THE YFLA SUMMER/AUTUMN NEWSLETTER 2017

Young Fraud Lawyers Association

Dear YFLA members

I would like to thank all members of the YFLA for their support in what has been another fantastic year for the YFLA. Many thanks to all those who have attended our events, and those who have helped us to organise and deliver them. This will be the final YFLA Newsletter of this membership year and we hope that you find it both informative and entertaining.

Our membership year is not over yet and we still have two more fantastic events to go, namely:

1. the **YFLA/FLA Joint Educational** on the 19 September 2017 at Pinsent Masons and
2. the **YFLA end of year social / AGM** which will be held at the Stationers' Hall on Friday 29 September 2017

Please see our website www.yfla.com for details of all our events. We hope to see you at the upcoming events and we hope you continue to support us as we move into the 2017/18 membership year in November.

There will be a position available on the committee for the upcoming year and I would be grateful if those who are interested in applying to join could submit a brief application by email to me at habudulai@bcl.com by 19 September 2017. The application should be no more than 500 words and should let us know why you would make a productive member of the committee and what you can bring to the organisation. The committee will vote to decide which candidate is to join and this will be announced at the Annual Dinner on 29 September 2017.

Warmest Regards

Habiba Abudulai
(YFLA Chair)

In this issue:

UK / EU Criminal Investigation and Enforcement after Brexit

On 29 June 2017, the European Commission published its position paper on "Ongoing Police and Judicial Cooperation in Criminal matters", setting out the EU position's on police and judicial cooperation. The paper outlines the EU's position on any ongoing police and judicial cooperation procedures initiated prior to the withdrawal by the UK from the EU, as well as its position on the treatment of information which has been obtained by the United Kingdom pursuant to European instruments prior to the UK's withdrawal.

"all rights and obligations enshrined in Union Law should continue to apply"

In summary, the EU's position is that, in relation to any ongoing procedures or information held by the UK at the time of withdrawal, all rights and obligations enshrined in Union Law should continue to apply, and the UK will be entitled to retain any information obtained through existing EU information exchange procedures.

Perhaps unsurprisingly, the Council has not set out its position in relation to procedures and information sharing post-Brexit. This is in contrast to more robust rhetoric from the EU in other more contentious areas such as access to the single market and the jurisdiction of the Court of Justice of the European Union.

The softer approach in this area likely reflects the fact that the UK's continued participation in EU information exchange and mutual recognition procedures is both mutually beneficial and a vital tool for the EU (and its individual Members States) in investigating and prosecuting crime. It also reflects the fact that this is one area in which the UK has a relatively strong negotiating position.

Consider, for example, the stats on European Arrest Warrants ('EAWs'). Between 2010 and 2015 the UK submitted 1,424 requests to other Member States and in that period, its request rate remained relatively consistent. In that same period, it received a total of 48,766 requests from other Member States, with the rate of request rising annually. The breakdown makes it clear that other Member States benefit more from the UK's participation in the EAW scheme than vice versa.

This is reflected in the tentative optimism expressed in the European Union Committee report on Brexit and the future of UK-EU security and police cooperation. The report acknowledges that, although there is not much precedent for the involvement of non-Member States in the various EU policing and judicial agencies, the UK's role as a key partner in the operation of these agencies so far, together with the value of the data it has to offer, render an outcome which is beneficial to the UK far more likely. The exact structure of such an agreement remains to be seen, but if it is to retain the mutual benefits of the current system it is unlikely that the structure would change substantially.

Laura Manson,
Taylor Wessing LLP

The Fourth Money Laundering Directive implemented in the UK

As a world-wide financial hub, the UK is highly exposed to the risk of money laundering, and has sought to tackle its infamous reputation as a safe haven for the proceeds of crime and corruption. Regulators such as the FCA have recently confirmed their commitment to reduce money-laundering.

Yet despite its apparent prioritisation, the government had to rush to take action to meet an EU deadline to improve anti-money laundering ("AML") regulation, by imposing the Money Laundering, Terrorism Financing and Transfer of Funds (Information on the Payer) Regulations 2017. The 2017 Regulations update the previous Money Laundering Regulations (2007) and finally bring the law into compliance with the EU's Fourth Money Laundering Directive.

