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The Criminal Finances Act 2017: Key legal changes

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Contents

The Criminal Finances Act 2017: Key legal changes

In April 2016, the Government published an action plan ('**Plan**') to counter the money laundering and terrorist financing risks faced by the UK, as identified in the national risk assessment published in October 2015. The Plan focused on the following priorities:

— A more robust law enforcement response to the risks, including building new capabilities in the UK's law enforcement agencies and creating tough new legal powers to enable the disruption of criminals and terrorists;

— Reforming the supervisory regime to ensure that it is consistent, effective and brings companies who facilitate or enable money laundering to task; and

— Increasing the international reach of UK law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats.

Pursuant to the Plan, the Government announced that it would seek the views of law enforcement agencies, professional services firms, NGOs and big businesses as part of a 6-week consultation on a number of measures, including:

— A reform of the Suspicious Activity Reports ('**SARs**') regime, to encourage better use of public and private sector resources against the highest threats and provide the National Crime Agency ('**NCA**') with a new suite of powers;

— The creation of new powers, including unexplained wealth orders ('**UWOs**'), requiring those suspected of money laundering to explain the source of their wealth; and

— A linked forfeiture power for use where the answers provided are unsatisfactory or where the subject of the UWO fails to respond.

At the same time as the Plan was announced, the then Home Secretary, Theresa May, commented that '*Britain's world leading financial system is at risk of being undermined by money laundering, illicit finance and the funding of terrorism … The [Plan] sends a clear message that [the UK] will not tolerate this type of activity in our financial institutions*'.

As part of the implementation of the Plan, on 13 October 2016 the Criminal Finances Bill ('**Bill**') was introduced to Parliament. It included:

— A new corporate offence of failure to prevent the facilitation of tax evasion;

— A major reform of the SARs regime;

— The introduction of UWOs;

— New proceeds of crime powers; and

— Information sharing gateways for financial institutions who have money laundering concerns regarding transactions or clients.

The Bill received royal assent on 27 April, becoming the Criminal Finances Act 2017. However, none of the substantive provisions of the Act are yet in force, and require commencement orders to be made, expected in the Autumn. The Act is divided into 4 parts:

— **Part 1** – changes to the proceeds of crime, money laundering, civil recovery, enforcement powers and related offences.

— **Part 2** – extends money laundering/ asset recovery powers to terrorism investigations.

— **Part 3** – new corporate offences of failure to prevent the facilitation of tax evasion.

— **Part 4** – consequential amendments.

We discuss the most salient parts of the Act below.

Corporate failure to prevent facilitation of tax evasion

- Introduces two offences of facilitating the evasion of UK tax and the evasion of foreign tax.
- Does not alter meaning of tax evasion and does not apply to tax avoidance
- Makes businesses strictly liable for those acting on their behalf who facilitate evasion
- Defence of 'reasonable' procedures.

The Act establishes two offences (likely to be brought into force in the Autumn), dealing respectively with facilitating (i) evading UK tax or (ii) evading foreign tax. The foreign offence will require the consent of the DPP or the Director of the SFO to prosecute. Although primarily aimed at businesses providing tax advice and who operate in the financial sector, these offences apply to all businesses irrespective of sector.

It is important to note that the offences are based on tax *evasion* by another person, not tax *avoidance*. Tax evasion takes place when individuals or businesses *dishonestly* omit, conceal or misrepresent information in order to reduce tax liability. Tax avoidance, on the other hand, is not a criminal offence, but involves the exploitation of tax rules by the use of transactions that are designed to gain a tax advantage. It involves operating within the letter, but not the spirit of the law.

Failure to prevent the facilitation of UK tax evasion offences

A corporate or partnership (wherever incorporated or formed) ('**X**') will be guilty of an offence if:

- A person ('**Y**') evades UK tax of any kind,
- Another person ('**Z**') deliberately and dishonestly facilitates Y's evasion while Z is acting as an associated person of X, and
- X fails to prevent Z from doing so.

There is no need in this offence for X or Z to have any connection to the UK.

A UK tax evasion offence means:

- An offence of cheating the public revenue; or
- An offence under the law of any part of the UK consisting of being knowingly involved in, or taking steps with a view to, the fraudulent evasion of a tax (e.g. conspiracy).

The Act defines UK tax evasion facilitation as an offence under UK law consisting of:

- Being knowingly concerned in, or taking steps with a view to, another person's fraudulent tax evasion;
- Aiding, abetting, counselling or procuring the commission of a UK tax evasion offence; or
- Art and part involvement in an offence consisting of being knowingly concerned in, or taking steps with a view to, another person's fraudulent tax evasion.

