

Some Financial Implications When Happily-Never-After

How forensic accountants can identify hidden assets in a divorce

According to the recent World Wealth Report 2014 from Capgemini and RBC Wealth Management, Asia-Pacific recorded the largest increase in high net worth individuals (“HNWIs”) in 2013. With the increasing number of HNWIs comes a corresponding increase in the financial worth at stake in matrimonial disputes. Now more than ever, there needs to be a full understanding of all matrimonial assets to facilitate an equitable division among both parties.

Human nature being what it is, spouses often attempt to hide assets or minimize the worth of their holdings in order to keep as much as possible for themselves. In these cases, forensic accountants can play a critical advisory role in forming and implementing effective investigation strategies and offering valuation advice in a matrimonial dispute.



How Forensic Accountants Bring Assets Out of the Dark

Spouses have innovative and sophisticated ways to hide the existence or true value of assets, especially those who have advance notice of a divorce and/or whose financial situation is especially complex. Indeed, the planning and concealment of assets could have been ongoing for years, or even decades in extreme cases, and may involve multiple parties to hide such assets. In these cases, a straightforward accounting exercise may fail to identify the full matrimonial pool of assets.

By virtue of their training and experience, forensic accountants are knowledgeable in the many ways that assets can be concealed, including the following:

- Transfer of funds to accounts unknown to a person's spouse, which could be held by nominees whilst remaining beneficially owned by the transferor
- Disposal of assets or properties — again, often to a nominee — at a consideration lower than the fair market value
- In the same vein, the creation of inflated or sham liabilities to offset disclosed assets
- Acquisition of assets or properties in the name of nominees
- Secret accumulation of cash or assets and hiding them in places inaccessible or unknown to the spouse
- Delaying income such as salary, dividends, commissions or bonus until after the matrimonial proceedings
- The use of complex corporate structures (often including tax haven jurisdictions)
- Businesses “wound down” by excessive spending of capital expenditure or private expenses

This list is by no means exhaustive — successful entrepreneurs and business people are apt to apply the same creativity and ingenuity to the concealment process that enabled them to amass the fortune in the first place. Unfortunately, the burden of proof of asset non-disclosure in matrimonial proceedings usually rests with the spouse with fewer financial

resources. With such large amounts at stake, forensic accountants can provide thorough and effective strategies that lead to a fuller understanding of the matrimonial assets and ultimately facilitate an equitable division of such. Some of the more common steps that forensic accountants use to identify concealed assets and/or financial manipulation may include:

- Examining tax returns to identify undisclosed or understated incomes, income-generating assets or proceeds from disposal of properties
- Reviewing financial statements to identify potentially undisclosed interests in businesses, transactions not conducted at arm's length and assets that are carried at "cost of a dollar" that may have a substantial value when adopting a market valuation
- Understanding historical transactions (such as the sale of a business or asset) and identification of the proceeds from such transactions
- Analyzing movements on disclosed bank account statements which may indicate the existence of undisclosed bank accounts and investments, or missing funds that should be taken into consideration during the calculation of the matrimonial pool of assets
- Searching corporate registry and other publicly available registers, and conducting a comprehensive review of Internet, media and other open sources
- Performing a reasonableness test to determine whether the spouse is living beyond his/her declared means

Conclusion

Because every situation is unique, forensic accountants must devise specific steps and strategies on a case-by-case basis. For example, the structure and value of the matrimonial pool of assets or applicable jurisdictions are among the factors that must be considered. In many cases, information and observations provided by the spouse can be critical to support an effective investigation.

Kroll's forensic accountants have assisted numerous clients involved in highly sensitive or contentious matrimonial proceedings. We have the global geographic footprint, in-country resources and world-leading experts to shed light on the most obscure financial picture, no matter where the trail of assets leads.

CASE STUDY: KROLL FORENSIC ACCOUNTANT DETERMINES TRUE VALUE OF ASSET AT LEAST 20 TIMES GREATER THAN REPORTED AMOUNT

SITUATION

The parties had been married for 15 years, and the husband filed a petition for divorce in Hong Kong in December 2012. The husband stated in his Form E – Financial Statement (a standard form used in Hong Kong for financial disclosure by both parties) that his 100% equity interest in a British Virgin Islands company ("the BVI company") had been disposed of in late 2012 for a cash consideration of USD100,000, and the disposal proceeds of USD100,000 were included as part of his assets in his Form E.

WHAT KROLL DID

On behalf of the wife, Kroll's forensic accountant used open source research to identify that the BVI company was a significant shareholder of a U.S.-listed company and the market value of the shares held by BVI Company at its date of disposal was approximately USD2,000,000.

Further enquiry established that the new beneficial owner of the BVI company was a long-term business associate of the husband, and the sale and purchase transaction had clearly not been conducted on an arms-length basis.

RESULT

Both these factors increased the value of the matrimonial pool of assets in relation to the divorce.

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