

Asset Tracing – protecting your business and assets

Given the current economic climate and the increase in the value and complexity of reported fraud in recent years, more and more companies are using asset tracing to identify, locate and retrieve their assets.

But what is asset tracing and how does it benefit you and your business?

In this, the first in a series of regular ebriefs, Jane Fowler, Managing Director of Aquila Advisory, the boutique forensic accounting company, looks at what's involved in asset tracing and explains the steps you should take to protect your business and assets.

Whether you're trying to recover assets that have been misappropriated, or you're aiming to establish that an individual is 'fit to sue', the process of asset tracing is specialised and critical.

Tracing is simply a legal process by which a claimant demonstrates what has happened to their property:

- Who has handled it,
- Who has received it, and
- If or where the proceeds have been received and spent.

The process of tracing was defined by Lord Millet, in the case of *Foskett v McKeown*, as having two steps:

1. **Following**: the process of following the same asset as it moves from hand to hand; and
2. **Tracing**: the process of identifying a new asset as the substitute for the old one such as the proceeds of sale or the purchase of an alternate asset.

In the UK legal system, we have two processes for tracing, namely tracing at common law and tracing in equity, with the latter being the most widely used as the process is not lost when assets become co-mingled.

Common law tracing

Common law tracing can be applied where physical possession of property has transferred, but the legal ownership hasn't. Common law tracing requires the claimant to

be able to identify the actual asset they are seeking to recover so will fail if the asset has been co-mingled with others.

Equity tracing

Equity tracing on the other hand does not stop if assets are co-mingled, as it is not based on legal ownership but on an equitable interest, which can be transferred. However, the presence of co-mingling makes the tracing more complicated, especially if some or all of the funds are those of an innocent bystander rather than just those of the defendant.

Tracing is not an easy process and the law surrounding it is very complex. Critical to any tracing process is strong investigative skills and good quality intelligence gathering. Not least because tracing is most often used in cases of theft or fraud, which gives rise to the added complication that the defendant may have gone to extra lengths to disguise the location and nature of the property.

So where do you start?

1. **Appoint an Expert:** As well as having the benefit of an independent investigation of the facts, it is unlikely that many individuals or companies have the requisite skills to interrogate data, as well as access to sufficient external data to complete the tracing process. Asset tracing can also be a lengthy and time-consuming process.
2. **Keep Quiet:** At the start of any investigation, and especially in cases of tracing, confidentiality is of utmost importance. For example, if fraudsters learn of an investigation, which seeks to retrieve the assets they hold, they will take further steps to place them out of reach.
3. **Debrief victims and witnesses:** It is imperative that this step is completed right at the start of an investigation, not only because this is when the memories will be most fresh, but also the intelligence gathered will help direct the investigation and save a significant amount of time.
4. **Preserve and secure the evidence:** It is essential to collate copies of any cheques, wire transfers or other documentation that relate to the transfer of funds, as well as any correspondence and contact details, such as phone numbers and addresses used by the defendant. This information offers a starting point to the investigation.
5. **Intelligence gathering:** it is important to gain as complete an insight as possible not only into the circumstances of the case, but also the parties involved. This could include the review of financial information, as well as corporate and personal profiling of defendants.

Fraud costs the UK economy £73bn* a year, affecting both individuals and businesses alike. Where there are suspicions that fraud may have been committed it is essential that the investigation is undertaken in a timely, organised, confidential and cost effective manner to protect your business and assets and to maximise the chance of recovery.

* The National Fraud Authority (published 2012)

At Aquila Advisory, we are experienced in investigating fraud and undertaking asset tracing exercises, both in the UK and overseas and we are used to working as part of a team with solicitors, barristers and experts from other disciplines. We are also able to call upon specialist IT support in relation to data retrieval and investigation.

So contact us today for a free initial consultation and find out how we can help you protect your business and assets.

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