

Government Enforcement and White Collar Crime Alert

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UK Government Expands Enforcement Measures To Address Fraud and Money Laundering

On 22 September 2022, the U.K. government introduced the Economic Crime and Corporate Transparency Act 2022. The new bill is currently navigating its way through the U.K. Parliament and is likely to receive royal assent in 2023. The bill seeks to build on the Economic Crime (Transparency and Enforcement) Act 2022 (ECA 2022), which took effect on 15 March 2022. (See our 26 April 2022 client alert "[New UK Economic Crime and Transparency Laws Take Effect](#)") to review the key provisions of the ECA 2022.) Since that update, the "Register of Overseas Entities" requirements came into force on 1 August 2022.

The U.K. government has stated that the new bill is designed to drive "dirty money out of the U.K." and to address "the use of companies as a front for crime or foreign kleptocrats".¹ The bill introduces a number of reforms, including (i) enhancing powers available to Companies House (the U.K. registrar of companies), the Serious Fraud Office (SFO), the National Crime Agency (NCA) and other regulators and law enforcement agencies to combat money laundering and economic crime, (ii) codifying new criminal offences related to designated persons under the U.K. sanctions regime and providing false information to Companies House and (iii) granting powers to freeze, confiscate and forfeit cryptoassets under the confiscation and civil recovery regimes enshrined in the Proceeds of Crime Act 2002 (POCA).

We have detailed in this article a summary of the key provisions as they currently appear in the draft bill as well as the reception to those provisions by various stakeholders.²

New Powers To Tackle Money Laundering and Economic Crime

The core of the new bill focusses on reforms to Companies House, including strengthened investigative and enforcement powers designed to deter the creation of "sham" companies that facilitate money laundering. The reforms are designed to shift Companies House from being a passive recipient of corporate information to acting as a "gatekeeper" of reliable data in efforts to combat money laundering.³ The bill imposes a new function

¹ See the U.K. government's announcement "[New Crackdown on Fraud and Money Laundering To Protect UK Economy](#)" (22 September 2022).

² At the time of publishing this article, the bill has not received royal assent. It is possible that provisions included in the bill that are referred to in this article could be amended.

³ See "[Economic Crime and Corporate Transparency Bill Explanatory Notes](#)".

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on Companies House, requiring it to analyse the information it receives for the purposes of crime prevention or detection.⁴

The new bill includes new identity verification requirements for persons with significant control (PSC), officers of a company and persons delivering documents to Companies House.⁵ These requirements will also be extended to general partners of limited partnerships. The verification requirements apply both to existing and newly registered company directors and PSCs and are designed to ensure that Companies House is the custodian of reliable corporate data. This is particularly important given the extent of the data held by Companies House — in 2020-2021, Companies House incorporated over 810,000 companies and oversaw over 4.4 million registered active companies.⁶ Persons who the verification requirements cover must have a “verified identity” with Companies House or have registered and verified their identity with an “authorised corporate services provider”. The bill envisages that the U.K. government will issue regulations relating to the procedure for verifying an individual’s identity, including the records that an authorised corporate services provider must retain. The regulations may also make it a criminal offence to fail to comply with the verification requirements, which could result in a sentence of two years imprisonment, a fine or both.

An individual should not act as a director of a company unless his or her identity has been verified. In practice, this will mean that a director should not take any actions on behalf of the company until Companies House confirms his or her identity. Failing to comply with this requirement could lead to a fine being imposed on the director, or on the company where it fails to ensure its directors are verified.⁷

Where a legal entity owns or controls a company, the entity may be a “registrable relevant legal entity” (RLE) under the new bill. The company will be an RLE where it is subject to U.K. PSC rules or has voting shares admitted to trading on a regulated market in the U.K., EEA or specified markets in Switzerland, Japan, Israel or the U.S. RLEs must provide information to Companies House regarding their “relevant officers”, whose identity must also be verified.⁸

⁴ Economic Crime and Corporate Transparency Act 2022, Section 88.

⁵ A person’s identity can be verified in two ways: (i) directly with Companies House as prescribed by the secretary of state or (ii) indirectly through an “authorised corporate service provider” (which could include, for example, accountants, lawyers, company formation agents, etc.), who can submit a verification statement to Companies House.

⁶ See “[Economic Crime and Corporate Transparency Bill Explanatory Notes](#)”, page 10.

⁷ Economic Crime and Corporate Transparency Act 2022, Section 39.

