

Protecting your clients' assets - crime prevention



Insurance brokers know that helping clients protect their assets against criminal activity is a fundamental duty; however it's often the case that they are unaware or unclear of the regulatory requirements involved. Crime prevention legislation sometimes does not get the prominence it needs; in this article we explore some issues that can impact the broking community.

Modern Slavery Act 2015

This is a piece of legislation that has largely gone unnoticed by the majority of the financial services industry. The law came into force on 29 October 2015.

Whilst the financial services industry is not immune from the perils of modern slavery with longer distribution chains and outsourcing overseas, it is not an issue that is necessarily high risk and the need to produce a statement is only a requirement in specific circumstances.

So, to put people's minds at ease, you only have to produce a statement (to be updated each financial year), which must be on your website, if your firm meets the following criteria.

“ Any commercial organisation that supplies goods and services, with an annual turnover that exceeds £36 million and that carries on its business (that is trade or profession) or part of its business in the UK is covered by section 54 of the Act (which requires the statement). Thus, body corporates, partnerships and group companies, including those with a non-UK based parent fall within the remit of the Act. ”

Turnover is defined as the amount derived from the provision of goods and services as part of the ordinary activities of the organisation.

For completeness, such as statement would have to include matters such as follows, and the Act provides a non-exhaustive list of information that may be included:

- The organisation's structure, business and supply chains
- Its policies on slavery and human trafficking
- The due diligence processes it has undertaken with regard to the risk of slavery and human trafficking within its business and supply chains
- The parts of the business and supply chains where there is a risk of slavery and human trafficking
- How it measures that slavery and human trafficking has not taken /is not taking place in its business or supply chains
- Staff training.

For broker use only

Such statements have to be approved by a director or partner.

Many of the Insurers now have statements on the websites and so do many household names such as Amazon, it may be worth having a look at these for reference.

Criminal Finances Act 2017

From the 30th September 2017 the Criminal Finances Act 2017 introduces two new criminal offences to prevent a 'relevant body' from facilitating the evasion of UK tax and foreign tax. A relevant 'body' would be a limited company or partnership.

The offences will be committed where the relevant body fails to prevent the crimes of those who act for them or on their behalf.

Only relevant bodies can commit the new offences; therefore, this excludes natural persons (individuals) or sole traders.

However, all FCA regulated firms are subject to the general requirements of SYSC (Senior Management Arrangements, Systems and Controls UK Financial Services Authority), which includes the requirement to establish and maintain appropriate systems and controls to counter the risk that the firm may be used to further financial crime. Therefore, failure to consider the changes may call into question the adequacy of the firm's procedures.

The definition of an 'associated person' is broad in scope can include any person (individual or incorporated body) who provides services for or on behalf of the relevant body e.g. employees, self-employed advisers, agents, sub-contractors, third parties, distributors etc.

What is tax evasion?

Evasion of tax could occur in a number of ways e.g. by clients, third party suppliers etc. All types of tax should be considered, including income tax, capital gains tax, VAT, stamp duty (e.g. on share transactions) etc.

An example of tax evasion may include a person who fails to declare to HMRC taxable income from an offshore investment in order to evade tax, income from a part time job or any income which does not 'go through the books'.

This is not new as it was caught by the Proceeds of Crime Act 2002 (POCA 2002).

What is meant by Facilitation of Tax Evasion?

It is already a criminal offence to evade tax and help somebody evade tax (POCA 2002).

For the corporate offence to be committed (failure to prevent the criminal facilitation of tax evasion) there must first be a criminal offence at taxpayer level and the criminal facilitation of the tax evasion by somebody at the relevant body, which as we said at the start is the limited company or partnership. (or, indeed anybody acting for it). These could be an employee or agent or outsourced provider.

Penalties for the offence

The offence is a strict liability offence so unless the relevant body can show it had reasonable prevention procedures in place to prevent the criminal facilitation of tax evasion the offence will have been committed.







Penalties for the offence 'failure to prevent the criminal facilitation of tax evasion' include (not exhaustive):

- Unlimited financial penalties
- Ancillary orders (e.g. confiscation orders)
- Serious crime prevention orders.

Regulated firms will be also subject to regulatory risks (FCA sanctions) from failing to prevent the criminal facilitation of tax evasion.

Firms need to ensure that they have 'reasonable procedures' in place to prevent the criminal facilitation of tax evasion by persons associated with them. The procedures may be stand alone or part of a wider set of procedures (as long as they properly address the risk of facilitating tax evasion).

In September 2017, the HMRC published [government guidance](#) for the corporate offences of failure to prevent the criminal facilitation of tax evasion which indicated that reasonable procedures should cover the following six key principles:

- 1 Risk assessment** 
- 2 Proportionality of reasonable procedures** 
- 3 Top level commitment** 
- 4 Due diligence** 
- 5 Communication (including training and awareness)** 
- 6 Monitoring and review** 

There are a variety of sources of information which will guide firms on how to comply with the new requirements rather than on single source of information. Amongst other things, the firms can be guided by publications such as the FCA's Financial Crime guides and guidance issued by HMRC which your accountant will be able to help with.

Conclusion

Financial crime is on the increase and we all have a duty to protect ourselves and our clients. Preventing financial crime is one of the FCA's operational objectives and they will look to the insurance profession to play its part.

It is important that all are familiar with what is required, have appropriate and proportionate procedures in place with regular reviews and staff training. That way, we can all play our part.

Importantly, under Systems & Controls, the FCA expect a firm to have sufficient systems and controls in place at all levels.

On a final regulatory note, remember that as part of the five Threshold Conditions, all firms must have sufficient resources (COND 2.4) and have a viable and sustainable business (COND 2.7), fighting financial crime helps meet these requirements.

About the author



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