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Patriot Act receivers can invoke mutual legal assistance treaties

At a Glance

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Rob Garver

In the United States, receivers have a considerable amount of power to trace and freeze assets as part of the effort to seek recovery for creditors and those wronged by fraudsters. But in cases where assets are moved out of the U.S. — as is increasingly common in today's world of instant electronic transfers — a receiver's authority all but stops at the water's edge.

All receivers in federal cases have the standing of officers of the court, but that is a distinction that carries little weight in many foreign jurisdictions.

"I have had a few SEC cases where we thought funds had gone out of the United States, said James H. Donell, a state and federal court receiver in Los Angeles. "Right now, when we approach law enforcement in a foreign country they say, 'Who the heck are you? I don't care what that court order says.'"

But a little-known provision of federal law, could go a long way toward changing the reception receivers face in other countries.

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A new weapon

When Congress passed the USA PATRIOT Act in 2001, it gave federal courts the authority to appoint receivers with enhanced powers. In addition to all the usual authorities of a federal receiver, these Patriot Act receivers have the standing of a prosecutor for the purposes of requesting information from the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and

for requesting information from foreign governments pursuant to their obligations under mutual legal assistance treaties and other international information-sharing agreements.

The Patriot Act receiver provision is encoded in federal law at 18 USC 1956 (b)(4).

(The Patriot Act receiver's authority to access FinCEN data was the subject of another recent AssetRecoveryWatch.com article [here](#).)

Streamlining the process

AssetRecoveryWatch.com editorial board member Linda Candler, a former Assistant U.S. Attorney, was one of the primary drafters of the provision. Candler, a barrister and attorney-at-law admitted to practice in England and Wales, Washington, D.C. and California, said the effort to create the designation of a federal receiver grew out of the unnecessary complexity of some asset recovery cases.

"To freeze assets and transfer the misappropriated funds, the receiver must seek recognition of his order of appointment by a U.S. court in every foreign jurisdiction where assets are located," she said.

"Right now, other than hiring a private investigator, it is difficult to prove those claims."

"This required a substantial evidentiary hearing on the powers and duties of the receiver, and proof that the receiver is acting on behalf of victims rather than seeking to enforce a fine or penalty. This

statute was designed to simplify the process to make it easier to recover assets that have been moved offshore for victims of a large-scale fraud," she said.

Worldwide scope

The United States has mutual legal assistance treaties in effect with 64 countries around the world. Additional treaties have been signed but not yet put into force with eight other nations and the European Union. The U.S. is also party to numerous multi-lateral agreements, such as the United Nations Convention against Corruption, which have information-sharing components.

In general, such treaties create systems for the exchange of information and evidence in criminal and other cases, and require law enforcement and judicial authorities in other countries to provide assistance at the request of a "central authority."

The central authority in the U.S. is the Department of Justice, and a Patriot Act receiver is allowed to make such requests through the Justice Department.

Significant benefits

For professionals used to tracing the assets of fraudsters overseas, the benefits of the Patriot Act receiver's authorities are obvious.

"I think that any source of information that a receiver can access is going to be beneficial," said Robert Wing, an attorney with the law firm Prince, Yeates & Geldzahler in Salt Lake City, Nev. "There are certainly times when there are allegations that someone who has committed financial fraud has moved money overseas, and it is difficult to trace it."

Currently, a receiver's options are limited when it comes to tracing assets held in foreign jurisdictions.

"Right now, other than hiring a private investigator, it is difficult to prove those claims," said Wing. Typically we do it by tracing the money. But if someone transferred cash overseas it would be useful

to have better tools to follow it."

Words of caution

While enthusiastic about the possibilities the Patriot Act federal receiver provision opens up, James Donell offered some words of caution as well. "It certainly doesn't hurt a receiver at all but getting other nations to move and react and respond is another thing," he said.

He said that the powers of a receiver in the United States are considerably greater than they are in many other countries. Until the new provision is tested in practice, he said, it is not clear how much cooperation it will engender.

"In my opinion it just does not open the door and pave the way to authorities like those you have here. A receiver has a great deal of authority in the United States. It doesn't work that quickly in different nations."