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# Asset recovery in fraud cases

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A lot changed in 2020. The global pandemic has affected us all – how we work, how we shop, even how we communicate. We have adapted our lives in response to 'the new normal', so we should not be surprised that corporate fraud too is on the rise as fraudsters adapt their techniques. As technology makes the world smaller, it increases the opportunities for perpetrators to commit fraud and successfully conceal the proceeds. Fortunately, asset tracing techniques are also becoming more sophisticated, meaning that with the right team of experts, a successful recovery is an increasingly common result for victims.

Asset tracing can take many different forms. However, it has one ultimate central purpose: to recover misappropriated assets from those who have committed wrongdoing. As no two frauds are the same, it stands to reason that no two investigations should follow the same blueprint. While the exact approach will be determined by several factors, at its core there are two main streams of asset tracing available: internal and external.

**Internal vs external asset tracing**

In essence, forensic accountants, technology experts and fraud examiners review the company's books and records to answer the five 'WHs' of investigations – the who, what, where, when, why – and most importantly, how. Internal asset tracing demonstrates how crimes were structured, identifies who was responsible and identifies the scale of the loss.

These answers lead the direction of the external asset tracing, which reveals how the fraudster used the proceeds. Its purpose is to identify the current location, ownership structure and value of the assets, as well as providing supporting documentation to aid their recovery.

While best practice is to combine both processes, the external asset tracing can be conducted discreetly without access to the company's books and records. It requires a different set of experts: accountants, investigators and those with experience in identifying sources.

External asset tracing typically supports recovery proceedings, traditionally being used to provide a pre-litigation assessment of the location and value of a target's assets or support an injunction or enforcement. However, specialists are being increasingly used to prove the perpetrators have dissipated assets or to support settlement negotiations. As in any investigation, the more information you know about the target will increase your chances of successful and meaningful recovery.

**Asset tracing KYC – 'know your crook'**

Fraudsters may now be more sophisticated, but the age-old adage that people invest in the jurisdictions and interests they know remains true. This is why involving the client becomes important; without realising it they often have the most valuable information on the target. A fraudster will not tell you where they have invested, but water cooler chat about where they holiday, their personal interests and family members can provide invaluable leads on where to look first. This, alongside targeted research and your own discreet conversations with sources who know the subject, builds an enhanced profile as the foundation of any investigation.

Managing sources brings its own challenges. While their intelligence helps direct the investigation, for the purposes of recovery all information must be independently verified through the public record. Depending on the jurisdictions, and the types of assets you are seeking to confirm, this will take many different forms. For example, while information may be freely available in several Western jurisdictions, the 'public record' in more opaque regions is neither public, nor much of a record. Despite the modern demands for greater transparency, local protocol may still dictate the need for physical retrieval of records. Therefore, instructing an asset tracing expert with a strong knowledge of the practicalities and limitations of the jurisdictions of interest is as important as their reach of sources and contacts.

The corporate fraudster will ultimately seek to personally benefit from their actions. Fraudsters typically either invest to generate further returns or splash out on a more lavish lifestyle. Therefore, investment property, new business ventures or lifestyle assets such as sports cars, private jets and yachts remain the most popular outlets. However, as buying these assets can leave a trace, fraudsters are increasingly investing in cryptocurrency, art, jewellery – even competitive sports. Whether racing falcons in the Middle East, pigeons in Asia or horses in Ireland, an investor who knows his craft can make a valuable return under the radar from traditional asset tracing.

**Results-led investigation strategies**

The asset tracing investigation is all about one thing: recovery. Ultimately, the strength of evidence collected will help determine the strategy and likelihood of recovery. Typically, victims have two main options to pursue the fraudster: settlement and enforcement.

While settlement is generally a quicker approach, it typically brings a lower level of recovery. The evidence is obtained as a starting point for the negotiation, with leverage increasing the rate of success. Enforcement, in comparison, is more costly, timely and requires a higher threshold for evidence. Evidence is required in relation to the allegations, their assets, and, most importantly, to link the proceeds of crime to the assets. However, at its most successful, it results in the maximum return.

In some instances, the client's preferred recovery strategy will be set in advance of the investigation. That, in turn, will focus the asset tracing strategy. However, the earlier in the process the asset tracing occurs, the more opportunity its results can guide the recovery strategy. For example, an investigation which identifies assets across the globe provides the client multiple enforcement opportunities. The traditional model would prioritise the pursuit of enforcement in jurisdictions which have the largest asset value and likelihood of recovery. This approach, while potentially lucrative, will cost the client valuable time and money. By instead firstly pursuing the 'low hanging fruit' – the assets most enforceable, irrelevant of value – the client can use those proceeds to fund the recovery of higher-value assets.

In instances of settlement, an effective approach is to pursue the target's 'trophy assets' – those which would affect their social status, cause embarrassment or otherwise frustrate the fraudster. While the value of the target's prized sports car, or a key part of their business supply chain, may not sufficiently cover the client's loss, this may create the required leverage to ensure early settlement. Therefore, having a reliable profile of the fraudster from the outset provides the opportunity for investigators to identify and capitalise upon pressure points in the final negotiation.

So, while much changed in 2020, the core components of asset tracing have not. While corporate fraud will continue, the perpetrators, while increasingly sophisticated, remain vulnerable to an effective asset tracing and recovery strategy. With a diverse team of experts, the right tools and a results-focused approach, victims of fraud can be positive that their chances of successful recovery remain strong in 2021 and beyond. ■