



CM ADVOCATES LLP

ASSET TRACING & RECOVERY PRACTICE GROUP

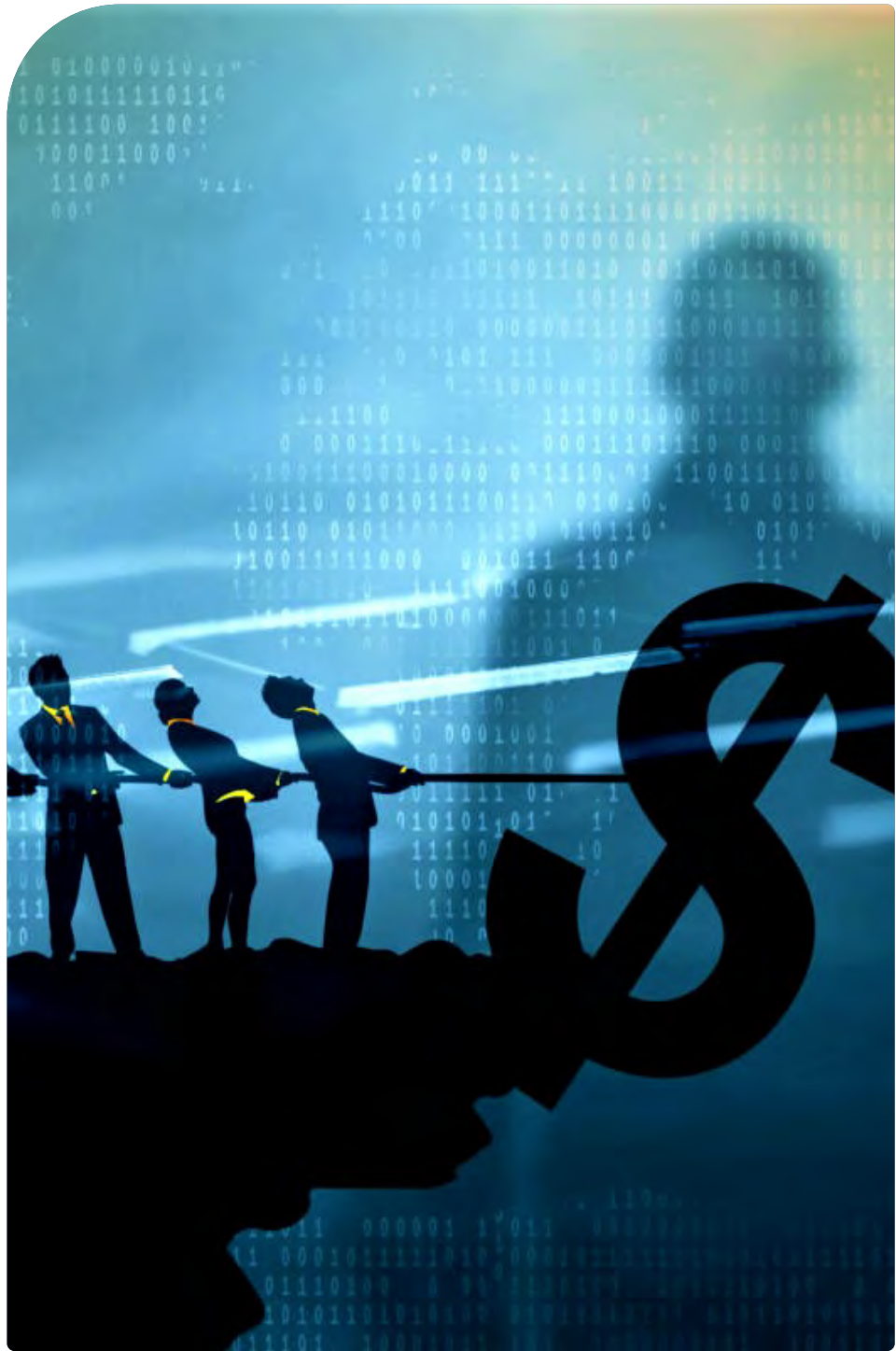
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THE FIRM

At CM Advocates LLP, we pride ourselves on being able to provide our clients with consistently timely, high quality, innovative and commercially relevant legal advice. Since technical know-how is not adequate, we constantly seek to build excellent working relationships with our clients and clearly understand their businesses and the realities and imperatives they face. Our strategy is to build teams that are specific to our clients' needs and also combine specialist legal skills, industry experience and practical know-how.

