

Insights

## UNDERSTANDING THE ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) BILL

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### SUMMARY

The majority of the provisions in the Economic Crime (Transparency and Enforcement) Bill (the Bill) have been seen before: they were included in the Draft Registration of Overseas Entity Bill, which fell away in 2018. It sat gathering dust somewhere in the bowels of government until, earlier this year, the government was forced to confirm that an 'Economic Crime Bill' would be tabled in the third session of Parliament later this year. A Bill was in fact tabled on Tuesday, having been published on 28th February. But why now? And what's new?

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### WHY IS THIS BEING INTRODUCED NOW?

For years, calls have been increasing for legislation to tackle the rising threat of economic crime and, in particular, to close loopholes which allow corrupt foreign entities (including oligarchs and kleptocrats) to use complex corporate and trust structures to disguise their wealth in the UK. On 24 January 2022, Lord Agnew resigned in protest at the failure of the government to bring forward what was then known as the 'Economic Crime Bill'.

The situation in Ukraine gave new impetus to the need to prevent supporters of President Putin's activities in Eastern Europe from being able to hide and/or access their assets in the UK. It is widely believed that this will send a strong message of deterrence. As a result, we have seen an unprecedented level of international co-ordination to implement financial and other sanctions designed to disrupt the action Russia is currently pursuing in Ukraine.

The UK government's strategy against Russia now also includes strengthening legislation to prevent the UK's real estate market from being used to safeguard, conceal or launder both wealth obtained by crime and wealth which is the target of the sanctions regime against Russia. This is to be

achieved by forcing transparency and increasing the ease with which the National Crime Agency (NCA) can strip owners of their unlawfully obtained assets.

## WHAT CHANGES ARE PROPOSED?

The bulk of the Bill is concerned with the creation of a regime for the registration of beneficial ownership information for foreign entities with Companies House. Broadly speaking, if you are the beneficial owner of a foreign entity and own, wish to buy or wish to sell land in the UK, you will need to comply by registering the foreign entity with the Registrar of Companies and providing the requisite beneficial ownership information.

From a corporate crime perspective, the additions to the original draft legislation which are most telling are the provisions in new Parts 2 and 3 of the Bill, which amend existing primary legislation providing for unexplained wealth orders (UWOs) and sanctions offences.

The former extends the existing UWOs regime to include company directors, managers, officers, trustees, partners, board members and other 'responsible officers' of a non-natural person which is the target of the inquiry. These individuals will be made subject to the order and required to comply with it. Failure to do so risks the property being found to be derived from the proceeds of unlawful conduct and therefore forfeited in civil recovery proceedings brought under Part 5 of the Proceeds of Crime Act 2002. The amendments also widen the net by creating an alternative test to be satisfied before UWOs can be imposed: now, reasonable grounds for suspecting that property has been obtained through unlawful conduct will satisfy the High Court that the income requirement has been met. The amount of time that the authorities have to investigate assertions as to the legitimate origins of wealth has also been increased.

Meanwhile, the amendments to the Policing and Crime Act 2017 (the legislation giving rise to the sanctions regime) render civil monetary penalties available for breaches of financial sanctions regimes on a strict liability basis and enable the Treasury to publicly censure a person for noncompliance even where there is no monetary penalty imposed for a breach.

## WHAT IMPACT WILL THIS NEW LEGISLATION HAVE?

The deceptively small amendments to the sanctions legislation have a potentially large impact. It will be impossible to challenge the imposition of a civil penalty on the basis that you did not know, or have reasonable cause to suspect, that you were transacting with a designated person. In other words—no amount of due diligence will be enough. The power to publicise sanctions infringements even where there has been no basis for a monetary penalty to be imposed is likely to give businesses further concerns about operational and reputational risk.

The changes to the UWOs regime are intended to deter the use of complex ownership structures to disguise the identities of the true owners of illegitimately-acquired wealth in the UK, as well as the origins of that illegitimate wealth. However, their effectiveness as a deterrent relies on them being

utilised effectively and in sufficient number so as to make the risk of getting caught, and losing the property as a result, not worth taking.

The regime providing for the registration of overseas entities is reinforced by both civil and criminal penalties as set out in the Bill, which can be committed by the overseas entity and/or its officers, depending on the offence. This includes an offence for failing to register, for which office holders can be prosecuted and serve (on conviction on indictment) up to two years in prison. There is also an offence of an overseas entity making a registrable disposition of a qualifying estate that would otherwise be prohibited, which can be committed by the company itself as well as every officer of it, pursuant to which the latter could find themselves serving a sentence of up to five years' imprisonment when tried on indictment.

## WHAT ARE YOUR PREDICTIONS FOR FUTURE DEVELOPMENTS?

The Explanatory Notes to the Bill give an indication as to the speed with which the Government intends this legislation to become law. The Bill is likely to be fast-tracked through both Houses of Parliament and therefore we anticipate this could receive Royal Assent before the summer.

Companies and those advising them should act quickly to understand the implications from a compliance perspective and to take steps to ensure registrable information is identified.

Significantly, the Bill aims to be retrospective in scope—extending to qualifying estates acquired since 1 January 1999 in England and Wales. Transactional due diligence processes relating to the buying and selling of UK land will need to be reviewed to build in steps relating to updating and checking the register of overseas entities. From the date the act comes into force, overseas entities will have just 18 months to complete their registration.

## UPDATE: 16 MARCH 2022

On 14 March 2022, the Economic Crime (Transparency and Enforcement) Act 2022 received Royal Assent. Significant amendments have been made since our previous article (above), which may be of interest to our clients:

- As of 15 March 2022 in the UK, if the US, EU, Australia, Canada, or another country with whom the UK aligns its sanctions policy, designates an individual or entity under their own regimes, and the Minister considers that it is in the UK's interests to designate the same person or entity, the UK government is now permitted to immediately add that individual or entity to the UK's own designations list. Consequently, you should anticipate a material number of parties being added to the UK sanctions list;
- The registerable information in respect of the beneficial owners of overseas entities with real estate holdings will include trustees and persons designated under sanctions regimes, albeit that the information obtained in respect of trustees may not necessarily be made public;

- The grace period for compliance with the new register of overseas entities requirements has been shortened from 18 months to 6 months.

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