So this offence relies on existing UK criminal offences of tax evasion and facilitating tax evasion. What it does is to make a corporate automatically liable where the facilitation is done by someone acting on its behalf.

Failure to prevent the facilitation of foreign tax evasion offences

X will be guilty of an offence if, at any time:

— Y evades foreign tax (and this would be a tax evasion offence if committed in the UK),

— Z deliberately and dishonestly facilitates Y's evasion while Z is acting as an associated person of X (and such facilitation would be an offence if committed in the UK) and

— X fails to prevent Y's facilitation.

For this offence it is necessary that: (i) X is incorporated or formed under UK law; (ii) X carries on business or part of a business in the UK; or (iii) any conduct constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom.

Foreign tax evasion is defined as conduct which:

— Amounts to an offence under the law of a foreign country;

— Relates to a breach of a duty relating to foreign tax; or

— Would be regarded by a UK court as amounting to being knowingly concerned in, or in taking steps with a view to, fraudulent tax evasion.

Foreign tax evasion facilitation means conduct that:

— Amounts to an offence under the law of a foreign country;

— Relates to the commission by another person of a foreign tax evasion offence; and

— Would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence.

For this offence to apply then, the evasion and its facilitation must both be criminal evasion and facilitation offences in the relevant foreign country and, had they occurred in the UK, they must constitute evasion and facilitation offences here ('dual criminality').

Associated persons

Under the above provisions, a corporate will be liable where an 'associated person' acting in his capacity as such, criminally facilitated others to evade taxes. The corporate offence will not be made out, however, if the associated person was acting in a personal capacity.

The Act defines an 'associated person' as: (i) an employee acting in that capacity; (ii) an agent of the corporate who is acting in that capacity; or (iii) any other person who performs services for or on behalf of the corporate while acting in that capacity. Although the definition could potentially apply to contractors, sub-contractors, and temporary workers, along with JVs, whether it does so in any given case will be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship.

Defence of 'reasonable' procedures

Echoing the Bribery Act's corporate offence, the new corporate failure to prevent facilitation of tax evasion offences are ones of strict liability. However, it will be a defence if a business charged with either offence proves that (i) it had such prevention procedures as it was reasonable in all the circumstances to expect it to have in place or (ii) it was not reasonable in all the circumstances to expect it to have any prevention procedures in place.

Guidance

Although the Act notes that the Chancellor of the Exchequer must prepare and publish guidance about procedures that relevant bodies can put in place to meet the defence, this is not likely to be published until the Autumn.

In the meantime, HMRC has issued draft guidance, which mirrors that which accompanied the Bribery Act, and is intended to help firms to understand what types of prevention measures are likely to be considered 'reasonable'. HMRC's draft guidance focuses on:

— (i) **Proportionality** - prevention procedures should be proportionate to the risks faced of an associated person committing a tax facilitation offence;

— (ii) **Top level commitment** - prevention procedures should be developed with appropriate commitment from senior management, which will be expected to take responsibility for the development, implementation and endorsement of the prevention procedures;

— (iii) **Risk assessment** - prevention procedures should be developed following a risk assessment, regularly reviewed, and documented;

— (iv) **Due diligence** - prevention procedures should make provision for appropriate due diligence, capable of identifying the risk of criminal facilitation of tax evasion by associated persons. The due diligence procedures put in place should be proportionate to the identified risk;

— (v) **Communication** - prevention procedures should be communicated, embedded and understood throughout the organisation, through internal and external communication, including training. The nature of internal and external communication should be proportionate to the risk to which the organisation assesses that it is exposed; and

— (vi) **Monitoring and review** - prevention procedures should be monitored and reviewed periodically and improvements made, where necessary.

In its draft guidance, HMRC stressed that simply including the word 'tax' into existing ABC or AML procedures and processes, but not effectively implementing or enforcing them or risk assessing them, is unlikely to be sufficient for the purposes of the Act. This could leave a corporate at risk of being unable to put forward a successful reasonable procedures defence to any allegation that it failed to prevent an offence.

Deferred Prosecution Agreements ('DPAs')

Pursuant to schedule 17 of the Crime and Courts Act 2013, which introduced DPAs on 24 February 2014, DPAs are an available alternative to prosecution for tax evasion offences and so may be applied to the new corporate offence of failing to prevent the facilitation of tax evasion.

