ARTICLE

APPLEBY

THE FOREIGN COMPANIES ACT 2014

by Andrew Webb

October 2016

In September 2016, the first person to be charged with a breach of the Foreign Companies Act 2014 (the **FCA**) appeared before the Deputy High Bailiff. The judgment should serve as a salutary lesson to anybody who carries on business in the Isle of Man through a foreign company that local legal advice should be obtained to ensure compliance with relevant laws.

BRIEF BACKGROUND

The Defendant was the director of a company (the **IOM Company**) which traded as the manufacturer and designer of rollers for supply to wallpaper manufacturers. In February 2015 the IOM Company had a presence in England and was served there with a winding up petition from Her Majesty's Revenue and Customs in respect of outstanding debts. The Company subsequently went into administration in the United Kingdom and administrators were appointed. A pre-pack sale of assets of the IOM Company was agreed with the administrators to Laserflex (UK) Limited, a company registered in England and Wales, incorporated on 11 March 2015 (the **UK Company**). The Defendant was also one of the directors of the UK Company.

The UK Company continued to operate the previous business of the IOM Company on the Isle of Man and had an established a place of business here. On 3 February 2016 the Department of Economic Development (**DED**) wrote to the UK Company advising them of their obligations to register under section 7 of the FCA. The UK Company went into receivership on 31 March 2016.

FOREIGN COMPANIES ACT 2014

A foreign company which carries on, or is held out as carrying on, business from an established place of business in the Isle of Man must make an application for registration within one month of the FCA 2014 applying to that company, by virtue of section 7(1) of the FCA.

A director of a company which fails to register is guilty of an offence under section 20 FCA and is liable, on summary conviction, to a fine not exceeding £5,000. For more serious offences, the Court of General Gaol could impose a much larger fine.

MITIGATION AND SENTENCE

It was submitted on behalf of the Defendant that this was not an attempt to use the Isle of Man for any nefarious purpose; it had simply been an oversight by the Defendant who was struggling to save a business with a long trading history in the Isle of Man. The UK Company went into receivership soon after the letter from DED had been received and the requirement to register the UK Company was regrettably forgotten.

In sentencing the Defendant, the Deputy High Bailiff took into account: (i) the Defendant's early guilty plea; (ii) a lack of previous convictions; and (iii) that no other criminal conduct in respect of the running of the business had come to the Court's attention.

The Defendant received a £1,000 fine and also had to pay £50 costs.

SUMMARY

The judgment is important since it demonstrates that a genuine oversight of a director of a company may still result in a prosecution, even though the fine is at the lower end of the scale. An offence committed with the intention of contravening the requirements of the FCA for any nefarious purpose could expect to receive a much harsher punishment.

This article has been written by:

Isle of Man
Andrew Webb
Counsel
awebb@applebyglobal.com

Andrew Webb is Counsel in the Corporate Department at Appleby. A copy of this article is available on the firm's web site at applebyglobal.com