

# PUBLICATION OF THE CRIMINAL FINANCES BILL 2016-17

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Legal Briefings - By **Susannah Cogman, Daniel Hudson and Kate Meakin**

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The Criminal Finances Bill 2016-17 (the "Bill") was presented to Parliament and had its first reading in the House of Commons on Thursday 13<sup>th</sup> October. In a [press release](#) on the same day, the Home Office stated that the new legislation is designed to "*tackle money laundering and corruption, recover the proceeds of crime and counter terrorist financing*". The Bill is divided into four parts: Part 1 adds new powers for enforcement agencies under the Proceeds of Crime Act 2002 ("PoCA"); Part 2 makes changes to existing anti-terrorism legislation; Part 3 makes provision for two new corporate offences of "*failure to prevent facilitation of tax evasion*"; and Part 4 includes minor and consequential amendments to PoCA.

Below, we set out a brief introduction to the Bill, highlighting certain key areas of interest. Further briefings providing more detail on some of these areas will follow in the coming weeks.

## **PARTS 1 AND 2: CHANGES TO POCA AND ANTI-TERRORISM PROVISIONS INFORMATION SHARING WITHIN THE REGULATED SECTOR**

The Bill makes provision for voluntary information sharing between nominated officers in the regulated sector where this may help determine any matters relating to a suspicion of money laundering, where the information sharing has been requested by a National Crime Agency ("NCA") authorised officer or by another regulated firm, and if a notification has first been made to the NCA. Similar provisions are introduced into the Terrorism Act 2000 to facilitate the sharing of information to assist in the determination of matters relating to suspicions of terrorist financing. Whilst the provisions are somewhat complex and their detail will require further scrutiny, the general principle that there should be a clearer framework within which regulated firms can share information for anti-money laundering purposes is likely to be broadly welcomed.

The Bill also introduces a new power for the NCA to serve a "further information notice" to persons in the regulated sector, following a Suspicious Activity Report ("SAR") or in certain circumstances where the NCA is assisting an overseas investigation. A Notice will specify information that should be provided to the NCA and the form of and deadline for its provision, and will therefore enable the NCA to obtain follow-up information on SARs more readily. A Further Information Notice will not itself compel the production of the requested information but, if a firm complies with the Notice, it will not breach any restrictions on the disclosure of information; this would therefore address any concerns about client confidentiality in providing further information to the NCA outside the context of a SAR (which already benefits from similar protection). If a Notice is not complied with, the NCA can apply to a Magistrates' Court for a Further Information Order, which, if granted, will compel the production of the specified information.

Legal professional privilege will not be overridden by a Further Information Notice or Order.

### **SUSPICIOUS ACTIVITY REPORTS - EXTENSION OF MORATORIUM PERIOD**

Under the new provisions, the moratorium period following a request for consent to deal with criminal property may be extended by Court order in up-to 31 day periods. Extensions may be granted where the Court is satisfied that it is necessary and reasonable, and where an investigation is being conducted diligently and expeditiously. Applications may be made by authorities conducting an investigation in the UK or on behalf of an overseas authority. Such extensions may be made up to a maximum total of 186 days following the initial 31 days, allowing a maximum moratorium period of 217 days.

### **OTHER AMENDMENTS TO POCA - IDENTIFICATION AND SEIZURE OF THE PROCEEDS OF CRIME**

The Bill amends PoCA to enable the High Court to make unexplained wealth orders ("UWOs"), which are intended to target cases where a person holds assets which appear disproportionate to their known legitimate income. UWOs will require a respondent to explain the nature and extent of their interest in specified property and how it was obtained, and will be available in respect of respondents who hold property of over £100,000 in value. Generally, the applicant authority must satisfy the Court that either (a) the respondent is a foreign politically exposed person ("PEP") or (b) there are reasonable grounds for suspecting that the respondent or a connected person has been involved in serious crime (which need not have taken place in the UK). The Court must also be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's legitimate income would have been insufficient to enable the respondent to obtain the property.

Where a UWO is not complied with – i.e. where an explanation of how the property has been acquired is not provided – the property will be deemed to be "*recoverable property*" for the purposes of the civil recovery provisions of Part V of PoCA. The UWO provisions are also supported by provision for interim freezing orders and a specific offence for a person who knowingly or recklessly makes a statement in response to a UWO that is "*false or misleading in a material particular*".

Separately, the Bill extends existing seizure and forfeiture powers, allowing the seizure of certain personal property (including precious metals and stones) where there are reasonable grounds to suspect that they represent the proceeds of crime or are intended for use in crime. There is also provision for enforcement agencies to seek an Account Freezing Order from the Court, which freezes accounts where the Court is satisfied that there are reasonable grounds to suspect it holds the proceeds of crime or finances intended to be used in unlawful conduct. As with the other provisions, including those relating to information sharing, Part 2 of the Bill introduces similar provisions in the context of terrorist funding.

The Bill also extends the use of disclosure orders, currently available only in respect of certain types of investigations (such as confiscation, civil recovery and exploitation proceeds investigations), to also be available in money laundering investigations and to be available to a broader range of investigators.

### **PART 3: FAILURE TO PREVENT FACILITATION OF TAX EVASION OFFENCES**

In one of the Bill's most significant innovations, a new corporate offence provides that a "*relevant body*", being a corporate or partnership (wherever incorporated or formed), will commit an offence if a person associated with the relevant body commits a UK tax evasion facilitation offence.

Several elements of this offence merit note:

- It may be committed by a non-UK company or partnership in respect of facilitating acts or omissions taking place wholly overseas, jurisdiction arising from the evasion of UK tax;

- Employees and agents (acting in such a capacity) explicitly constitute a "*person associated*" with the relevant body in the Bill. The Bill also includes a 'catch-all' provision for persons who perform "*services for or on behalf of B who is acting in the capacity of a person performing such services*". As with the UK Bribery Act 2010 ("UKBA") section 7 corporate offence of failure to prevent bribery, the test for persons associated depends not on the formal nature of the relationship but on all the relevant circumstances;
- A defence is available if, at the time the associated person committed the offence, there were in place prevention procedures which were reasonable in all the circumstances, or if it was not reasonable to expect the relevant body to have such procedures in place.

There is a further offence of failure to prevent the facilitation of foreign tax evasion offences. This may be committed by a UK incorporated body, a body carrying on at least part of its business in the UK or by an overseas body where any conduct constituting part of the foreign tax evasion facilitation offence takes place in the UK.

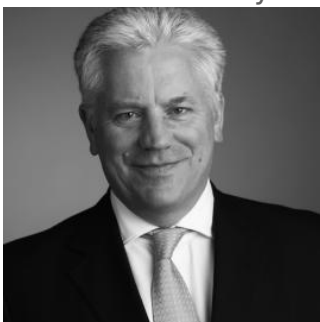
The new failure to prevent tax offences are the latest example of an apparent trend towards 'strict liability' offences designed to give enforcement agencies stronger tools to hold corporate bodies to account for the criminal activities of others. The similarities in structure of the new offences to the section 7 UKBA failure to prevent bribery offence may give a steer as to the likely structure for the proposed new corporate offence of 'failing to prevent economic crime' – a consultation on which is awaited (see our full e-bulletin on that proposed offence [here](#)).

## **FUTURE DEVELOPMENTS**

The date of the second reading for the Bill is yet to be announced, but there is speculation that it may come into force in early 2017. The Bill demonstrates the Government's appetite to strengthen the tools available to it in the detection of illegal activity and its proceeds, and the protection of the integrity of the UK financial system.

## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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