Case Studies

1. Homes UK Limited

Homes UK Limited ('**HUKL**') has a number of sites in the UK, and has contracted Tom to manage one of the sites in London. Tom has faced increasing pressure from HUKL to complete the building of a number of homes at his site by a particular date. Due to a shortage of builders, and in order to meet the looming deadline, Tom hires a number of workers who are paid in cash.

If it can be established, to a criminal standard, that by paying his workers in cash, Tom was knowingly concerned in or took steps with a view to cheating the public revenue (i.e. by helping the contractors to avoid reporting their income from the building work), Tom could be criminally liable for facilitating tax evasion. In addition, because Tom may be deemed to be an associated person of HUKL and paid the contractors in cash while acting in that capacity, HUKL may be guilty of failing to prevent the facilitation of UK tax evasion, unless HUKL can show on the balance of probabilities that it had in place procedures to prevent such an offence from being committed (or that it was not reasonable for it to have such procedures).

2. A UK company

A UK company arranges for invoices for services to be issued to a business customer in France for a higher amount than was really due or paid so that higher tax deductions can be dishonestly claimed by the customer. (The UK company then writes off the balance as a bad debt.)

Whilst local French criminal tax offences may have been committed in this scenario, the processing of the invoices in the UK will be relevant under the Act as it could amount to an act constituting part of the foreign facilitation offence that has taken place in the UK.

SARs

- SAR moratorium period can be extended up to a maximum of 186 days beyond original 31 days.
- On notice application to Crown Court.
- Authorities can seek to withhold specified information from SAR maker when seeking extension.

Because of the difficulties law enforcement agencies have faced in developing evidence to start a criminal investigation or seek civil recovery following a SAR (especially if foreign assistance is needed), the consent SAR regime has been altered to enable the authorities to seek additional time to investigate matters disclosed to them before the SAR moratorium period comes to an end. (This is against a backdrop of 14,672 consent SARs being filed between October 2014 and September 2015 – or 59 for every working day of the year, for a team of only 20 people in the NCA's Financial Intelligence Unit to consider and approve.) The moratorium period can now be extended from 31 days up to a maximum of a further 186 days (on application to a Crown Court and in successive 31 day extensions before the end of the relevant period), to allow the police to investigate suspicious transactions.

An extension may be granted by a Crown Court if it is satisfied that:

- An investigation is being carried out in relation to a relevant disclosure, but has not been completed;
- The investigation is being conducted diligently and expeditiously;
- Further time is needed for conducting the investigation; and
- It is reasonable in all the circumstance for the moratorium period to be extended.

The Act also introduces a new mechanism to automatically extend a moratorium period where there is a risk that an application for such an extension cannot be heard before the moratorium period would otherwise come to an end, or to cover the period of any appeal against a decision to refuse an extension (subject to the cap of 186 days' extension). Any automatic extension will also never be for more than 31 days.

As part of the extension application, which must be on notice to the SAR maker, an enforcement authority (e.g. NCA) can apply to the Crown Court to withhold specified information from being made available to that interested person (and the interested person will be excluded from the hearing of that aspect of the application).

Where an application is made for an order to exclude specified information from an interested person, an order will only be made by the court if there are reasonable grounds to believe that: (i) evidence of an offence would be interfered with; (ii) gathering the evidence would be interfered with; (iii) persons would be harmed; (iv) recovery of property would be hindered; or (v) national security would be put at risk.

The Act also provides some comfort to SAR makers against the increased risk that they may be subject to claims when a moratorium period is extended by the NCA preventing them from executing client instructions. The Act amends POCA so that where an application is made to extend a moratorium period, any disclosure of that fact to a customer/client, who has an interest in the relevant property, will now not fall foul of the tipping off offence. However, the Act limits how much information can be disclosed to a customer/client to '*only such information as is necessary for the purposes of notifying the customer or client*'.

Information sharing in the regulated sector

- Puts JMLIT trial on statutory footing.
- But contains a more complex and cumbersome process of gateways.
- Unclear when or why firms would operate this process in practice.

Money laundering involves the flow of illicit funds, often across the regulated sector and, sometimes, only the regulated sector can see how those flow holistically. As a result, and following a successful pilot through the Joint Money Laundering Intelligence Taskforce (which led to 58 arrests and the closure of 450 accounts holding £5 million of suspect funds), the voluntary sharing of information between bodies in the regulated sector in connection with suspicions of money laundering, has been put on a statutory footing in the Act. The Government believes this will secure better and more complete intelligence regarding money laundering activities by allowing a joined-up approach.

