



GLOBAL INVESTIGATIONS AND COMPLIANCE

COUNTERING ECONOMIC CRIME IN THE UK - FURTHER REFORMS, NEW CHALLENGES

On 11 December 2017, the UK Government announced a number of new policies aimed at improving the UK's response to economic crime. In this client update, we summarise the main proposals, and set out some implementation challenges.

A STRENGTHENED NATIONAL CRIME AGENCY, AND A REPRIEVE FOR THE SERIOUS FRAUD OFFICE

The key plank of the proposed reforms is the Government's intention to enhance the role of the National Crime Agency (NCA) in economic crime matters, by:

- giving it powers to task the Serious Fraud Office (SFO) to investigate particular instances of economic crime; and
- creating a new National Economic Crime Centre (NECC) – which will be housed within the National Crime Agency – bringing together law enforcement agencies, and working with the private sector, to task and co-ordinate the response to economic crime.

The SFO will remain an independent organisation, effectively ending speculation about its long-term future, which had been in doubt following the Conservative Party's 2017 election manifesto proposal to abolish it.

In addition, the Government signalled that it intends to seek further recoveries of criminal proceeds by announcing the creation of a dedicated team which would use the confiscation powers in the Criminal Finances Act to obtain money held in frozen bank accounts. It is not clear from the Government's announcement where this new team will reside; however, if it is housed in the NCA, this would further cement the NCA's leading position in economic crime matters.

Given that legislation is likely to be required to achieve at least some of the reforms, it remains to be seen how these new functions will be implemented in practice, not least:

- to what extent the NECC will further enhance the public/private sector co-operation that already takes place through the Joint Money Laundering Intelligence Taskforce (JMLIT);
- how the NCA and SFO will work together, given the NCA's enhanced role;
- when and how the NCA might use its power to "task" the SFO; and
- given the SFO's limited budget, and its status as an independent body, the impact of the NCA's "tasking" power on its caseload and other priorities.

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AN END TO BOX TICKING - FURTHER REFORMS TO THE UK SUSPICIOUS ACTIVITY REPORT (SAR) REGIME?

Building on the UK SAR Reform Programme (which led to the reforms to the SAR regime under the Criminal Finances Act 2017) the Government is proposing to work with industry, regulators and law enforcement on the SAR regime to:

- reduce “tick box” compliance;
- target it more effectively against the most significant threats; and
- improve outcomes for firms and law enforcement alike.

While this announcement contains little new information as to where any reforms might be targeted, it may well represent an opportunity for industry to promote further changes to the SAR regime. Firms should therefore be prepared to engage with Government to point out the existing limitations of the regime, and make practical suggestions for reform.

ENHANCING TRANSPARENCY: REGISTERS OF OVERSEAS BENEFICIAL OWNERS

Recognising the financial crime risks of hidden beneficial ownership, enhancing transparency remains high on the international agenda.

The UK already has in place a beneficial ownership register for UK companies (held by Companies House) through which companies are required to disclose any individual owning 25% or more of the shares in, or exercising significant control over, the entity concerned.

In a move to increase transparency, the Government is proposing to publish draft legislation creating a beneficial ownership register of overseas companies and other entities – also to be held by Companies House – which own property in the UK, or participate in Government contracts.

The choice of these two areas was first proposed in a 2016 consultation paper issued by the (then¹) Department for Business Innovation and Skills². As such much will depend on the precise terms of the draft legislation. In particular, it remains to be seen whether the proposed register will require all foreign companies currently owning property in the UK to make a declaration, or whether the legislation will apply only to companies investing in the future.

When implemented, the register will be a further source of information for firms who are seeking to understand the beneficial ownership of current or potential clients. Once any legislation is enacted, firms will need to consider what changes may be required to their processes to ensure any new information is taken into account when on-boarding new clients, or refreshing KYC information of existing clients.

WHAT DOES THIS MEAN FOR YOU?

While many of the measures announced by the UK Government on 11 December 2017 build on previous reforms, and appear well timed given the upcoming 2018 FATF visit to the UK, together they represent a concerted effort to move the dial on the UK’s response to economic crime, with the aim of making the UK a less hospitable environment for economic criminals. And, because some of the proposals will require new legislation, it may be some time before they actually take effect.

Firms will therefore need to stay in close touch with these reforms as they are further developed and make the most of any fresh opportunities to influence Government policy, particularly in areas ripe for further reform, such as SARs.

Finally, as the Government moves towards implementing these proposals, firms will need to consider carefully whether any changes are required to their compliance frameworks as a result.

1. The department is now known as the Department for Business, Energy and Industrial Strategy.

2. Beneficial ownership transparency: Enhancing transparency of beneficial information foreign companies undertaking certain economic activities in the UK. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf