

NEW CHALLENGES IN TRACING AND RECOVERING ASSETS IN INSOLVENCY PROCEEDINGS

Speaker Introductions

Angela Barkhouse

1. Angela is a managing director in the Restructuring Practice at Kroll in the Cayman Islands.
2. She has vast experience as an insolvency practitioner in both the BVI and the Cayman Islands. Her notable appointments include: (i) acting as a liquidator over multiple entities involved in the 1MBD fraud and (ii) her appointment as liquidator over Cayman Islands' first crypto related insolvency of Atom Holdings Limited.
3. Angela was inducted as a III full member last June in Singapore.

Mark Goodman

4. Mark is a partner at Campbells in the Cayman Islands where he specialises in insolvency, restructuring and investment fund litigation.
5. Mark is also an accredited mediator and participates as a delegate to the UNCITRAL Working Group V.
6. Mark has been a full member of the International Insolvency Institute since 2019.

Greg Grossman

7. Mark is a founding shareholder of Sequor Law, based in Miami, and his practice focuses on bankruptcy and insolvency litigation, creditors' rights, restructurings, and international commercial litigation.
8. Prior to private practice, Greg clerked for a United States Bankruptcy Judge in the Middle District of Florida.
9. He is also a full member of III.

Alecia Johns

10. I will be your moderator this morning and I am counsel in Conyers' Litigation and Restructuring team in the Cayman Islands and III Next Gen Class 13.

11. Prior to joining Conyers' Cayman Office I also practiced for a number of years in the BVI and still maintain a BVI practice.
12. So I will also be adding a few BVI insights where relevant to the topics we are discussing as well as wearing my moderator hat.

Challenge 1: Identification / Anonymity Issues

13. The first challenge we want to discuss are issues related to the identification of parties when seeking to trace and recover digital assets given the anonymous (or at least pseudo-anonymous nature) of most digital asset transactions. **@Angela**, do you want to kick things off on that?
14. [Limitations of the “public” blockchain and challenges in tracing digital assets (**Angela**)]
15. **@Greg**, what’s been your experience from a Florida perspective on this?
16. [Identification challenges from US perspective: limited KYC held by crypto exchanges and financial institutions, experience from recent Chapter 15 Ponzi Scheme case; also challenge in dealing with tracing of funds that pass through money changers in Latin America (**Greg**)]
17. **@Mark**, another thing we’re seeing a lot more of in the Cayman Islands are DAOs (Decentralized Autonomous Organizations) and Cayman Foundation Companies as legal wrappers for DAOs. Can you tell us about some of the challenges those create?
18. [Insights from Cayman perspective (including Atom); challenges presented by DAOs and Cayman foundation companies as legal wrappers for DAOs (**Mark**)]
19. In wrapping up on this point, we do see where the Courts have tried to adapt in dealing with some of these identification issues. For example, in the BVI, the Courts have followed the lead taken in England and granted injunctions against “Persons Unknown” in Crypto cases by reference to the individual’s wallet address or email address. We saw this in the Chainswap case in 2022 and more recently in the AQF v XIQ decision handed down in late 2023.

Challenge 2: Speed of movement of digital assets

20. Another challenge that we have all come across when dealing with tracing digital assets is the speed of movement of these assets, within seconds and in a way that often outpaces efforts to get formal injunctive relief from the Court. **@Angela**, can you touch on your experience with that.
21. [Court adapting tools to deal with speed of movement: Angela's experience of getting turnover of data from third party service providers prior to Chapter 15 recognition; wallet reconstituted with info turned over (**Angela**)]
22. **@Greg** have you found that US Courts are moving fast enough to keep up with the speed of movement of these assets?
23. [Limitations of Court processes in responding to speed of movement (**Greg**)]
24. **Recent BVI experience:** In a recent case Angela and I were involved in, Angela's team had helpfully discovered some Tether (valued at approximately 22 million) which it was strongly suspected originated from assets of the company in liquidation and was unlawfully transferred by bad actors. We wrote to the relevant crypto exchange requesting that they freeze or disable withdrawals from certain specified wallets and that they provide KYC on the holders of the wallets pending our application to the Court for injunctive relief. The exchange insisted that they would not act without a formal court order, which we did not manage to get until a few days later. Within the span of those 3 days we saw the 22 million dissipate further until only a few thousand remained traceable.
25. On the flip side, we have had experience with other crypto exchanges who are willing to put courtesy freezes in place pending a formal order which proves to be incredibly helpful given the speed of movement.

Challenge 3: Funding

26. Intro: We can all agree that funding remains a major piece of the equation when asset tracing in the context of an insolvent entity. The appointed officeholders have to be paid, investigators, lawyers. Even the process of seeking discovery on assets (which is an essential first step) is expensive, for example Norwich Pharmacal Applications, Bankers Trust Orders, or 1782 Applications. **@Mark**, can you give us the Cayman perspective on the legal regime for third party funding in insolvency cases?
27. [Cayman perspective: legal regime for litigation funding; ease of liquidators sourcing funding on commercially favourable terms and obtaining sanction for funding agreements \(Mark\)](#)
28. **@Angela**, from an IP's perspective, what has your experience been with third party funders? Is it relatively easy to get good funders on board on commercial terms?
29. [Cayman IP perspective \(including re funding in crypto cases\) \(Angela\)](#)
30. [Florida perspective: war stories \(Greg\)](#)

Challenge 4: Service Rules

31. Another challenge in cross border cases, where liquidators may be seeking to bring urgent claims as defendants in other jurisdiction is the rules regarding service. There are jurisdictions such as China and Russia where service of foreign process has to take place via the country's designated "Central Authority" under the Hague Convention which is a laborious process that can take up to and over a year. **@Greg**, do you want to kick off with your experience on this?
32. [\[Hague service rules out of date \(Greg\)\]](#)
33. **@Mark**, what has the Cayman experience been like? How easy is it to circumvent some of these more convoluted service procedures and to obtain an order for alternative service in the Cayman Islands?
34. [\[Ease or otherwise of obtaining an order for "substituted service" in the Cayman Islands and the challenges of that \(Mark\)\]](#)
35. Developments in BVI adapting to new methods of service including via NFTs and Twitter in appropriate case (Alecia)
 - From a BVI perspective, we have seen where the Court has been willing to adapt and in cases involving persons unknown (identifiable by their crypto wallet), the BVI

court has ordered service via NFT (in case of AQT following the English Court's lead in D'Aiola v Persons Unknown).

- Similarly in the Three Arrows liquidation, the Court ordered service via Twitter (now called X) on the Three Arrows Directors of an order that they be examined under oath.

Challenge 5: Limitation on Court's Jurisdiction to Award free-standing interim relief

36. Short intro on BVI "black swan" jurisdiction to award free-standing injunctive relief in aid of foreign proceedings (**Alecia**):

- In the BVI and in Cayman it is well established that the Court has jurisdiction to award interim injunctive in aid of contemplated or actual foreign proceedings even if there is no claim of cause of action in the BVI or the Cayman Islands.
- This is now confirmed at the highest level by the Privy Council in the case of Broad Idea and also by statute in the BVI and Cayman Islands.

37. Greg you mentioned that there are certain limitations in not having similar relief available pre judgment in the US context.

- Limitations on such relief not being available in the US; also the challenge of bond requirements for pre-judgment remedies (**Greg**)
- Availability of free standing interim relief in Cayman and previous experiences (**Angela / Mark**)