⁸ *Ibid*, Section 61.

In addition to bolstering requirements related to corporate entities, the new bill also strengthens registration and transparency requirements for limited partnerships. As noted above, this includes the new identity verification requirements, which will be applicable to general partners. The bill also restricts who may be a general partner of a U.K. limited partnership, excluding persons who have been disqualified under director’s disqualification legislation.

The new bill also equips Companies House with the tools to maintain the integrity of its corporate register, creating new powers to reject documents and to require disclosure of additional information to enable the agency to determine whether persons have complied with their obligations to Companies House. Failing to comply with a request for additional information is an offence and, where the offence is committed by a firm, every officer of the firm may be liable. If found guilty of the offence, a person could face imprisonment for up to two years, a fine or both.⁹

Similar offences will apply relating to the provision of false information to Companies House. It will be an offence for a person, without reasonable excuse, to provide documents or statements to Companies House that are misleading, false or deceptive in a material way.¹⁰ Where a firm commits the offence, every officer of the firm will be considered to have committed the offence, and the U.K. enforcement agencies may impose a fine. The new bill will include an aggravated version of the offence, which may carry a sentence of up to two years imprisonment, a fine or both. The bill will also empower Companies House to impose a financial penalty if a person has committed an offence under the Companies Act 2006.¹¹

Investigative Powers

The new bill will also significantly enhance the SFO’s investigative powers, including a tool referred to as the SFO’s “Section 2” powers, which allow the agency to compel a person to answer questions, provide information and produce documents, including prior to formal commencement of an investigation. Section 2A of the Criminal Justice Act 1987 permits the SFO to use its Section 2 powers at a pre-investigation stage when the investigation relates to bribery and corruption. The bill seeks to expand Section 2A power to the SFO’s other activity, such as fraud and money laundering investigations.¹² This would be a significant change amid recent setbacks and criticisms of the SFO, and we expect to see the agency make greater use of these powers to collect information.

⁹ *Ibid*, Section 80.

¹⁰ *Ibid*, Section 94.

¹¹ *Ibid*, Section 96.

¹² *Ibid*, Section 156.

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The NCA will also see its armoury bolstered under the new bill. One tool available to the NCA is an “Information Order” (IO), which the Criminal Finances Act 2017 introduced and which requires a business in the AML-regulated sector (which includes banks, accountancy practices, legal services, etc.) that has submitted a suspicious activity report (SAR) to provide further information about its customer that is the subject of the report. IOs are designed to assist the NCA in gathering intelligence in money laundering investigations. Historically, the NCA could only seek an IO where there was a preceding SAR, but the bill will abolish this requirement.¹³ The new rules will also make it easier for the NCA to obtain an IO to assist a foreign intelligence unit in its investigation of suspected money laundering.

To support the new information gathering powers made available to law enforcement agencies, the new bill also aims to facilitate businesses sharing information with regulators and law enforcement agencies for the purpose of preventing, investigating and detecting economic crime. Where a business shares information for these purposes and satisfies certain criteria, it will have a defence to potential civil liability that could arise if the disclosure breaches confidentiality obligations owed to the subject of the report.¹⁴

Sanctions-Related Changes

The new bill introduces a number of changes related to designated persons (*i.e.*, subject to U.K. or UN financial sanctions)¹⁵ and their role in the management of companies and other organisations. It will be an offence for a director (or in the case of a limited partnership, a general partner) who is a designated person to act as a director of a company or (directly or indirectly) to participate in the promotion, formation or management of a company without the permission of the court. This restriction is intended to apply to directors who become designated after the bill comes into force and does not apply retrospectively. A person who commits this offence is liable for up to two years imprisonment, a fine or both.¹⁶

Cryptoassets

One of the most significant changes under the new bill is that it formally extends the confiscation and civil recovery regimes under POCA to cryptoassets.¹⁷ The U.K. government has indicated that

a key objective of the bill is to “make it easier and quicker for law enforcement agencies such as the National Crime Agency to seize, freeze and recover cryptoassets”.¹⁸

Appropriate officers will be able to seize cryptoassets or cryptoasset-related items during the course of an investigation, even where someone has not yet been arrested for an offence.¹⁹ The new bill defines a “cryptoasset-related item” as property that is — or that contains or gives access to information that is — likely to assist in the seizure of a cryptoasset.²⁰ An appropriate officer will also have the power to require any information stored in electronic form to be produced for the purpose of enabling or facilitating the seizure of a cryptoasset.²¹ Both provisions will assist U.K. authorities in overcoming the challenges that arise in enforcement involving cryptoassets, including obtaining an owner’s private key (referred to in our 7 September 2022 client alert “[Cryptoasset Seizures and Forfeitures: US and UK Enforcement Overview](#)”).

