

Exposing Deceit

The Fraud Act 2006 came into force early this year and is the government's latest weapon in the fight against increasing levels of financial crime. Alan Ma gives an overview

Fraud has been thriving and is costly to business, so the Fraud Act 2006 is to be welcomed. Prior to the Act, charges had to be based on a combination of eight separate offences of deception under the Theft Acts 1968 and 1978 and common law conspiracy to defraud. This caused difficulties as fraudulent conduct might not fit nicely into one of the specific offences, and the fraudster could avoid punishment on a technicality.

The Act, for the first time, makes fraud a specific offence. It repeals various offences under the Theft Acts and creates a general offence of fraud which can be committed by false representation, failure to disclose information and abuse of position (as set out below). The offence carries a maximum sentence of 10 years' imprisonment and/or an unlimited fine.

The prosecution must prove that the accused had acted dishonestly, and with intention either to make a gain or to cause a loss or risk of loss. However, there is no need to show that gain or loss was suffered nor that the intended victim acted on the basis of the fraudulent act or omission or was even aware of it.

All the offences can be committed by corporate bodies as well as individuals. If an offence is committed with the consent or connivance of any director, manager or officer of a company, they will also be deemed to have committed the relevant offence.

False representation. This covers any representation made knowingly or with awareness that it may be false or misleading. Representation can be expressed or implied by words or conduct. Accordingly, inaccuracy of any warranty, representation or assertion could lead to a criminal charge if

accompanied by dishonesty and guilty intention. There is no requirement that the victim of the representation need actually have relied upon it. Trade puff is a grey area.

However, the situation of a seller who overstates its product's capacity should fall within the provision.

Failure to disclose information. A person will commit an offence if he dishonestly fails to disclose to another person information which he is under a legal duty to give. This covers a wide range of duties, for example import/export declarations, disclosure as specified in an agreement or under a trust or trustee relationship, tax returns. Under this clause, fraud can be committed by omission as well as positive act.

Fraud by abuse of position. The defendant must have been in what amounts to a privileged position and under an obligation to safeguard the victim's financial interests, which he dishonestly abuses with intention. The abuse may be by an act or omission. Types of relationship where this may arise include employer and employee, trustees and beneficiaries, director and company, professional and client, agent and principal, partners and even personal relationships including carers of friends and relatives.

The new legislation moves the law to criminalise the conduct of fraudsters rather than to look at the consequence of the fraudster's activities. It simplifies the prosecution process, and extends the criminal law in respect of fraudulent and deceptive behaviour.

Alan Ma is a partner at Maxwell Alves Solicitors
(alan.ma@maxwellalves.co.uk)

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