

Regulation, compliance and the wealth management industry in Asia

Gez Owen, Managing Director & General Counsel at Hubbis, had more than 22 of experience as a lawyer in the UK dealing with white collar crime. He has concerns that the wealth industry in Asia needs to upgrade its understanding of new global regulation and compliance demands.

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OWEN HOSTED A WORKSHOP at the Hubbis Asian Wealth Management Solutions event in Singapore on May 10. One of his missions was to discuss the new challenges introduced by the UK Criminal Finances Act 2017, including the new corporate offences of tax evasion, adequate procedures and Unexplained Wealth Orders, and why this new UK legislation cannot safely be ignored in Asia. His other objective was to engage the audience in an interactive discussion on cryptocurrencies and how to adapt to the many different regulatory directives around the world.

An Act without borders...

Owen began with an overview of the impact of the UK's Criminal Finances Act 2017, which he said



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will have huge ramifications for everyone in the wealth management industry. "This legislation is aimed

at those outside of the UK," he explained, "so although it is a UK law, its tentacles reach globally."

The new UK tax evasion offence

The UK tax evasion offence is split into three stages:

1. Criminal evasion of UK tax by the taxpayer
2. Criminal facilitation of the tax evasion by an “associated person” of the relevant body who is acting in that capacity
3. Failure by the relevant body to prevent that facilitation.

It is vital that businesses understand that this is a **strict liability offence** for an entity for the actions of associated persons regardless of knowledge or intention. However, there is some better news in that there is a statutory defence.

The Criminal Finances Act 2017 became effective law from 30th September 2017. The Act introduced two new corporate tax evasion offences and a new statutory defence. The Act also introduced new enforcement powers including Unexplained Wealth Orders which came into effect on 31st January 2018. The critical element of the new law is that it applies to both UK and non-UK companies, and to UK and non-UK tax evasion.

The Act introduced two new corporate offences. The first is failure of a relevant corporate body to prevent the facilitation of UK tax evasion by an associated person, (the UK tax evasion offence for short). The second is failure of a relevant corporate body to prevent the facilitation of non-UK tax evasion by an associated person (the foreign tax evasion offence).

The foreign tax evasion offence will catch UK companies, and also non-UK companies if the non-UK company carries on business in the UK, or some or all of the facilitation happens in the UK.

Wealth advisers and service providers beware

“With the foreign tax evasion offence,” said Owen, “it does not require UK tax evasion, and therefore could affect anyone giving bespoke financial advice or tax advice. The guidance makes it clear that higher risk business lines will be those involved in giving bespoke financial advice or tax advice. Those risks are higher for organisations connected to offshore jurisdictions, tax havens or secrecy havens.”

Owen further elucidated that the UK tax evasion offence is split into three stages: criminal evasion of UK tax by the taxpayer; criminal facilitation of the tax evasion by an “associated person” of the relevant body who is acting in that capacity; and failure by the relevant body to prevent that facilitation. “It is vital that businesses understand that this is a strict liability offence for an entity for the actions of associated persons regardless of knowledge or intention,” Owen concluded.

Explaining the unexplained

Owen also noted that the UK’s new Unexplained Wealth Orders law came into effect on 31 January and allows enforcement agencies in the UK to investigate when they suspect that an individual has more than £50,000 worth of assets which are unexplained. “The risk, for example, is that an individual or trustee here in Singapore, if served with an order, and if for example a permanent resident in the UK with UK property and other assets, cannot ignore this, or they might risk jail, and/or losing those UK assets.

“In the past, people in this region have kept a lot of trust structures secret, but that is no longer an option, nor is a defence of stating that the individual had the money in the first place, they now have to explain how they got that money, if those funds are then moved into UK assets such as property.”

Owen also highlighted an online course on the Hubbis learning platform which will help banks and other wealth firms improve their

Penalties for the new offences

- ▶ Significant Brand and reputational damage
- ▶ Unlimited fine
- ▶ Ban on bidding for public contracts.
- ▶ Potential other sanctions upon conviction including confiscation.

staff's understanding of these and other new regulations, which could greatly affect their businesses and their clients.

Cryptocurrencies – a regulatory puzzle

On cryptocurrencies, Owen highlighted the many different regulatory approaches of jurisdictions around the world as the authorities struggle to decide, firstly what cryptocurrencies are, and secondly, how to regulate them.

“For now,” Owen said, “it is essentially an unregulated market, the pieces of the puzzle do not yet fit together into one coherent picture as regulators around the world are not sure even how to define cryptos, yet alone regulate the infrastructure that is developing, or the transactions that are proliferating.”

By their nature, cryptocurrencies, due to the Blockchain technology that facilitates them, are untraceable, although Owen noted that investigators, particularly in the FBI in the US, are working hard to look behind transactions.

Cryptos are very probably used extensively by money launderers, terrorists and other criminals. Even countries facing sanctions are reportedly using them to bypass sanctions. But so is cash, so are

the mainstream banks and so are many corporate and trust and other structures around the world.

But Owen wondered how significant all this is, and how much tangible evidence there is of such claims against cryptos. “As I see it, jurisdictions around the world are watching each other because they all want to have a competitive advantage.”

Owen noted that Singapore, for example, has committed itself to the blockchain technology behind Bitcoin, but also issued warnings to its people about the dangers of cryptocurrencies. For example, a major fear is that they are unregulated instruments, the trading and holding infrastructure is untested and there is some fear that unscrupulous IT gurus could manipulate their valuation.

Owen then presented some of the many different approaches to cryptocurrencies from the authorities in Japan, China, India, Singapore, South Korea, the US, Europe and elsewhere.

In 2017, for example, Japan approved Bitcoin as legal payment tender. But China banned Bitcoin trading and initial coin offerings in September last year. Indonesia banned Bitcoin transactions on January 1 this year. In India just recently, four cryptos exchanges

have challenged the Indian authorities and banking blockade. “What we can see is that there is so much money to be made that litigation will rise as people challenge the assessments of the authorities,” Owen observed.

Tulip mania? Or the next global financial revolution?

Cryptos could be tulip mania all over again, but they could also be the next step in global financial and commerce evolution. The jury is out. But right now for the wealth industry the regulatory financial and reputational risks associated with cryptocurrencies remain too great.”

Owen concluded that very probably cryptocurrencies are here to stay and that the regulators will find some common ground, especially in relation to some of the weakest points in the chain, such as the exchanges that are sprouting across the globe. “In general, western regulators are more cautious at the moment and the major global banks take their lead from the lead regulators because they want to take a global approach,” he concluded. “The ideal would be some global consistency in authorities’ perspectives on cryptos and the regulations to apply, but for the moment that is still a distant prospect.” ■