The new bill also expands the tools available to law enforcement relating to cryptoasset service providers. U.K.-connected cryptoasset service providers will include cryptocurrency businesses that (i) act in the course of business in the U.K., (ii) have entered into customer contracts containing a requirement that legal disputes be resolved in U.K. courts, (iii) hold data in the U.K. relating to persons to whom the businesses provides services or (iv) meet other conditions prescribed in the bill, namely that the businesses have a registered or headquarter office in the U.K. or that an office or establishment maintained in the U.K. is responsible for day-to-day management of the business.²² Where enforcement officials have made a confiscation order against a person holding cryptoassets, the court may order a U.K.-connected cryptoasset service provider to (a) realise the cryptoassets, (b) pay the proceeds of that realisation to a designated officer of the court (up to the maximum value of the confiscation order) and (c) to the extent the proceeds of the realisation are in excess of the amount owed under the confiscation order, pay the excess to an “appropriate officer” (*i.e.*, accredited financial investigator, constable, HMRC, immigration officer, the NCA).²³ If the cryptoasset service provider fails to comply with the order, enforcement officials can impose a fine of up to £5,000.

¹⁸ See the U.K. government’s announcement “[New Crackdown on Fraud and Money Laundering To Protect UK Economy](#)” (22 September 2022).

¹⁹ Schedule 6, Part 1, paragraph 2.

²⁰ Schedule 6, Part 1, paragraph 3.

²¹ Schedule 6, Part 1, Section 3.

²² A cryptoasset service provider will include a cryptoasset exchange provider or a custodian wallet provider.

²³ Schedule 6, Part 1, Section 12.

¹³ *Ibid.*, Section 145.

¹⁴ *Ibid.*, Sections 148-149.

¹⁵ Sanctions and Anti-Money Laundering Act 2018, Section 9(2).

¹⁶ Economic Crime and Corporate Transparency Act 2022, Section 32(2); Company Directors Disqualification Act 1986, Section 13.

¹⁷ Sections 141 and 142.

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The inclusion of cryptoassets in the POCA civil recovery regime means that enforcement agencies may also freeze and seize cryptoassets in civil courts. POCA allows enforcement authorities to bring civil proceedings to recover property obtained through unlawful conduct. The court will decide, based on the balance of probabilities — which is a lower standard than in the criminal court — whether unlawful conduct occurred and if the property has been obtained through unlawful conduct. An enforcement officer may seek a “crypto wallet freezing order” or forfeiture order if there are reasonable grounds to suspect that the cryptocurrency wallet administered by a U.K.-connected cryptoasset service provider contains recoverable property or is intended for use in unlawful conduct.

Exceptions to Principal Money Laundering Offences

POCA covers the principal money laundering offences in the U.K. (*i.e.*, concealing, arranging, acquisition, use and possession). In certain circumstances, a person can seek consent from the NCA or from other specified persons to deal with property in a way that could otherwise trigger the principal money laundering offences under POCA. This is often referred to as a “Defence Against Money Laundering” (DAML). Where the NCA grants a DAML, the person who made the report can proceed with the transaction and will have a defence to any suggestion that a principal money laundering offence has been triggered.

In addition to DAMLs, POCA includes exceptions that allow certain businesses to process transactions where there is knowledge or suspicion of money laundering if the transaction is below a certain monetary threshold. The new bill expands the exceptions to the principal money laundering offences under POCA to businesses in the regulated sector that (i) transfer property worth less than £1,000 to end a business relationship with a customer and (ii) hold property for a client to which the knowledge or suspicion of money laundering relates.

Reception: What the Bill Is Not

Members of the U.K. Parliament (MPs) from across the political spectrum have responded to the introduction of the new bill with some criticism relating to the bill’s ability to achieve the proposed legislative aims in its current form. Stakeholders have consistently raised a number of themes, as detailed further below.

