

CASE STUDY 1

B Keith

1. You are approached by Mr Smith who is a director and majority shareholder of Trading Ltd. Trading Ltd is a multi-national company with offices all over the world. The Polish branch of Trading Ltd has recently been involved in the purchase of land (Tower X) in Moscow from Russia Holdings Inc for £200million. The purchase of land has been done via a number of subsidiary companies, via the Cayman Islands, and the United States and the eventual purchase was by a Cypriot Company Trading Inc (Cyprus).
2. Mr Smith is in a relationship with Mrs Antonov a Russian National, they have one child together who is 5 years old, Tommy who is a joint UK/Russian National.
3. From the preliminary information he has provide you with the Cypriot company received a 20% tax break on the purchase and so in fact there was a surplus of £40million. There seems to be an accounting discrepancy and £100,000 has gone missing during the transaction. As a result a number of jurisdictions and agencies are interested in talking with Mr Smith. You also find that there is an Interpol Red Notice from Russia for Mr Smith.
4. What advice and assistance can you offer? On what matters?
5. Mr Smith has been approached by the Serious Fraud Office to answer questions about his business dealings.
 - a. What advice do you give?
 - b. Why?
6. Mr Smith's decides he has nothing to hide and arranges the SFO interview. Before that happens a request for mutual legal assistance ("MLA") from Cyprus comes in directly to the SFO. The request asks for Mr Smith to answer questions about his business interests and tax position. In particular:
 - a. What the details of the deal were with Russia Inc
 - b. How much tax has been paid on the deal? And in which jurisdictions
 - c. Where the proceeds (£40million) have ended up?

7. You are asked to examine the MLA request and advise on what answers should be given:
 - a. What formalities should be in within the MLA request
 - b. What form should the answers be in
 - c. What sort of information should be contained within the answers
 - d. What are the risks in cooperating vs not cooperating

8. You provide advice on the answers to be given on the MLA and the risks. As you are giving that advice you receive an email that Mr Smith is asked to surrender to Westminster Magistrates to be arrested on an extradition request to Russia.

9. You arrive at Westminster Magistrates and find that there are in fact two extradition proceedings against Mr Smith, a request by Russia for a fraud totalling £200 million which seems to be something to do with the Russia holdings deal and an EAW from Cyprus for a fraud in the sum of £100,000 which seems to relate to the same deal.

10. Which case will be dealt with first?

11. How is it decided?

12. What can you do to influence that?

13. The EAW case to Cyprus is first in line and the hearing is fixed for 4 days in 4 months' time. The EAW contains the following description of the offence:

“The Defendant is a Director of the company Trading Inc (Cyprus) along with Mrs Antonov, in the course of acting as a director along with Mrs Smith committed fraud to the sum of £10,000 as the tax form was not submitted by 31 March 2013, which was an act that he was obliged to do. Therefore he brought to disadvantageous disposition the Cypriot Government. Mr Smith and Mrs Antonov were requested to assist the Cypriot authorities in their investigation but have failed to do so, they are therefore evading justice”

The maximum sentence is 10 years imprisonment and the Framework List is ticked for fraud.

14. What challenges can you make to the particulars and content of the EAW?
15. What bars could you raise?
16. What problems are you likely to face?
17. What human rights considerations can you raise?
18. What evidence should you gather?
19. What prospect of success do you have?
20. You gather evidence and raise a number of issues. However, there is a preliminary argument about the credibility of your expert on Human Rights – the judge rules that that the expert is credible but that the point has already been decided against you in a number of cases. What are your remedies?
21. The Judge also rules that
 - a. The EAW scheme requires that I accept further information in its entirety
 - b. The proportionality argument cannot be argued in this case as it falls outside the guidance issued by the Lord Chief Justice
22. Does that change your remedies?
23. Two months pass and you attend court to discover that the EAW has been withdrawn by Cyprus. The Russian request is therefore going to proceed.
24. You sit down with Mr Smith and ask him what he knows about the Russian case in conference. He explains that he was involved in the deal and negotiated it and paid the money over, he has evidence to show that from his bank accounts. However, he

obtained the funds from a number of different investors based abroad, two of whom are strong critics of the present regime, they have a significant public profile and investments in Russia. They put up the majority of the money for this deal.

25. What additional challenges can you deal with from the EAW?

26. What evidence do you need?

27. How are you going to get it?

28. You win – on a number of grounds. However the Interpol Red notice remains in place – how do you go about challenging it?