

THE UNITED KINGDOM'S NEW *ECONOMIC CRIME BILL* PORTENDS A SEA CHANGE IN ANTI-MONEY LAUNDERING LEGISLATION IN THE WEST

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Western governments are responding to Russia's Invasion of Ukraine with historic changes to money laundering legislation. On March 1, 2022 the United Kingdom government introduced the [Economic Crime \(Transparency and Enforcement\) Bill](#) (the "**Bill**") in Parliament. The *Bill* expands the powers of the National Crime Agency and enhances a number of powerful measures targeting assets rather than individuals. Given the alleged prevalence of Russian assets in the United Kingdom, the government intends these measures to directly impact the immediate crisis. Beyond these immediate effects, the UK's *Economic Crime Bill* promises to change the conversation in the west respecting anti money laundering ("**AML**") legislation generally and may portend sweeping changes in other jurisdictions, including Canada.

Measures Introduced in the *Economic Crime Bill*

The *Bill* has three main sections. Part 1 sets up a new register of overseas entities and requires overseas entities to disclose, and keep updated, information about their beneficial owners. This is an effort to lift the veil on secretive corporate structures. Part 1 also creates new requirements for overseas entities to register if they own land in the United Kingdom.

Part 2 sets out amendments to the *Proceeds of Crime Act 2002* by expanding the scope of unexplained wealth orders ("**UWO**"). An UWO is an order from the court requiring a person to disclose the nature of an interest in property, how it was obtained (including how it was paid for), and setting out other details as required. Under the *Bill*, an UWO can be imposed on an officer of the respondent company, including a person outside the UK. The definition of an asset "holder" will be expanded to include those who hold property in the UK in a trust, closing a significant loophole. Other amendments to the *Proceeds of Crime Act 2002* include increasing the period for which an interim freezing order has effect and limiting the risk that enforcement authorities would pay costs of unsuccessfully seeking an UWO if they had reasonable grounds to seek it. The UK government intends these reforms to greatly expand the use of UWOs, which had been hampered previously by the cost implications and short timelines that impeded evidence review by law enforcement.

Part 3 amends the *Policing and Crime Act 2017* to impose a strict liability standard on those who breach financial sanctions legislation. Part 3 removes any legislative requirement for a person to have known, suspected or believed any matter when determining if that person has breached a prohibition.

In addition to the immediate provisions of the *Bill*, the UK government has indicated it intends to introduce further changes to the UK's AML framework, including:

- anyone setting up, running, owning or controlling a company in the UK will need to verify their identity with Companies House;
- Companies House will be given the power to challenge the information that appears dubious, and will be empowered to inform security agencies of potential wrongdoing;
- company agents from overseas will no longer be able to create companies in the UK on behalf of foreign criminals or secretive oligarchs;
- new powers to seize crypto assets and bring them within scope of civil forfeiture powers to tackle the growing threat from ransomware and the use of crypto assets for money laundering;
- strengthened anti-money laundering powers to give businesses more confidence to share information on suspected money laundering and other economic crime; and
- reforms to bear down on the use of limited partnerships as vehicles for facilitating international money laundering (including illicit Russian finance) and illegal arms movements.

Impact On Canada

While Canadians doing business in the UK are obviously impacted by these new measures, the importance of the UK's reforms extends beyond its shores.

In 2019, an independent panel in British Columbia proposed the introduction of UWOs into BC civil forfeiture legislation, modeled on the UK legislation. This proposal met with significant resistance from civil liberties groups due to its reverse onus structure. Despite this, B.C. Attorney General David Eby has continued to promote UWOs and ordered the Cullen Commission on Money Laundering to review the possible implementation of this measure. The Cullen Commission is due to issue its final report in May, 2022, which will include recommendations relating to unexplained wealth orders, among other measures.

As recently as September, 2021, The Honourable Minister Eby also called on the federal government to introduce reforms to the *Criminal Code* to combat money laundering, including the introduction of a U.S. style racketeering offence (as set out in the U.S. *Racketeering Influence and Corruption Act*). The federal government has recently acknowledged its role in combatting money laundering, particularly in the real property industry given the growing cost of living crisis in Canada. However, the federal government has not

yet implemented significant changes to its AML framework.

If UWOs are implemented in Canada, it is likely they would be administered by provincial civil forfeiture offices across the country. These offices already have developed expertise in commencing court actions to seize assets that the government alleges are proceeds or instruments of unlawful activity. The current process requires the government to prove in a civil trial on a balance of probabilities that the property is either proceeds or an instrument of crime. An UWO would shift the onus from government to asset holder to justify the source of funds used to purchase the asset. While such provisions would likely face a *Charter of Rights and Freedoms* challenge in Canada that is not an impediment in the UK, the current climate has altered the context and justification for UWOs and may present a more favourable environment for provincial governments to implement them. Defending an UWO will take significant preparation and resources, particularly if asset holders do not anticipate the paper trail legislation will require asset holders to disclose under this new procedure.

There is little doubt that with Russia's invasion of Ukraine and the UK's response, potent AML measures such as the unexplained wealth order have taken on new significance and may become far more prevalent in western democracies. Those who hold assets through trusts or other beneficial forms of ownership could see increased risk and possible legal compulsion to explain the source of wealth used to purchase the asset. The United Kingdom's dramatic move has made it clear: given the crisis, core industries such as real estate and financial institutions in Canada could be impacted by significant changes to AML legislation in a much shorter time frame than anticipated.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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