Our focus is getting to the core of our clients' legal needs, creating and adding value to them; by delivering timely, innovative and commercially-sound advice and legal solutions. We have set up robust systems to ensure consistently high quality out-put in every assignment we undertake and we are uncompromising in our quality control. Moreover, we always seek to protect our clients' interests, mitigate their risks and create superior outcomes for them.

Our achievements for clients are made possible by our professional team of technically and commercially brilliant lawyers led by our Managing Partner at the fore front of every transaction, who are singularly focused on their clients' success. In other words, our pride is to make you succeed in your business or project.

We have a culture of professionalism, team work and respect, where talented professionals with different views, experiences and backgrounds can thrive. To remain on the cutting edge, we put extra emphasis on continuous learning, knowledge sharing and peer reviews. This has enabled the Firm to carve a niche for itself in the existing as well as new and emerging branches of law. The Firm's local and international clientele cuts across various sectors of our economy like financial services, real estate development, manufacturing, telecommunication, agribusiness, tourism and hospitality, energy and mining.

OUR PRACTICE AREAS

1. Anti-Bribery & Anti-Corruption
- 2. Asset Tracing & Recovery**
3. Aviation Law
4. Capital Markets
5. Charities and Not-for-Profit Organizations (NPOs)
6. Commercial/Business Law
7. Construction & Infrastructure Law Unit
8. Corporate Law
9. Cyber Security, Privacy & Data Protection
10. Debt Recovery, Restructuring & Insolvency
11. Dispute Resolution
12. Employment, Labour Relations and Immigration Law Advisory
13. Energy, Mining & Extractive Industries
14. Entertainment & Sports Law
15. Family Law, Estate Planning & Probate Administration
16. Forensics & Investigations, Risk & Compliance
17. IP & TMT (Telecommunications, Media & Technology)
18. Lobbyist & Policy Practice
19. Multi-lateral Organizations. Foreign Embassies & Consultants
20. Non-Compete, Non-Solicit & Trade Secret Practices
21. Private Equity & Venture Capitalist
22. Real Estate, Banking & Finance
23. Shipping, Logistics & Admiralty Law
24. Start-ups & Small & Medium Sized Enterprises
25. Tax Law Advisory

ASSET TRACING & RECOVERY

CM Advocates LLP has a pre-eminent Asset Tracing and Recovery practice.

Fraud including contrived bankruptcies as well as computer and internet fraud and other fraudulent schemes designed to cheat financiers and creditors are on the increase. Using our multidisciplinary skills, we are able to draw on an array of tools available from both Kenyan courts and foreign jurisdictions to trace and locate debtor's or wrongdoer's assets and secure them for recovery.

Our team includes specialists with experience in forensic investigative techniques, fraud detection and deterrence, white-collar crimes, and public and private law enforcement work.

In each case, we strive for professionalism, thoroughness and rapidity of action. We also have dogged tenacity to go to great lengths to achieve the desired clients' objectives. Since each fraud is different, the approach and the strategies employed must be tailored to ensure the desired outcome. Moreover, in order to ensure good results early action is indispensable.

Our team often advises local and international clients on suspected fraudulent activities where it appears that assets have been, or are at risk of, being dissipated. We also advise on investigations and courts proceedings in Kenya as well as working as part of a larger team on

multijurisdictional frauds involving global organisations. In addition, we regularly advise on associated civil or criminal proceedings. Moreover, we help clients plan, implement internal investigations, and liaise with external investigative agencies, forensic accountants and the media.

