

The Newsletter from The Network of Independent Forensic Accountants

“FORENSIC ACCOUNTING AND FINANCE”

NIFA announce the publication of a new seminal text in the field of forensic accountancy



Also in this issue:

10 WAYS TO USE YOUR FORENSIC ACCOUNTANT TO HELP RESOLVE FINANCIAL ISSUES IN DIVORCE

Forensic accountants provide advice to spouses, civil partners or cohabitantes who are separating.

WHEN LOSSES ARE UNAVOIDABLE

Claimants need to demonstrate how losses could have been avoided.

CRIMINAL FINANCE ACT 2017 PUTS LEGAL AND ACCOUNTING FIRMS AT HIGHER RISK THAN EVER BEFORE

The Criminal Finances Act 2017 (the “Act”) introduces new corporate offences designed to prevent evasion.

FORENSIC ACCOUNTING AND FINANCE

NIFA is delighted to announce the publication of a new seminal text in the field of forensic accountancy. “Forensic Accounting and Finance”.

Published by Kogan Page and edited by Wilder Coe partner Bee-Lean Chew, the book features chapters written by a number of NIFA members. It is a complete guide to Forensic Accounting and Finance and offers a complete, accessible and affordable guide, combining coverage of principle theory with the real and practical needs of the professional.

NIFA’s co-authorship of the book is a testament to the high regard in which its members are held and its contents reflect the broad range of work that they undertake, with chapters on a diverse range of topics from forensics as an extension

of auditing and the basic principles of forensic accounting, to financial analysis and modelling, financial reporting, financial crime, and IT systems.

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Forensic Accounting and Finance shares current examples and case studies, highlighting cultural differences for key topics with updated regional legislation information available online for those looking for a truly global approach which is always up to date.

WHEN LOSSES ARE UNAVOIDABLE

A recent Supreme Court decision has highlighted how vitally important it is for claimants to be able to demonstrate that in a counter-factual scenario they would have avoided the losses for which they are seeking damages.

In the case of BPE Solicitors v Hughes-Holland [2017] UKSC 21, the Supreme Court considered a claim by a Mr Gabriel (“G”) who lent £200,000 to L for the purpose of a property development. The loan was secured on the property.

BPE Solicitors acted for G to prepare a facility letter and legal charge and were negligent in doing so.

G thought the loan would be used to develop the property. In fact it was used by L to buy the property and repay debts. The development project failed, and the property sold at auction in 2010 for £13,000 (leaving nothing for G after the costs of sale).

“...the burden is on a Claimant to prove the financial consequences of having been given negligent advice or wrong information.”

In its judgment the Supreme Court upheld the decision of the Court of Appeal and made it clear that the burden is on a Claimant to prove the financial consequences of having been given negligent advice or wrong information. It found that G had failed to prove that, in a counter-factual scenario in which the £200,000 had been spent on developing the property as was intended, his loan would have been repaid. Indeed the court found that the available evidence showed that much more than £200,000 would have been required to develop the site successfully.

The case highlights the importance of supporting claims for damages with realistic financial forecasts that illustrate what would have been the Claimant’s financial position in an appropriate counter-factual scenario. If the Claimant is no better off in the counter-factual scenario, damages are likely to be assessed at £nil as was the case in the BPE case.



10 WAYS TO USE YOUR FORENSIC ACCOUNTANT TO HELP RESOLVE FINANCIAL ISSUES IN DIVORCE

There are a myriad of procedures that can be used to settle family finances on divorce from litigation to collaboration and mediation. In just the same way, forensic accountants have become adept at providing advice in flexible ways that suit the environment in which spouses, civil partners or cohabitants are separating. Here are our top 10...

1 Interpreting financial disclosure

Consider using forensic accountants to help interpret Form E's and to assist with the drafting of questionnaires and the analysis of responses to them.

