Jurisdiction to Take Control over, and Liquidate, Foreign Companies

Is it permissible for a court to appoint a receiver whose powers will include taking control of a foreign company, holding in his possession all its assets, and liquidate it? Would that, at the very least, require recognition of the court order in the jurisdiction where the company has its seat?

These are some of the very many interesting issues raised by the proceedings initiated by the American Securities and Exchange Commission (SEC) against an American businessman living in France, Richard Blech, and companies of his group, Credit Bancorp. Blech has been accused of running a ponzi scheme in the United States. The SEC initiated proceedings against him before the U.S. District Court for the Southern District of New York for violation of U.S. securities laws. Pending the determination of the merits of its claims, the SEC sought interim orders aiming at preserving the assets of the defendants. In November 1999, the U.S. Court issued a first temporary restraining order and asset freeze and then a second one. These orders not only purported to freeze the assets of the defendants world wide but also appointed a Fiscal Agent for both Blech and some of his companies.

The authority of the Fiscal Agent included asserting control over foreign companies by being appointed by Blech as their sole officer and director. The companies were incorporated in various jurisdictions in the world, but what really mattered to the Fiscal Agent was Credit Bancorp N.V., the holding of the group which was incorporated in the Netherlands Antilles. The Fiscal Agent (who had been appointed in the meantime as a Receiver by the U.S. Court by an order of January 2000 which had now empowered him to liquidate Credit Bancorp N.V.) demanded that Blech designate him as the signatory of all accounts of the company, and that he appoint him as the sole director and officer of Credit Bancorp N.V., and indeed of all other companies. As Blech would not, he was declared in contempt of court by Court Order of April 2000 and ordered to pay US$ 100 per day of non-compliance. The financial penalty eventually reached US$ 13 million (I have already reported on the enforcement proceedings that the Receiver has initiated in France).

In August 2008, the Netherlands Antilles lawyer of Credit Bancorp N.V. wrote to the Receiver in his personal capacity to inform him that he had been instructed to seek compensation for his improper interferences with the company, arguing in particular that the receiver had no lawful jurisdiction over Credit Bancorp N.V. The Receiver answered that he was properly constituted by the U.S. Court. He also demanded that Blech instruct the Netherlands Antilles lawyer to discontinue its activities. On December 17, 2008, Credit Bancorp N.V. initiated proceedings in Curacao, Netherlands Antilles, against the Receiver (still in his personal capacity) and his American lawyers, claiming US$ 150 million in damages for unlawful interference. Arguments put forward by Credit Bancorp N.V. include that U.S. Court never had jurisdiction over Credit Bancorp N.V., that the Receiver never sought recognition of any of the U.S. orders abroad (and that he consequently has no authority in Curacao), and that he has never served properly the foreign company.

In October 2009, the Receiver sought an antisuit injunction in New York. On the jurisdictional points, he argued that Credit Bancorp N.V. was the very same company as its American subsidiaries, and indeed that all Credit Bancorp companies wherever incorporated are just different names used by Blech to operate his scheme. On October 14, 2009, the U.S. District Court issued another contempt order against Blech. The order finds that Blech is in contempt for interfering with the Receiver's duties, and issues an arrest warrant which will remain in effect as long as the Netherlands Antilles action will not be dismissed.

Is the assertion of jurisdiction of the U.S. Court admissible? The court appointed receiver certainly carries state authority. May a Court freely empower him to act abroad? Is it relevant whether he will physically travel to the foreign jurisdiction or whether he will instead merely act from the country where he was granted authority?

Is the situation different when his actions include taking control over a foreign company, and might result in its liquidation? In this case, the Receiver argued that the "foreign" company could not be distinguished from a local company. But I understand that the companies each had offices in the jurisdiction where they were incorporated, with salaried resident directors. And the Receiver still demanded Blech to relinquish control over the foreign company. If there had really been no difference, maybe he would not have insisted so much and sought two contempt orders. Does the existence of a company fall within the exclusive

jurisdiction of the state where it was incorporated?