



Gallagher

Insurance | Risk Management | Consulting

## FINANCIAL & PROFESSIONAL RISKS

# THE CRIMINAL FINANCES ACT 2017

The prevention of tax evasion has been brought into sharp focus in the United Kingdom by the recent introduction of the Criminal Finances Act 2017 ('the Act'), which introduces new corporate criminal offences of failing to prevent facilitation of UK and foreign tax evasion. The consequences for a corporate entity of falling foul of the Act are significant, including unlimited fines, likely disclosure to professional regulators and reputational damage. Financial institutions are particularly vulnerable to prosecution.

### GETTING THE RIGHT COVER

When legislation of this nature is introduced we need to examine to what extent the insurance purchased by financial institutions may respond. Given that the Act is dealing with corporate offences, the most applicable area of coverage is Professional Indemnity (PI), also known as Civil Liability insurance.

There appears to be a good prospect for a well drafted PI policy to provide coverage for costs incurred in defending proceedings under the Act and in responding to regulatory investigations concerning failures to prevent the facilitation of tax evasion. However, there are two provisos to bear in mind. Firstly, all PI policies include some form of dishonesty exclusion, which will typically apply once fraudulent or dishonest acts by the insured entity have been established by a court or other decision making body. On the plus side, exclusions of this type may prove to be difficult to exercise given that it appears an entity can be found guilty under the Act where it has not committed fraudulent or dishonest acts in its failure to prevent facilitation of tax evasion.

Secondly, all PI policies exclude criminal fines and under most jurisdictions there is a general legal principle which prevents companies and individuals negating the deterrent effect of fines for wrongful conduct by insuring their exposure. As such, we do not believe that any fines levied against an insured entity under the Act will be covered. For further information on the insurability of fines, please refer to our [June 2017 bulletin, 'A Solution to a Fine Mess?'](#)

### OTHER SOLUTIONS

It is also worth considering Directors' & Officers' (D&O) Liability insurance in this context. If a corporate entity is prosecuted, then it seems possible that its directors and officers could face claims by shareholders and others for shortcomings in failing to prevent the corporate entity's facilitation of tax evasion. Further, we presume that directors' and officers' involvement in certain remuneration practices, transfer pricing and internal licensing fees may lead to actions under the Act and regulatory investigations.

Reputational Risk insurance, which provides coverage for certain losses resulting from damage to a corporate entity's reputation, could also be relevant given that it can be a useful tool in dealing with the reputational fallout from incidents such as prosecution under the Act. Such insurance is relatively easy to access although it is not often purchased by financial institutions.





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If you would like to discuss any of the above further then please contact your Account Executive or email [Thomas\\_falcon@ajg.com](mailto:Thomas_falcon@ajg.com)

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