What changes have been made?

Beneficial ownership

Corporations registered in this country will now be required to register their 'beneficial owners' (e.g. anyone who owns or controls over 25% or more of the company). The information will be recorded on a central register ("the Register") operated by HMRC, which would be accessible to law enforcement agencies.

HMRC will also maintain a register of beneficial owners of taxable trusts.

Customer due-diligence ("CDD")

There has been a reduction of simplified CDD, which will no longer automatically apply in any case.

CDD must now occur for anyone trading goods in cash with a value of more than £8750. Gambling providers must also perform CDD for customers placing a bet or collecting winnings of in excess of £1750.

A 'black list' of high risk jurisdictions has been created, which will make enhanced CDD a requirement for individuals /corporations with connections to those jurisdictions.

Politically exposed-persons

Under the 2007 Regulations, enhanced due diligence was only applicable to politically exposed-persons ("PEPs") from a foreign jurisdiction, but will now also apply to British PEPs.

New criminal offence

A new offence has been created, which bites where an individual makes a false or a misleading statement recklessly in the context of a money laundering investigation.

Risk assessment

A regulated person within a business must produce a risk report which will then be used to inform policy. Risk mitigation policies must be proportionate to the risks and include due diligence procedures/internal AML controls.

Commentary

The 2017 Regulations represent a shift to a risk-based approach. The changes to CDD do create a more onerous system but, as an integral part of CDD is often identifying the ultimate beneficial owner, the Register is likely to make some aspects of CDD easier.

The creation of the Register in particular is a significant step in improving corporate transparency. This is important because, for example, much of London's high value real estate is owned by shell companies, often with the ultimate beneficial owners of the property hidden behind an impenetrable corporate veil.

Although it is a step in the right direction, the Register in and of itself will not solve the issues with corporate transparency, particularly where there may be many corporate 'layers' involved. The accuracy or falsity of the information would not be immediately apparent and would require

extensive investigation. There has been criticism that the Register would not be available to the public at large or to journalists. Furthermore the registration requirement does not extend to overseas corporations holding UK property (although other EU countries will be required to keep a similar register pursuant to the Fourth Money Laundering Directive).

The Financial Action Task Force (FATF) will be releasing an analysis of the UK's efforts in 2018.

Merry Van Woodenberg, Foundry Chambers

Taxes and Trouble

On Saturday, 30 September 2017, the Criminal Finances Act 2017 will bring into force two new "failure to prevent the facilitation of tax evasion" offences; a domestic tax evasion offence and an overseas tax evasion offence.

Historically, it has been difficult to hold companies criminally liable for facilitating UK tax evasion because of the existing rules of attribution. The new offences now place the burden on companies to ensure they have the controls in place to prevent "associated persons" from facilitating tax evasion. As a result, it will be easier for prosecuting authorities to attach criminal liability to a company if they do not have adequately robust controls in place.

Definition of an "Associated Person"

A company will be held criminally liable if it fails to prevent an "associated person" from facilitating tax evasion. The definition of an "associated person" is broad and catches not only employees, but also agents and/or third parties providing a service for the company or on its behalf in the UK or overseas.

Criminal Facilitation

For a company to fall foul of the new offence of failing to prevent tax evasion, both the facilitation and the tax evasion must be 'criminal'. Two essential elements that must be present are criminal tax evasion (by a third party) and criminal facilitation (by the 'associated person'). If the act or omission is not deliberate and dishonest, then the company cannot have committed the criminal offence of failing to prevent tax evasion.

Extra-Territorial Reach

Importantly for companies, these new tax offences have very broad extra-territorial reach. They will catch UK and non-UK companies.

In respect of the non-UK tax offence, it will catch UK companies but also non-UK companies if:

(a) The non-UK company carries on business in the UK; or

(b) Some or all of the facilitation happens in the UK.

This means that non-UK entities with UK branches will be caught by these new rules just as UK entities would be, notwithstanding the fact that there may be no other nexus with the UK.

