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## UK Criminal Finances Bill Tackles Money Laundering and Corruption

The Criminal Finances Bill (the Bill) had its first reading in the House of Commons on 13 October 2016. The Bill is a key part of the UK government's ongoing program to improve its ability to tackle money laundering and corruption, recover the proceeds of crimes, and counter terrorist financing. It builds on the proposals contained in the government's 'Action Plan for anti-money laundering and counter-terrorist finance', also published in October 2016, as well as upon the discussions that took place during the May 2016 Global Anti-Corruption Summit held in London.

There are three main parts of the Bill:

- > enhanced powers of investigation and asset recovery in relation to the proceeds of crime and money laundering, including the introduction of unexplained wealth orders;
- > the extension of relevant money laundering and asset recovery powers to investigations under the Terrorism Act 2000 (TACT); and
- > the creation of two new corporate offences for failure to prevent facilitation of tax evasion.

Each of these parts, which are described more fully in this *GT Alert*, share a common goal - namely to make the UK a more hostile place for those seeking to move, hide, or use the proceeds of crime, corruption, or terrorism.

### Enhanced Investigatory and Recovery Powers

The Bill includes a range of measures that strengthen existing powers of investigation for enforcement agencies in connection with investigations under the Proceeds of Crime Act 2002 (POCA). The most significant changes include the following:

- > **Unexplained Wealth Orders (UWOs):** The Serious Fraud Office (SFO), HM Revenue and Customs (HMRC), the National Crime Agency (NCA), and other agencies will be able to apply to the High Court for an order forcing the owner of the assets to explain how they obtained the funds to acquire them. The orders will apply to property worth more than £100,000. UWOs will be used in relation to persons that are suspected of involvement in serious criminal activity where the value of the assets in question appear to be of disproportionate value to the person's known income. Failure to provide a response will lead to a rebuttable presumption that the property is recoverable in any subsequent enforcement action. This addresses the concern that the current evidential requirements under POCA are hampering the ability of enforcement agencies to effectively freeze or recover assets. The Bill also envisages that UWOs can be made in respect of Politically Exposed Persons (PEPs) without the need to show suspicion of serious criminal activity.
- > **Disclosure Orders:** Disclosure orders are already used in confiscation and fraud investigations, and enable an enforcement officer to compel a person with relevant information to answer questions, provide information or produce documents. The Bill extends the use of disclosure orders to money laundering investigations. It also simplifies the authorisation process.
- > **Suspicious Activity Reports (SARs):** The Bill allows for the extension of the moratorium period, within which consent to engage in activity involving property suspected of being the proceeds of crime can be withheld, from 31 days to a maximum of 217 days. This allows the National Crime Agency (NCA) more time to investigate whether the activity should be permitted. To assist the NCA further, the Bill grants it the power to request further information from anyone in the regulated sector in relation to a SAR.
- > **Information Sharing – Public and Private:** The recent Joint Money Laundering Intelligence Taskforce pilot is considered to be a successful example of the positive benefits that can arise from the sharing of information between the public enforcement agencies and the private sector, but the private sector has some legitimate concerns that its participation in such initiatives may give rise to civil litigation for alleged breaches of confidentiality. The Bill creates a legal gateway for the sharing of information within the regulated sector with a view to using that information to combat money laundering.
- > **Seizure and Forfeiture Powers Over Assets:** The Bill creates new civil powers of seizure and forfeiture over listed assets, including precious metal, jewels, watches, stamps, and art where there is reasonable suspicion that the property is the proceeds of crime. The Bill also introduces provisions to ensure that bank accounts are easier to freeze.
- > **Enhanced Civil Recovery Powers for the Financial Conduct Authority (FCA) and HMRC:** Like the NCA and SFO, under the Bill, the FCA and HMRC will have the power to recover property in cases where there has not been a conviction, but where it can be shown on the balance of probabilities that property has been obtained through unlawful conduct.

## Terrorist Finance

The accompanying explanatory memorandum to the Bill notes that the vulnerabilities in the financial sector that are in danger of being exploited by those seeking to hold, move, or use the proceeds of crime are the same in the context of countering terrorist finance. Therefore, under the Bill, the tools and powers available to enforcement agencies under POCA are also made available in investigations into terrorist property and financing.

The Bill extends the powers outlined above in relation to SARs, information sharing, disclosure orders, and seizure and forfeiture powers to terrorist property and financing investigations. It also enables existing powers under TACT, that can currently only be exercised by constables, to civilian Accredited Financial Investigators (AFIs). It is anticipated that the inclusion of AFIs, who currently play an important role in POCA investigations, will increase the capacity of the police to apply for these investigative orders by 50 percent, thereby enhancing their ability to tackle these issues.

## Corporate Failure to Prevent Facilitation of Tax Evasion

The Bill introduces two new criminal offences:

- > failure to prevent facilitation of a UK tax evasion offence by an associated person; and
- > failure to prevent facilitation of a foreign tax evasion offence by an associated person.

Modelled on the s7 Corporate Offence under the Bribery Act 2010, these new offences do not seek to prosecute companies for commission of the direct offence of tax evasion facilitation, but instead penalise them for failing to take proportionate steps to prevent the illegality from happening in the first place. The concept of 'associated persons' includes employees, agents, and anyone else performing services for or on behalf of the company.

Tax evasion offences include cheating the public revenue and being knowingly concerned in the fraudulent evasion of tax. Facilitation of a tax evasion offence includes being knowingly concerned in the fraudulent evasion of tax by another person, and aiding, abetting, counseling, or procuring the commission of a tax offence.

Like the Bribery Act these are strict liability offences, and the only defence is to show that the company had in place 'reasonable prevention procedures' or that it was reasonable for it not to have had such procedures in place. The Bill requires the Chancellor of the Exchequer to publish guidance on what might constitute reasonable prevention procedures, drawing on historic experience in tackling tax evasion.

In introducing these offences, the Bill seeks to ensure that companies, including banks, accountancy firms and other professional advisors, take responsibility for the actions of their employees and agents. At present, whilst there is criminal liability for the individuals involved in these offences, there are no direct consequences for the companies they represent. It is hoped that, as with the Bribery Act, these offences, and the preventative procedures defence, will drive greater accountability and enhance the focus on compliance.

The introduction of these offences has been the subject of some criticism, particularly (a) their extra-territorial aspects and (b) the feature that a company can commit an offence without intent and without standing to benefit in any way from the commission of the offence. Companies will likely need to look at implementing appropriate control and audit processes to avoid exposure.

The notable absence from the Bill is the mooted offence of failing to prevent economic crime. If included, this likely would have followed the model of the s7 Bribery Act offence and the new facilitation of tax evasion offences. Indications are that this may be resurrected at some point in the future, but it is not clear when.

### Next Steps

The Bill reflects a clear commitment to enhance the powers of the enforcement agencies tasked with tackling money laundering, fraud, corruption, and terrorism. Publication of the Bill is the first stage of the legislative process and it may be subject to some amendment. It is anticipated that it will come into force as an Act in 2017, but this may be impacted by the ongoing [Brexit](#) discussions to the extent that these create delays or constraints on the parliamentary timetable.

GT will monitor the progress of the Bill and provide updates accordingly.

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