The process introduces a number of gateways to allow disclosures between regulated sector entities either at the request of the NCA or a person in the regulated sector where there are money laundering concerns and it is considered that another person(s) in the sector has information that would or may assist in determining any matter in connection with a money laundering suspicion.

Following the exchange of information, the Act provides for information to be provided to the NCA in a joint disclosure report – a 'Super SAR'. This mechanism is intended to fulfil both (or multiple) entities' reporting obligations and will obviate the need for multiple entities to submit SARs on the same subject matter.

A concern raised when the Bill was introduced related to the risks of sharing customer information with others. The Act attempts to protect against legal exposure as a result of information sharing by providing that a relevant disclosure will not breach any obligation of confidence or any other restriction on the disclosure of information if it is made in 'good faith'. However, it would be advisable for firms to ensure they have incorporated these protections into their terms and conditions. The Act also specifically seeks to deal with the risks under the Data Protection Act ('**DPA**') of sharing personal customer data or personal sensitive customer data with others. The Act amends the DPA so that a relevant disclosure will not breach the DPA on the disclosure of personal data if it is made in 'good faith'. However, it would be advisable for firms to ensure they have incorporated these protections into their terms and conditions.

Unfortunately, the process set out in the Act to allow such information sharing is over-engineered and bureaucratic, requiring multiple interactions and reports with the NCA, including a requirement to notify the NCA even if a 'Super SAR' is not going to be made (and if it is, then it can't be done via the online reporting portal because the SAR must be physically signed by the MLROs for each regulated firm taking part). There appears to be little incentive for using the new process, given that there must already be a money laundering suspicion before a regulated business can request relevant information from another; it would seem more straightforward simply to make a SAR in the normal way instead.

Information orders

- The NCA is given an additional power when investigating a domestic SAR or its foreign equivalent to require information to be provided.
- Application to a magistrates' court.
- A fine will be imposed if the information order is not complied with.

When a SAR is made, on occasions the NCA may require further information to be able to undertake a proper analysis and make an informed decision on whether to investigate. The previous moratorium regime did not always allow sufficient time to develop evidence, particularly where investigators need to obtain evidence from overseas authorities or undertake complex asset tracing enquiries.

In addition to allowing extensions of the moratorium period, the Act allows the NCA to apply to a magistrates' court for a 'further information order' following the submission of a domestic or equivalent overseas SAR.

Any such application must:

- Specify or describe the information sought under the order; and
- Specify the person from whom the information is sought ('the Respondent').

Such an order will only be granted if one of two conditions are met.

The first condition is:

- The information sought relates to a matter arising from a SAR;
- The Respondent is the person who made the SAR or is otherwise carrying on a business in the regulated sector;
- The information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started; and
- It is reasonable in all the circumstances for the information to be provided.

The alternative condition is:

- The information sought relates to a matter arising from a disclosure made under a corresponding disclosure requirement (i.e. foreign SAR equivalent);
- The NCA equivalent authority in a foreign country has made a request to the NCA for the provision of information in connection with that disclosure;
- The Respondent is carrying on a business in the regulated sector;
- The information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure; and
- It is reasonable in all the circumstances for the information to be provided.

If one of the above conditions is satisfied, an order must then specify how the information required under the order is to be provided, and the date by which it is to be provided. A magistrates' court can impose a fine not exceeding £5,000 in the event an information order is not complied with.

Unexplained Wealth Orders (UWOs)

- Available on application to civil court.
- Civil burden of proof.
- Places burden on property holder to prove property obtained legitimately.
- Criminal offence to give false/misleading response.
- Precursor to civil recovery if inadequate explanation provided.

Law enforcement authorities sometimes identify assets during investigations that they suspect are proceeds of crime but which they cannot gather sufficient evidence to prove or take further action against, especially if support from overseas authorities is required. UWOs seek to overcome this difficulty by reversing the burden onto the holder of the assets to demonstrate they have a legitimate source.

A without notice application may be made to the High Court for an UWO by an enforcement authority (i.e. the NCA, HMRC, FCA, SFO or DPP), specifying: (i) the property in respect of which the UWO is sought; and (ii) the person whom the enforcement authority thinks holds the property (which may include a person outside of the UK).

