A Tsunami of Fraud

David Ingram introduces INSOL Europe's new Anti-Fraud Forum

DAVID INGRAM
Insolvency practitioner,
Grant Thornton, London (UK)

I recently met with a senior investigator from the UK's tax authority and discussed, amongst other things, a tax fraud which swept across Europe in 2010. Carbon credit tax fraud was a variation on MTIC (missing trader intra community) tax fraud which is often associated with mobile phones and computer chips. My investigator friend described the fraud as a "tsunami of fraud", starting in the Netherlands before sweeping into France and then moving to the UK, Germany and Italy, which struck me as a very apt description of most of the frauds that I encounter.

Like a tsunami, fraud has no respect for international barriers, leaving in its trail financial destruction which can take years to repair. This particular tax fraud was quickly halted in France and the UK through intervention by the tax authorities; despite this, in the brief period when this fraud was active the losses to the UK Exchequer are estimated to be several hundred million pounds; losses in other countries are thought to be far higher.

My investigator friend told me that some jurisdictions continue to be affected by carbon credit tax fraudsters, who continue to surf the tsunami of fraud across Europe. Whilst the scale of the carbon credit tax fraud is unusually high, it usefully demonstrates the pan-European aspects of fraud, and the reasons behind the establishment of the Anti-Fraud Forum. As a group of professionals, we need to react, and react quickly, to these waves of destruction.

Tackling fraud and, in particular, tracing and recovering the assets from that fraud requires collaboration across countries. When I first started to specialise in this area, some ten years ago, I had a limited network of fellow professionals who properly understood what was required and what could be achieved. Had there been an Anti-Fraud Forum when I first started working this area I would not have had to go through the period of trial and error in trying to find professionals in jurisdictions with the appropriate knowledge to assist me.

I am fortunate in that now, if I need assistance in many jurisdictions, I know who to turn to. However there remain many jurisdictions where I have had limited or no experience and would struggle to find professionals to assist me; I sincerely hope that the Anti-Fraud Forum will plug those gaps and provide a source of experts with relevant experience across Europe.

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Establishing a reliable network

So how can we achieve this? In the first instance we need to establish a network of professionals across Europe who have a *genuine* knowledge of what *can* be achieved, using insolvency as a tool to assist with the tracing and recovery of assets that have been acquired through fraud. I stress the words "genuine" and "can" with good cause. From bitter experience I know that it is tempting to engage with professionals in overseas jurisdictions on the basis of a recommendation based upon the fact that they are personable, and speak the same language as you. These attributes are just not enough. The language barrier is always a challenge when dealing with overseas professionals and this difficulty can be exacerbated if the professional team being instructed are unfamiliar with the legal language that is particular to this area of work.

An example might be seeking a freezing order (formerly known in Commonwealth jurisdictions as a *Mareva Injunction*) in connection with insolvency proceedings. This is a reasonably common application in respect of cases involving fraud. However, not all professionals have practical experience in making applications for such injunctive relief, and the applicant is unlikely to have the luxury of time for the instructed professional to learn how to make such an application. The nature of pursuing assets out of frauds is that the professional teams may have to move quickly and decisively, so it is important that all team members are very familiar with the legal tools at their disposal.

Of equal importance is that professionals instructed have a knowledge of what can (and cannot) be achieved locally. This is best explained by the example of, say, a disclosure order in, again, insolvency proceedings. Whilst such orders might be routinely obtained in certain jurisdictions, in others, local secrecy laws (notably Switzerland) might prohibit such disclosures. The issue here is to determine at an early stage what can and cannot be achieved and for the local professionals to advise whether an alternative procedure might achieve the desired result.

In cases involving Switzerland I have had cases where local lawyers have filed criminal complaints on my behalf, even though I was appointed as an insolvency practitioner in civil proceedings in the UK. The filing and pursuit of a criminal complaint in Switzerland in these cases led to the helpful disclosure of information by Swiss banks, which would otherwise have been unable to disclose information to me on account of secrecy laws.

Join the forum

It is appropriate to mention that there is no selection criteria for joining the Anti-Fraud Forum; provided you are a member of INSOL Europe, you are entitled to join the group. Clearly, like any special interest group, the more members put in, the more they will get out of the group, so I would encourage all members of the group to be as active as possible to drive the group forward.

The membership of the Forum currently stands at 30, drawn from 11 different jurisdictions – a great start for a group that is, at the time of writing, less than six months old. Details of the Forum and its members can be found at the Anti-Fraud Forum's section of the INSOL Europe website (*see panel*).

I expect the Anti-Fraud Forum will have an exciting and fruitful first year. I hope membership numbers will increase further, building on an existing group of enthusiastic, knowledgeable insolvency professionals. Contributions from Anti-Fraud Forum members will be most welcome, whether in the form of articles, discussion papers, or ideas as to how the Anti-Fraud Forum can move forward in achieving its aims.

To mark our first anniversary, the Anti-Fraud Forum will be hosting a break-out panel session during the INSOL Europe Annual Congress in Paris this year; all signs are that this promises to be a lively and informative discussion.

Fraud seems to be increasingly prevalent. As I write this the press is reporting increasing incidents of horsemeat being found in what was being sold as beef or pork products. The current indications are that the practice has been widespread across Europe, as criminal gangs dupe multi-national companies as to the origins of the products that they supply. I have every expectation that in time, these criminal gangs will be identified, and steps taken to deprive them of their ill-gotten gains, whether through criminal litigation or civil, including the use of insolvency laws.

In the main insolvency law exists to assist with the tracing and recovery of assets. What we, as practitioners need to ensure is that there are no barriers to pursuing the fraudsters and recovering the fruits of their fraud. The establishment of a pan-European network of professionals who can collaborate with one another to tackle fraud will break down one of those barriers. Fortunately tsunamis are rare; fraud seems to be increasingly common. Whilst it is naïve to suggest that fraud will ever be prevented, I sincerely hope that the Anti-Fraud Forum will assist in the battle against the fraudsters and, in due course, provide a platform to educate so that the incidence of fraud is reduced.

If you are interested in joining the Anti-Fraud Forum please send me or Caroline Taylor (at INSOL Europe) an email.

Anti-Fraud Forum

Established in 2012 to:

- promote the use of insolvency processes to assist with the tracing and recovery of assets;
- share experiences amongst members of the group; and
- provide a forum to educate a wider audience on the threats of fraud.

Contact details

Chair:
David Ingram
david.ingram@uk.gt.com

Website:
www.insol-europe.org/anti-fraud-forum