



FTI CONSULTING
IN THE CARIBBEAN

RECOVERING VALUE
IN RUSSIA AND
THE CIS COUNTRIES

CRITICAL THINKING AT THE CRITICAL TIME™

Introduction

Companies registered in the British Virgin Islands (BVI) and Cayman Islands are used extensively by individuals and corporations in Russia and the Commonwealth of Independent States (CIS) as special purpose vehicles or joint venture entities and are often embedded in complex group structures, acting as key holding companies for valuable assets or operating subsidiaries. In the vast majority of cases, assets, liabilities, key management personnel and services providers are located in Russia or the CIS, but also the UK, U.S., Cyprus, Latvia and Luxembourg.

This paper concentrates on how value can be recovered from such structures containing Caribbean registered companies, using an insolvency or enforcement process. In addition to the specific topics covered in this paper, FTI Consulting offers a wide range of other services in Russia and the CIS, details of which can be found in our related publication "*Services in Relation to Russia and the CIS.*"

Our experience shows that when issues arise involving Caribbean registered companies with underlying investments or ultimate ownership interests in Russia or CIS, there is typically a need to establish:

- the nature of the assets held;
- whether any dissipation has occurred or is likely to occur; and
- who ultimately owns and/or controls the structure.

Obtaining clarity about such matters as soon as possible is crucial in the overall approach to realising value.

FTI Consulting has full service offices in the BVI and Cayman Islands, which are well-connected to our full network of offices around the world. As such, when assisting stakeholders with the enforcement of debt or security, or when resolving other complex disputes, our network can often be used to gain vital information about the Russian or CIS entities.

Insolvency and Enforcement Remedies

In Russia and the CIS there have historically been significant problems in local enforcement of overseas court judgements and arbitral awards, both against the state and state-owned entities, and also against private corporations. FTI Consulting has extensive experience in identifying the responsible parties behind companies and unravelling complex group structures; the identification and location of relevant assets; and advising clients on effective options to maximise recoveries.

Insolvency and enforcement remedies will depend upon the contractual rights of the stakeholders. If they hold the requisite security, they will have the ability to appoint a receiver over the shares or assets of the Caribbean entity. Otherwise, they may need to present the BVI or Cayman Court with a winding-up petition (together with an application to appoint a provisional liquidator in urgent cases or where there is a threat of asset dissipation).

A receiver or liquidator appointed over the Caribbean registered holding company has significant powers to gather information that is not publicly available, which can be used to identify and take possession of assets. These powers can, especially when combined with FTI Consulting's global investigative and forensic capabilities, uncover significant amounts of additional information about often opaque structures and/or assets and as a result significantly enhance the return for stakeholders.

The recovery strategy will vary based on the circumstances of each case, but the outcome will be determined by the skill, expertise, resources and practical experience of the office holder and team involved.

A typical scenario will involve the Caribbean receiver or liquidator immediately taking steps to:

- Get custody of books and records (paper & electronic) from directors and service providers in the Caribbean, Russia and CIS and in any other relevant jurisdictions.
- Identify financial institutions at which the company held bank accounts and undertake a forensic analysis of often voluminous bank statements and other information to identify potential assets and suspicious transactions.
- Examine records to establish the corporate structure and take control of underlying subsidiaries/operating companies, usually by replacing directors.
- Investigate transfers of assets in the period leading up to the onset of insolvency or enforcement and implement recovery strategies.
- Investigate potential causes of action against directors and other third parties, subject to determining their domicile and the cost effectiveness of such proceedings.
- Formulate realisation strategies for valuable underlying assets or subsidiaries identified and controlled by the office holder.

FTI Consulting's approach on these matters is – so long as it is not inconsistent with the office holder's duties – to undertake these steps in conjunction with the stakeholder's legal team. This approach combines the resources of FTI Consulting with the existing knowledge of the stakeholders often resulting in lower costs and greater recoveries.

To maximise recoveries, the FTI Consulting Caribbean office holder will draw on the skills and expertise of a multi-disciplinary team of specialists with proven experience in dealing with forensic accounting, investigations, asset tracing, computer forensics and litigation, often in multiple jurisdictions.