Often times, majority of asset tracing cases involve a debtor who may have a concealed identity or who has fraudulently transferred his assets, as in the case of offshore companies. Using professional investigators, our team can take steps to confirm the identity of a debtor – whether an individual or company director – as well as providing a thorough assessment of any financial and physical assets held that could be used to satisfy the outstanding debt.

In relation to assets tracing, our multidisciplinary team is able to handle cases involving:-

- Property;
- Succession (Wills and probate);
- Bankruptcy & Insolvency;
- Personal injury claims;
- Directors & shareholders disputes;
- Commercial law;
- Family law (e.g. divorce); and
- Fraud.

Besides the foregoing, we have expertise in:

Freezing & Disclosure Orders: We are regularly instructed to procure freezing orders or injunctions (normally called Mareva Injunctions) and disclosure orders on behalf of clients to prevent defendants or would be judgment-debtor from dissipating their assets as to have the effect of obstructing or delaying the execution of any decree that may be passed against him. In the event that the respondent to an order fails to comply with its terms, we are able to act quickly to seek punitive measures against that defendant.

Where the funds have been moved outside the jurisdiction, we are able to call upon trusted lawyers from around the world specializing in asset tracing, freezing and recovery to assist us, and we are able to supervise such practitioners on behalf of the clients.

Attachment before Judgment: These orders are normally issued where a respondent has deliberately taken action to avoid any process or otherwise obstruct or delay execution of a decree or anticipated decree. For such orders to be issued, a defendant must be about to dispose of his property or to remove it from the jurisdiction with intent to obstruct or delay any decree that may be passed against him.

Third Party Disclosure Orders: For purposes of identification of assets that have been misappropriated, we regularly seek orders requiring banks and other appropriate third parties to disclose information. This is particularly critical when attempting to trace funds that have been transferred to one or several banks accounts. To buttress our efforts, we invariably seek the assistance of the Assets Recovery Agency which is a government agency established in Kenya under the Proceeds of

Crime and Anti-Money Laundering Act, 2009.

Search & Seizure: Search orders are also known as "search and seizure orders" or as "Anton Piller" orders. It is a court order, which requires the defendant to give access to the plaintiff, or to his/her legal representatives to the defendant's premises in order to obtain evidence that might be essential to the plaintiff's case. Such orders may be issued where a defendant has in its possession incriminating documents or things and there is real possibility that he may destroy such material before any application inter parties can be made or otherwise warning others to destroy or conceal evidence. Such orders require-a respondent to allow the applicant's solicitors to enter the respondent's premises and to search for and remove all items covered by the order. We have experience in applying for and implementing such orders to preserve evidence that may be relevant to a claim when it is situated on premises that are not under the control of the claimant's home or office premises.

Passport Orders: In the event that there is evidence to suggest that the defendant would wish to flee the jurisdiction to avoid ongoing proceedings, we can apply to the court for an order requiring the defendant to surrender their passport(s) and travel documents.

Securing & Enforcing Foreign Judgments and Arbitral Awards: We work with foreign claimants and regulators with foreign judgments or arbitral awards who wish to freeze the assets of defendants (whether domiciled in the Kenya or not) and/or to recover the assets of defendants located in Kenya and the Eastern Africa region.

Foreign judgments are enforceable under Foreign Judgment (Reciprocal Enforcement) Act [CAP 43 of the Laws of Kenya]. This Act only applies to enforcement of judgments originating from countries that accord reciprocal treatment to judgments given in Kenya and these include Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda.

Kenya is also a signatory to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. This Convention applies to decisions rendered in civil or commercial matters by the courts of Contracting States. In the absence of a reciprocal

enforcement arrangement, a foreign judgment is enforceable in Kenya as a claim in common law but this requires proof that such judgment was issued by a competent court and through a fair trial process.

The Kenyan Arbitration Act, which is broadly based on the United Nations Commission on International Trade Law Model Law, makes specific provision for the recognition and enforcement in Kenya of foreign arbitral awards. If you are concerned about an actual or potential fraud, or would just like more information on how we can help you, please feel free to get in touch.