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UK sanctions: an effective block on war refinancing?

With coffers depleted after months of costly war in Ukraine, where are we with UK sanctions? Cameron Brown KC & Olivia Haggar assess the new regime

It was a poorly-kept secret that the UK had fast become a haven for 'dirty money' flowing in from overseas jurisdictions. The Russian invasion of Ukraine brought this to the forefront of politics.

In a hurried response to the conflict, the government announced the Economic Crime (Transparency and Enforcement) Act 2022 (EC(TE)A 2022), which was expedited through Parliament and came into force on 15 March 2022. EC(TE)A 2022 introduced new powers, which joined the roster of other powers such as unexplained wealth orders (UWOs) and civil orders, and sought to toughen up the existing legislative framework for tackling economic crime.

One of the key changes introduced by EC(TE)A 2022 is the Register of Overseas Entities. Overseas entities that own (from 1 January 1999 in England and Wales) or wish to buy, sell, let or grant security over qualifying property in the UK are required to register, including providing information as to the ultimate beneficial owner. The ultimate beneficial owner is a person who, among other criteria, holds more than 25% of the shares of the entity. The new register will be operated by Companies House and information supplied will be required to be verified. Criminal sanctions, in the form of a daily fine of up to £2,500 a day, will be imposed on any company that fails to comply, along with its officers, who can be imprisoned for up to five years.

Those who have been following will know that this is not a new idea, but was first proposed back in 2016. Progress in this area moved at a glacial place until the conflict in Ukraine placed mounting pressure on the government to act.

Where EC(TE)A 2022 falls arguably short is that it will not apply in respect of overseas entities owned by multiple individuals, none of whom hold over 25%. Similarly, there is no provision for when the ultimate beneficial owner of the entity holds the property as a nominee.

The second change of note is to make the breaching of sanctions a strict liability offence. Previously, under the Policing and Crime Act 2017, it was necessary to show not only that a sanction had been breached but that the person responsible 'knew or had cause to suspect' that a sanction had been breached.

The mental ingredient has now been dispensed with entirely under EC(TE)A 2022, which should mean that far more entities will fall foul of the sanctions provisions. This will be particularly important for businesses and individuals to note, given the variety of sanctions that have been recently introduced by the government.

Unexplained wealth orders (UWOs) have also been amended by EC(TE)A 2022. Previously UWOs could only be issued when there was a disparity between the value of an asset (at least £50,000) and the income of the person who appears to own it. To date, they have had limited success, facing criticism that they were insufficient to counter money laundering in the UK. They have now been updated, to include orders over property where there are reasonable grounds for suspecting that its acquisition came from unlawful conduct.

EC(TE)A 2022 also seeks to address some of the underlying problems with the UWO regime, by extending time limits for freezing assets and by including properties held by trust or other complex ownership structures. Orders may also be obtained against responsible officers of corporate entities that own the property.

It also changes the landscape in respect of costs. In respect of unsuccessful UWOs, the enforcement agency will not be responsible for the respondent's costs unless the authority acted unreasonably, dishonestly or improperly. This is no doubt in response to what is otherwise a costly and resource-heavy system, and should remove the 'fear factor' for UK prosecutors seeking such orders.

Finally, EC(TE)A 2022 introduced a new procedure into the Sanctions and Anti-Money Laundering Act 2018, allowing the home secretary to designate a named person subject to sanctions on an expedited basis, so long as it is in the public interest and they have already been made subject to a sanction by the EU, Australia, Canada, the US or others named under the regulation. Following its introduction, there was a flurry of individuals subject to sanctions.

One of the reasons money laundering has been able to grow so rapidly in UK is the arguably lax system for company creation. At present, Companies House requires minimal checks and information when a company is incorporated—meaning shell companies, through which illicit funds can be washed, can be created without detection. Furthermore, it has no powers to check the veracity of what it receives. Other entities are in a similar position; it has been estimated than one in ten limited liability partnerships have characteristics identical to those used in serious financial crimes, such as bribery and sanctions evasion.

The government has laid a Bill before the House of Commons, the Economic Crime and Corporate Transparency Bill (at report stage at the time of writing), where welcome reforms include requiring all directors and persons with significant control of companies to verify their identity and to flag suspicious activity to law enforcement in certain circumstances. Furthermore, the Bill seeks to tackle the issues presented by cryptoassets, including powers for investigators to seize such assets before arrests are made. It also tightens the requirements in relation to UK limited partnerships, including the need to provide more information about the partnership and maintaining an office in the UK.

It remains to be seen how much of the Bill will remain intact, and whether the new legislation will be sufficient to stop the bodies and individuals determined to use UK companies or other entities for money laundering or sanction evasion purposes. **NLJ**

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