If a court issues a UWO, the person will be required to explain how they have come to own those assets within a specified period (the 'response period'), failing which a rebuttable presumption arises that the property is recoverable (i.e. is property that has been obtained by unlawful conduct and is thus subject to recovery).

Before making the order, the High Court must be satisfied that there is reasonable cause to believe:

- The respondent holds the property;
- The current market value of the property in aggregate is greater than £50,000 (reduced from £100,000 in the original Bill); and
- On the balance of probabilities there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

In addition, the High Court must be satisfied that the person is either a politically exposed person (PEP) or that there are reasonable grounds for suspecting that he or a connected person is or has been involved in serious crime (whether in a part of the UK or elsewhere).

The Act defines a PEP as:

- An individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State;
- A family member of such a person; or
- A known close associate of such; or
- Otherwise connected with such a person.

The authority can also seek an interim freezing order over the property at the same time to avoid the risk that any recovery order that might subsequently be obtained is otherwise frustrated.

If an interim freezing order is imposed and the respondent complies or purports to comply with an UWO in the response period, the enforcement authority will then have up to 60 days to decide whether to seek a restraint order, property freezing order or interim receiving order over the property and must make that application within 48 hours of the end of the 60-day period. If they decide not to take further action (e.g. to recover the property), the authority must confirm to the court that no further enforcement or investigatory proceedings will be taken within the 60-day period. On the other

hand, if the respondent never responded to the UWO, the authority has only 48 hours to make whatever application it wishes to preserve the property, failing which the interim freezing order will be discharged.

While there is no sanction (beyond the presumption referred to above) for not responding to an UWO, it is a criminal offence (punishable on indictment to a term of imprisonment not exceeding 2 years and/or to a fine), if in response to a UWO a respondent makes a statement that he knows to be false or misleading or recklessly makes a statement that is false or misleading.

The Act also introduces a compensation scheme where an interim freezing order was obtained as a result of a serious default by the authority, which caused loss to the respondent. This safeguard was not included in the original Bill. Any application for compensation must be made to the High Court within three months beginning with the discharge of the interim freezing order supporting any UWO.

Case Study

1. The minister of health in country X

The minister of health ('**A**') in country X has misappropriated millions of pounds from the country's budget. To hide his crime, A decides to buy a property in Knightsbridge. The house is far beyond the reach of A's income which is the equivalent of £50,000 per year. The concerns come to the attention of the NCA. The information that is gathered by the NCA is taken to a High Court judge to show that A is likely to be the owner of wealth beyond his means. If the judge is satisfied by this connection, an UWO will then be issued, accompanied by an interim freezing order if the court is satisfied that there may be a risk of dissipation of the asset. If A fails to respond to the UWO or he provides an inadequate response, this extra information can be used in any subsequent civil recovery process, which could result in A's house being recovered without the need for a criminal prosecution in his home country or in the UK.

Disclosure Orders (DOs)

- Available on application to Crown Court.
- Extends Part 8 POCA powers to seek DOs to money laundering (and terrorist financing) investigations.
- Extends officer group who can apply for DOs to 'appropriate officers' (police officer, HMRC officer, the NCA or an accredited financial investigator), on the authority of a 'senior appropriate officer' (a police officer of at least inspector rank, HMRC officer, or an accredited financial investigator).
- Criminal offence not to comply and/or to give false/misleading response.

The Crown Court must be satisfied that:

- There are reasonable grounds for suspecting that the person specified in the application has committed a money laundering offence;
- There are reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- It is in the public interest for the information to be provided.

These orders are wider than other forms of information or production orders available to the authorities in connection with their investigations, but have not been widely used. The Act expands their availability to money laundering investigations, with a simplified process to encourage their greater use. They are particularly useful, because once made, the order remains in force throughout the relevant investigation and can be re-used.

If granted, the order allows a law enforcement officer to issue a notice requiring any person who has relevant information to provide that information or documents in connection with an investigation (i.e. confiscation, money laundering or terrorist financing). The order does not impinge on legal professional privilege and, importantly, any statement made in compliance with the disclosure order may not be used in evidence against that person in criminal proceedings.

Failure to comply with a disclosure order could lead to a term of imprisonment not exceeding 6 months and/or a fine. However, in the event that a false or misleading statement is made, the term of imprisonment increases to 2 years.

Magnitsky Amendment

— Extends meaning of 'unlawful conduct' in POCA for civil recovery regime, to gross human rights abuses (i.e. torture and cruel, inhuman or degrading treatment) by public officials or those acting on their behalf.
— Retrospective effect (in part).