About FTI Consulting

With over 4,200 employees in 26 countries worldwide, FTI Consulting has the global resources, regional coverage and local expertise to provide comprehensive solutions and achieve results from the most challenging situations involving Russia and CIS. Our previous engagements in Russia and the CIS have involved the region's corporate leaders, large multinational companies, as well as government institutions and sovereign nations.



What Makes Us Different?

FTI Consulting is a market leader with an outstanding reputation and proven track record in making recoveries for foreign investors. Our proven track record is driven by our ability to draw on the extensive range of skills, expertise, relevant experience and resources available within our offices worldwide.

Our experienced professionals have extensive expertise in contentious, cross-border insolvency and enforcement proceedings, involving international litigation, stakeholder disputes, fraud investigations, asset tracing and realisation of complex and illiquid assets. They have all worked on-the-ground in the Caribbean for a number of years and have been involved in a number of complex and high-profile matters involving Russia and the CIS countries. By virtue of this experience, our Caribbean team has the necessary knowledge and expertise to operate efficiently and effectively in these challenging jurisdictions.

Local knowledge, expertise and resources

Business customs and accounting procedures that record transactions can vary from one jurisdiction to another, particularly in developing markets. We understand how critical it is to have a deep understanding of regional cultural and business customs. Our consultants have been employed by Russian/CIS entities, have worked and lived there and have offered consultancy services to companies in these jurisdictions over their entire careers. Many of our professionals are multi-lingual and speak a wide variety of languages fluently, including native Russian and Ukrainian, and a number of other Slavic languages.

Multi-disciplined team of specialists

Our Caribbean team has direct access to specialists, within the FTI Consulting network, with vital investigation and asset recovery experience and skills, including:

- Forensic accountants
- Skilled investigators
- Asset tracing experts
- Arbitration experts
- Valuation experts
- Computer forensics technicians
- Restructuring/turnaround advisers
- Banking & securities experts
- Interim management experts

Unified and experienced team

Our professionals in the Caribbean have vast experience in managing complex and contentious insolvency and asset recovery matters involving the Caribbean, Russia and the CIS, and our teams have strong experience in working seamlessly with in our worldwide offices. Utilising the latest technology for sharing information and data, we regularly bring together professionals in multiple locations to provide additional depth of knowledge and expertise.

Unrivalled industry expertise

We have been involved in matters in a myriad of industry sectors in Russia and CIS, including energy and mining, general manufacturing, aviation and international trade. Our industry experts support our Caribbean practitioners and provide invaluable insight and specific sector expertise in relation to the assets of the Caribbean company.

Independent

Unlike international accounting firms, we do not offer audit services, so our engagements are rarely affected by conflicts. Furthermore, our conflicts review process is straightforward with confidential worldwide checks completed within hours.

Flexible and innovative

We can offer flexibility in terms of fee arrangements in circumstances where liquid assets are not readily available to support a possibly long asset recovery process.

Relevant Experience

FTI Consulting's multi-disciplinary expertise, global reach, local knowledge, united team and tenacity is best exemplified by the matters in which members of our team have been involved in, case studies of which are set out below. These engagements clearly illustrate how the involvement of our professionals significantly enhanced stakeholder recoveries from distressed situations involving entities with Russian and CIS components.

Project Tea

<p>Situation A BVI registered company was party to various agreements with an aluminium smelting plant in Tajikistan and certain suppliers of raw materials. Following a dispute between the company and one of its major suppliers, the supplier commenced arbitration proceedings against the company and ultimately obtained an award in excess of US\$70 million. The award was subsequently recognised in the BVI and the company was placed into liquidation. Amidst this, allegations arose that the company had disposed of significant assets to a connected party prior to the commencement of the liquidation.</p>	
<p>Our Professionals' Role</p> <ul style="list-style-type: none"> • Appointed as liquidator by the BVI Court. • Identified four wholly owned subsidiaries registered in the BVI and replaced directors. • Uncovered undisclosed bank accounts at a number of financial institutions in various jurisdictions across Eastern Europe. • Conducted a forensic analysis of voluminous bank statements recording total transactions in excess of US\$5 billion. • Obtained discovery from several U.S. correspondent banks pursuant to section 1782 of the United States Code. • Undertook a comprehensive review of corporate records and information obtained from services providers and other third parties in several jurisdictions. 	<p>Outcome</p> <ul style="list-style-type: none"> • Determined that valuable assets had been dissipated prior to liquidation and initiated a claim against various parties to recover these assets. • Identified a large number of unusual transactions with numerous suspicious counterparties. • Recovered significant funds from the financial institutions and solicitors' client accounts. • Identified two valuable commercial (Boeing 737) aircraft owned by one of the subsidiaries. • The matter is ongoing but it is anticipated that significant recoveries will be made as the recovery strategy progresses.