Criminal Enforcement

The new bill’s detractors have focussed on the failure of the bill to stipulate additional corporate criminal offences, such as a general “failure to prevent”-type offence in relation to economic crime. In pointing to the perceived shortcoming,

a number of MPs referred to the Law Commission’s recent report on corporate criminal liability, which, while refraining from endorsing comprehensive corporate liability for the failure to prevent economic crime, recommended the introduction of a new offence of failing to prevent fraud by an associated person. The U.K. Parliament recently debated amending the new bill to include an offence involving failure to prevent fraud, money laundering and false accounting, but that amendment was withdrawn at the time of this writing.

Resourcing

Another point of contention has involved the new bill’s perceived lack of funding proposals. Noting that “the panoply of agencies involved must be properly coordinated and resourced to tackle [economic crime]”, a number of MPs raised the concern that despite adding significant costs to enforcement operations (the Companies House reforms alone are expected to require £289 million), the bill does little to earmark additional money to cover its proposals.²⁴ One possibility discussed in the parliamentary debate regarding the bill would increase the fee payable to Companies House upon incorporation from the current rate of £12 to something more akin to the rate in neighbouring European countries. However, the issue of resource constraints plagues more than just Companies House; as noted by numerous MPs, multiple agencies are responsible for the enforcement of economic crime legislation. The funding for those agencies “is falling, not increasing. If we are serious about tackling economic crime, there needs to be a commitment of money to the agencies that are the force behind those warm words from the Government.”²⁵

Whistleblowing

Although the new bill contains increased powers intended to bolster the NCA, the SFO and other regulatory bodies, legislators have critiqued the bill for “[missing] an opportunity to refer to and support the important role of whistleblowers in the fight against economic crime”.²⁶ Referring to the bill’s impact assessment produced by the Department for Business, Energy and Industrial Strategy (BEIS), which cites PricewaterhouseCoopers’ 2020 global economic crime and fraud survey, MPs noted that “the proportion of serious fraud carried out by an external perpetrator in the U.K. stands at 57%, compared with 39% globally”.²⁷ The

²⁴ See the U.K. Parliament’s [debate on the Economic Crime and Corporate Transparency Bill](#) at 2:98 (13 October 2022).

²⁵ See the U.K. Parliament’s [debate on the Economic Crime and Corporate Transparency Bill](#) at 3:17 (13 October 2022).

²⁶ See the U.K. Parliament’s [debate on the Economic Crime and Corporate Transparency Bill](#) at 3:03 (13 October 2022).

²⁷ See BEIS’s [Impact Assessments for the Economic Crime and Corporate Transparency Bill](#) (September 2022).

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impact statement further notes that addressing external perpetrators is distinct from handling internal fraud, as external forces are “immune” to traditional fraud detection and prevention tools, including workplace frameworks and whistleblowing procedures.²⁸

Civil Penalties

Additionally, legislators have scrutinised even those areas of the new bill where it purports to strengthen the current enforcement landscape. Regarding disciplinary matters relating to economic crime, the bill purports to grant the Solicitors Regulation Authority (SRA) the authority to impose limitless financial penalties on its members, which include both traditional firms and individual solicitors. In a press release, the SRA noted concerns about how effective these additional powers will be in combatting economic crime. Citing the lack of dissuasive effect of a similar increase in the Financial Conduct Authority’s fining powers, the SRA explained that it is “concerned about the impact of the proposed additional powers on [its] members and [it] urge[s] the government to carefully consider the proportionality of additional regulation.”²⁹

²⁸See the U.K. Parliament’s [debate on the Economic Crime and Corporate Transparency Bill](#) at 3:03 (13 October 2022).

²⁹See The Law Society’s [“Proportionality of the SRA’s Extra Powers in Combatting Economic Crime Must Be Considered”](#) (13 October 2022).

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Conclusion

The new bill introduces sweeping new powers for Companies House, the SFO and the NCA designed to further strengthen the U.K. government’s efforts to prevent money laundering and economic crime. The proposed reforms are particularly significant for Companies House, as the U.K. government seeks to elevate the agency beyond its function as a corporate information depository to operate as an active gatekeeper.

The expansion of the SFO’s Section 2A powers will likely assist in reenergising the SFO and lead to greater enforcement activity. The formal inclusion of cryptoassets in the POCA confiscation and civil recovery regimes is significant too, reflecting the need to modernise enforcement tools to address the changing landscape of wrongdoing, including through the use of cryptoassets.

However, those tasked with enforcement and politicians of all stripes have responded to the introduction of the bill with controversy and critiques, and those voices are likely to factor heavily in debate on the bill’s contents in future stages of the legislative process.