For example, a non-UK company could be caught by the new rules if an overseas employee commits a foreign tax evasion facilitation offence for an overseas client, simply because the non-UK company has a London branch.

Reasonable Prevention Procedures

The new offence is one of strict liability, subject to the company having either:

(a) Such prevention procedures as it was reasonable in all the circumstances to expect it to have in place; or

(b) It not being reasonable in all the circumstances to expect the company to have any such prevention procedures in place.

The scope of those procedures will depend on what is proportionate given the risks inherent in the company's business.

What should companies do now?

Companies ought to be pro-active in using the following two months, before the entry into force of these offences, to undertake risk assessments for all activity (whether within or outside of the UK) to form the basis for the creation of prevention policies. The immediate costs of ensuring its controls are robust may ultimately save companies from the potential for long-term reputational damage and unlimited financial penalties resulting from a successful prosecution under these offences.

Emma-Jane Price,
Brown Rudnick LLP

Elena Elia talks with Hannah von Dadelszen, Head of Division at the Serious Fraud Office

Tell us a bit about your background and role at the SFO

I studied at Otago University in New Zealand and came out with a LLB and BA in English Literature. I probably had too much fun at university and I would recommend doing slightly more work than I did.

Despite this, in my final year of study I landed a training contract at a large commercial law firm (well, large for New Zealand) and started work straight out of university. I worked in the litigation department and I used to trot down to court every Friday to do lists in front of the Master.

I soon realised that I loathed summary judgments. After 2 and half years at it, I left to travel to the UK to stay with family for a while. I decided to change career tacks and try to get into criminal law. After a bit of contract work, I applied for a grade 7 investigative lawyer role at the SFO, and the rest is history. I was promoted to case controller for the Rolls Royce case. I was then appointed to the Head of Division/Joint Head of Fraud role in September 2016 when I took over after Stuart Alford QC's departure.

Have you always wanted to specialise in corporate crime?

Yes. When I was a trainee, I used to read the criminal law updates rather than the civil law updates because they always seemed so much more interesting. Even now, I find criminal law genuinely interesting.

What has been your most interesting case?

Most of them have been interesting in some respect. Rolls Royce was probably the most exciting case to work on; I was a case controller on that case. We had a huge team at the SFO working on the investigation. Devising a strategy to deal with a global case was a real challenge. It was great working in conjunction with the other case controllers and the Head of Division to achieve an effective outcome for both the SFO and the corporate. I enjoy that scale of collaborative working.

What were the main challenges?

The biggest challenge was how to deal with the case in a timely fashion. There is a lot of criticism about the time the SFO takes to investigate cases, but we deal with huge matters and have a finite set of resources. In Rolls we had to focus on what was key and divide the case into business areas to ensure we covered everything we needed to.

Who has inspired you?

Elle Woods, obviously. She was fabulous. Joking aside, Brenda Hale is an inspiration. It's always motivating to see a professional woman who has a career and a family.

What is your proudest achievement in your career?

Definitely becoming Head of Division. It was a big deal to be promoted over other extremely capable people, and I am always grateful for that. Now, I find it rewarding being in a position to help others

who are starting out in their career.

What do you enjoy most about working at the SFO?

I think we have the best work available in the corporate crime arena, so quality of work has to be number one. I love the exposure to overseas investigations and managing complex investigations in a multi-disciplinary environment. It's quite nice not having clients. And the biscuits at meetings. Just kidding, there are no biscuits. Now I am a Head of Division I have been able to wrangle an office, although I had to do some fairly fast talking to convince facilities to give up a meeting room for me to use.

What tips do you have for young lawyers seeking to or who specialise in corporate crime?

Experience is paramount, so try to find it at a regulatory body, within law enforcement or in a defence context. Once you have a foot in the door, other opportunities will become available to you. I also try to advise people to actively choose their career paths rather than simply falling into something. Be yourself, and keep at it. Sometimes success is not just not giving up.

Elena Elia,
Pinsent Masons LLP

We would like to extend our heartfelt appreciation to all our contributing authors.

This newsletter is collated from various members of the Young Fraud Lawyers Association (YFLA).
The views expressed by the contributors are not necessarily those of the YFLA committee.