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A Briefing Guide to

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# Taking The Right Approach In Asset Tracing And Recovery

RAHMAN RAVELLI

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Asset tracing is an effective way of locating, identifying and freezing stolen assets. It is a tool that is used to trace the full series of transactions that take an asset from its origin through to its final destination. This exercise is of great value when it comes to submitting relevant applications to the court and can help provide the evidence to substantiate any claim that you make.

In complex commercial fraud matters, money laundering is almost always inter-linked with it. This is because if someone deceives a company or individual out of funds or assets they will then look to ensure those funds or assets are out of reach of anyone who may be looking to retrieve them. This is where the law of asset tracing has a vital role.

Asset tracing is an important element of ensuring a fraud victim can link that fraud to the particular assets they believe are the proceeds of the wrongdoing. A tracing exercise will tackle money laundering techniques used by any perpetrator to identify where those assets are in order to recover them for their rightful owner.

## Regaining What is Yours

If anyone believes that they have been defrauded, they can use civil action to seek to regain what has been wrongly taken from them.

The law provides a number of routes by which action can be taken to compel the person accused of the fraud to return what was taken fraudulently from another.

While such procedures are a valuable – and often more rewarding – course of action than reporting the matter to the police and seeking a criminal prosecution, they do require preparatory work to ensure success. Asset tracing and recovery is a challenge that requires skill, judgement, speed of thought and action and legal intelligence in order to pursue and reclaim assets that have been lost to fraud.

It may seem obvious to say but you have to know where the assets concerned are in order to be able to use civil remedies to successfully regain possession of them. This is why asset tracing is so important.

In many cases, asset tracing will not be a simple exercise. The person or persons accused of fraud may have acted in a way that makes it hard to discover where the assets are currently located. If it was money it may have been spent, whereas other assets may have been sold or squandered. The legal term for such activity is that the assets have been dissipated. The assets may have been deliberately placed with a person or in a place that will make it difficult to locate them.

Assets obtained by fraud may have been moved across borders. In such cases, tracing and identifying them, freezing them and ensuring they are returned to their rightful owner may require experience of various countries' legal systems, expertise in co-ordinating a multinational case and knowledge of how best to manage and schedule proceedings from country to country.

Anyone wanting to recover their assets must adopt the right legal and investigative approach. It is important to seek the right advice regarding your legal options and the practical steps you should be taking to maximise your chances of succeeding.

At Rahman Ravelli, we put our expertise in this area of law and our international

network of contacts to work for clients to make sure that every avenue is explored when it comes to tracing and recovering their assets. Rahman Ravelli's tracing and recovery specialists have the skills and experience to ensure that any "hiding places" for fraudulently-gained assets are identified and that the full force of the civil law is used to return them to the rightful owner.

## The Importance of Acting Quickly

The importance of speed and expertise cannot be overemphasised in asset tracing and recovery. Both will increase the likelihood of assets being recovered.

Once the need for asset tracing has been determined, a team of the relevant experts must be put together immediately. There can also be no delay in deciding upon the best approach or in taking action to identify exactly where the assets in question are and who has them. This then must be followed by the right legal applications being made.

Rahman Ravelli has extensive experience of doing all this for both individuals and corporates around the world. Our legal intelligence coupled with our careful planning, high-quality investigative work and speed of thought mean we can tackle any efforts that may be made to prevent assets being located or recovered.

## First Steps

In any such case, it is important to establish the precise circumstances of the fraud.

This means carrying out investigations and taking statements to:

- Gain a full understanding of how the fraud was perpetrated
- Identify all those individuals involved and their location
- Establish the location of the fraudulently-gained assets
- Determine whether any of the assets have been sold and, if so, the location of the money obtained from the sale

Such a course of action will ensure that the full facts regarding the fraud are identified. This will then help determine the most appropriate legal action to take.

Our civil fraud section explains the various ways of using the law to recover any losses that are due to fraud. The legal tools available are known as interim reliefs. The most appropriate form of interim relief can be decided once the exact nature of the fraud and the current situation regarding the assets has been determined. Interim reliefs include worldwide freezing orders, disclosure orders and search orders.