2 Deciding to get a SJE or not to get a SJE

We can provide advice on whether the appointment of a single joint expert ("SJE") is likely to be beneficial or cost-effective. Instructing solicitors can sometimes find themselves wondering whether the appointment of a SJE is necessary and we are always willing to give our view, even if only to provide reassurance to the ultimate client.

3 Advising in the shadows

Use us to critique reports that have been prepared by SJE's. We can suggest questions of clarification to be put to the SJE and can help Counsel prepare for cross-examination.

4 Providing joint letters of advice

In cases that are too small for the cost of a formal SJE report to be justified, consider instructing a forensic accountant to prepare an informal letter of advice on joint instructions. Such letters might not comply with Part 25 of the Family Procedure Rules but they can still be prepared on the basis of a joint instruction, recognising our duty to both parties.

5 Providing joint advice "in conference"

If attempts are being made to settle cases collaboratively, by negotiation or by mediation, consider instructing an independent forensic accountant on a joint basis to provide an accountancy opinion without the need for any written report whatsoever. In appropriate cases we are happy to accept joint instructions to review financial disclosure and simply to provide our opinion orally in conference. This approach allows both parties and their respective advisors to ask questions about the value of family businesses, liquidity or earnings in a transparent forum. If advice is needed on how to divide assets in a tax-efficient manner, this approach can be particularly effective.

6 Accepting instructions as a single joint expert

SJE instructions are still the most common in family financial proceedings and provide the "Gold Standard" in terms of rigour and formality. However it should be borne in mind that, unless specifically instructed to do otherwise, even SJE's typically rely on the accuracy of financial statements without auditing them so care needs to be taken to ensure that if the parties need figures to be verified, the instructions are worded accordingly.

7 Finding undisclosed assets

We may not be private investigators but, if we are provided with financial disclosure that is inconsistent, we know how to illustrate to the court that the figures "don't add up". Even if we cannot find funds held in cash or crypto-currencies, we can sometimes impute their existence by highlighting "holes" elsewhere in business or domestic finances. For example in one case we proved the existence of undisclosed cash drawings by highlighting the absence of any other means by which one of the parties could have funded her lifestyle.

8 Helping to vary maintenance (or not)

Variation of maintenance applications can all too easily become disproportionately costly which is why we have no objection to receiving direct instructions from one or other party in appropriate cases to show how the financial affairs at the time of the application differ from those that existed at the time of the original order.

9 Addressing a limited number of issues only

Costs can be kept to a minimum by limiting the scope of the instructions to the forensic accountant. In recent cases we have been asked only to consider a party's earnings and in another we were instructed simply to advise on the methodology applicable to the valuation of a family business, without valuing it per se.

10 Acting as a party appointed expert

Last and probably now least common there are still cases in which a forensic accountant is instructed by one party only. Increasingly this type of appointment seems only to arise if one of the parties is not only unhappy with the conclusions reached by a SJE but has managed to persuade the court to allow it to adduce its own evidence to challenge that of the SJE. Thankfully such circumstances are rare in the extreme.



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CRIMINAL FINANCE ACT 2017 PUTS LEGAL AND ACCOUNTING FIRMS AT HIGHER RISK THAN EVER BEFORE

The Criminal Finances Act 2017 (the “Act”), which came into force on 30 September 2017 introduces new corporate offences designed to prevent evasion.

A new offence of ‘failure to prevent the facilitation of tax evasion’ is committed if a person facilitates tax evasion without having in place reasonable procedures to prevent it.

The Act will be most relevant to legal and tax advisory firms which have strict liability for the acts and omissions of their employees. This means that they may still be guilty of an offence under the Act even if the partners in the firm had no idea, and no reason to suspect, that the facilitation of tax evasion was taking place.

Those found guilty of one of these new offences can potentially face an unlimited fine and a criminal record not to mention irreparable reputational damage. For that reason it will be vital that anyone accused of offences under the Act can adduce forensic accountancy evidence to demonstrate that, when the tax evasion facilitation offence was committed, the firm had reasonable preventative measures in place including risk assessment; due diligence; communication; training; monitoring and review.