Project Deal

<p>Situation An offshore company alleged to be owned by a Ukrainian oligarch was placed in liquidation after an aircraft leasing company presented a petition. The aircraft leasing company claimed to be owed a substantial sum under the terms of the lease, but the company had failed to respond to all of its demands for payment.</p>	
<p>Our Professionals' Role</p> <ul style="list-style-type: none"> • Appointed as liquidator of the company by the BVI Court. • Conducted detailed investigation and asset search enquiries in numerous jurisdictions to which the company and its principals had links. • Identified and subsequently obtained significant information from a number creditors and other parties in relation to the ownership of the company and its assets. 	<p>Outcome</p> <ul style="list-style-type: none"> • Identified the company had purchased a private jet with an estimated value in excess of US\$50 million. • Developed a strategy and made arrangements to arrest the aircraft upon its return to the UK. • Prior to the seizure of the aircraft, the company reached commercial settlements with all of its creditors, and the liquidation was subsequently terminated by consent.

Project Arrow

Situation <p>A BVI registered company operating in Eastern Europe was involved in a dispute in relation to the supply of metal based products. One of the company's suppliers initiated a US\$50 million claim in the BVI Court following the company's failure to pay for goods supplied. At the hearing of the claim, the company was placed into liquidation by the BVI Court.</p>	
Our Professionals' Role <ul style="list-style-type: none">• Investigation of various statements the company had made in the Court proceedings where it said significant assets were held which could be used to satisfy the amount claimed.• Examination of the circumstances of the company to determine its assets, including valuable subsidiaries, and any transfers prior to the onset of liquidation.• Identified that the company held shares in three companies incorporated in Uzbekistan with a reported value of US\$250 million that had been transferred shortly before the commencement of the liquidation.• Analytical review of documents relating to the transfer of the shares in the subsidiaries.• Analysis of corporate records to identify bank accounts at previously undisclosed financial institutions.	Outcome <ul style="list-style-type: none">• The analysis of bank statements revealed accounts at several banks in Europe, which disgorged statements and other valuable information.• In conjunction with source enquiries in Uzbekistan, we gathered information in relation to the subsidiaries and established that subsidiaries having a reported value of US\$250 million had transferred the funds prior to liquidation.• Our investigations showed that no consideration had been given in respect of the transfers.• In conjunction with local counsel, we developed and implemented a strategy to recover the shares.• This robust action, driven by factual analysis, led to a significant settlement being reached between the company and the petitioning creditor.• The liquidation was terminated by consent.

Project Pinball

Situation <p>Appointed as liquidators of an offshore company following a major dispute with a multinational logistics company in relation to the supply of rolling stock in the Ukraine.</p>	
Our Professionals' Role <ul style="list-style-type: none">• In the absence of any cooperation from the former management of the company, we took steps to secure voluminous books and records from a number of third-party service providers in the BVI, Ukraine, UK, France and Latvia.• Conducted a forensic review of the complex trading history between the parties, including extensive cash tracing exercise involving bank accounts in several currencies at a number of European based institutions.	Outcome <ul style="list-style-type: none">• Our investigation revealed that the offshore company had in fact complied with its obligations under the supply agreement and that significant funds advanced had been retained by a third-party agent.• Our work enabled the logistics company to bring recovery action against the party which had misappropriated the funds.

Contacts

For details of how we can help, please contact:

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