This amendment was included to prevent the UK becoming a safe haven for human rights abusers. Its roots lie in news of the alleged torture and subsequent death in police custody in 2009 of the lawyer Sergei Magnitsky, who made a complaint of a $230m fraud against Russian public officials in 2007 only to be arrested himself on corruption-related charges.

The Act expands the definition of 'unlawful conduct' in Part 5 of POCA so that it now also includes (i) gross human rights abuses or violations outside the UK (i.e. torture and cruel, inhuman or degrading treatment) or (ii) conduct connected with such gross human rights abuses or violations (which includes profiting from or materially assisting (i.e. providing goods, services, financial or technical support in connection with) such conduct).

The unlawful conduct need not be a criminal offence in the place where it occurred, but it must constitute an offence had it occurred in the UK. There is also a 20-year time bar from the date the human rights abuse took place for bringing proceedings.

This change, save in respect of conduct based on cruel, inhuman or degrading treatment, will apply '*whether the conduct occurs before or after the coming into force of [the Act]*'.

Conduct constitutes the commission of gross human rights abuse if:

— The conduct constitutes the torture of a person who has sought: (i) to expose illegal activity carried out by a public official or a person acting in an official capacity; (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms; or (iii) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person;
— The conduct is carried out in consequence of that person having sought to do anything in (i) or (ii) in the first condition (above); and
— The conduct is carried out by a public official, or a person acting in an official capacity, in the performance or purported performance of his or her official duties (or at their instigation or consent/acquiescence while acting in such capacity).

The Act will mean that some businesses will have to be vigilant (and possibly review their policies and procedures) when contracting with foreign PEPs or those acting in an official capacity, where those PEPs/officials are party to gross human rights abuses or violations, and it can be established, on the balance of probabilities, that the business in providing goods, services, financial assistance or technical support, materially assisted the unlawful conduct.

Forfeiture of cash

The cash seizure provisions in POCA, which allow law enforcement authorities to seize items including cash, cheques and bearer bonds (where they believe that they are recoverable property or are intended for use in unlawful conduct), have been expanded to include gaming vouchers and fixed value casino tokens.

Seized cash can be detained for 48 hours without a court order. This can be extended up to 6 months by an order of a magistrates' court, but can then be extended for up to 2 years in total. Any continued detention must be justified to investigate its derivation or to consider bringing proceedings for an offence connected with the property (or proceedings have been commenced but not finished).

Account freezing orders

On an application of a police officer, the Director of Public Prosecutions, an accredited financial investigator or an officer of the SFO, a magistrates' court may make an account freezing order ('**AFO**') if it is satisfied that reasonable grounds exist for suspecting that money held with a bank or building society: (i) is recoverable property; or (ii) is intended by any person for use in unlawful conduct.

The effect of an AFO (the application of which may be made in private) is that funds held in a bank account can be frozen for an initial period of up to 6 months. The initial period can then be extended on a six-monthly basis up to a maximum of two years. The AFO can be made where the value of the account is in excess of £1,000.

A respondent to an AFO may apply for it to be discharged at any time, but bears the burden of proving that no reasonable grounds exist for the suspicion that the funds are recoverable property or are intended for use in unlawful conduct.

Compensation is available if none of the money is actually forfeited, the person affected has suffered a loss as a result of the AFO and the circumstances are 'exceptional'.

Recovery of listed assets

Search and forfeiture powers are widened in relation to personal and moveable property. If there are reasonable grounds for suspecting that 'listed assets' with a minimum value of £1,000 are present in premises, a relevant officer may search for them.

Listed asset comprise:

— Precious metals;
— Precious stones;
— Watches;
— Artistic works;
— Face-value vouchers (i.e. a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it); or
— Postage stamps.

The list can only be amended by the Secretary of State following a consultation with Scottish Ministers and the Department of Justice of Northern Ireland.

Comment

The Act, which was given impetus by the revelations of the Panama Papers, is the latest attempt to tackle corruption and serious organised crime in the UK. Coming less than a decade since the implementation of the Bribery Act, it will bring a major change to the way law enforcement agencies deal with persons they suspect of harbouring funds gained from criminal activity. It involves the most substantial changes to the UK's money laundering regime since POCA was enacted in 2002, and increases the UK's focus on tax transparency.

Although the facilitation offences are only likely to be brought into force in the Autumn, firms should now begin internal reviews of their policies and procedures to make sure that their businesses are ready for the new facilitation offences before they are brought into force.

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