It is important to move quickly when tracing misappropriated funds and assets. Bankers trust orders and passport orders can play an important role in achieving this.

## Bankers Trust Orders

A bankers trust order enables the defrauded party to trace funds through bank accounts. Such an order offers an effective way of policing any potential freezing injunction.

But bankers trust orders are not made lightly by the High Court. While they may be relatively straightforward to obtain if there are obvious signs of fraud, many individuals seeking one will require a legal team that can make robust representations and convince the court that such an order will be of genuine assistance in locating or preserving assets that are the subject of a claim.

It is crucial to act with speed to identify the whereabouts of the misappropriated funds and reduce the risk of dissipation. A bankers trust order can lead to all relevant documents being produced by the bank: account balances, cheques, payment slips and records of any money transfers. But the right steps have to be taken to ensure you obtain the order.

In applying for a bankers trust order, the applicant must disclose whether the alleged fraud is the subject of any internal or criminal investigations. It is always worth remembering that the court will be more willing to grant an order if the applicant has narrowed the scope of their request down to specific bank accounts and / or a certain time period. And the need to act swiftly cannot be over-emphasised. The quicker the application, the quicker the response will be from the banks in question – meaning there will be less opportunity for the defendant to dissipate the assets.

## Passport Orders

Where there is evidence to indicate that the defendant may well leave the country to avoid proceedings, we can ensure that a court order is in place requiring the defendant to surrender their passports and travel documentation.

## Tracing

As we mentioned earlier, one consideration that will go through the mind of anyone who is planning or who has committed a complex commercial fraud is how best to launder the proceeds. Laundering the proceeds means the person who has committed the fraud – or someone who is helping him – putting distance between himself and the proceeds of that fraud. It is the act of disguising the fact that the wealth that person has obtained has come from illegal activity.

Laundering is a common activity practised by those perpetrating various types of crime. Money laundering techniques are constantly evolving as perpetrators look to stay one step ahead of those looking to identify the source of their ill-gotten gains. It presents particular challenges to those looking to use legislation to recover what they have lost due to fraud. The main challenge is to trace and / or follow the assets.

## The Distinction between Tracing and Following

It is important to distinguish between following assets and tracing assets. Following an asset means investigating to see where that particular asset ends up. Tracing an asset means investigating and identifying where and how the original asset has been sold, traded or exchanged for another asset. Tracing is recognised as locating the value not the specific assets, as the value of the original asset may well be found in a substituted asset.

For example, if X is defrauded out of a diamond necklace by Y, who then transfers it to Z, X can follow the necklace into the hands of Z. The necklace has not been exchanged or substituted for another asset so X has simply followed his asset.

But if X is defrauded out of his diamond necklace by Y, who then exchanges it with Z for a gold watch, it becomes a tracing issue as the original asset has been exchanged for another product. The necklace can be followed into the hands of Z and the product for which it was exchanged, the gold watch, can be traced to Y.

This distinction is important as it has significant bearing on our understanding of when the court will grant proprietary remedies. In our example, where X's diamond necklace was exchanged by Y for Z's gold watch, X may wish to assert ownership over the gold watch rather than the necklace. Attempts could be made to freeze both assets. But such decisions need to be taken after taking the relevant legal advice.

Asset tracing and recovery can be of great importance in reuniting an individual or corporate with their assets. But it is an exercise that has to be handled with speed and intelligence by those with the relevant expertise.

# RAHMAN RAVELLI

**London Office**

36 Whitefriars Street  
London  
EC4Y 8BQ  
+44 (0)203 947 1539

**Northern Office**

Roma House, 59 Pellon Lane  
Halifax, West Yorkshire  
HX1 5BE  
+44 (0)1422 346 666

**Midlands Office**

3 Brindley Place  
Birmingham, West Midlands  
B1 2JB  
+44 (0)121 231 7025

[www.rahmanravelli.co.uk](http://www.rahmanravelli.co.uk)

