

UK Economic Crime (Transparency & Enforcement) Act 2022 and Latest UK Sanctions & Measures on Russia and Belarus

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What is this about?

Fast-tracked with lightning speed (in light of events in Ukraine) the UK has introduced new legislation which improves transparency concerning foreign ownership of UK property, reinforces the so-called UK Unexplained Wealth Orders regime, and broadens the UK sanctions regime. This new law is called the Economic Crime (Transparency & Enforcement) Act 2022 (“the new law”). This article looks at its highlights.

What is new about transparency concerning foreign ownership of UK property?

Arguably the most significant part of the new law is the introduction of new requirements for foreign ownership of property. In sum, under the new law:

- A legal entity governed by the laws of a country outside the UK will have to apply for registration (with Companies House) in the “Register of Overseas Entities” if it owns land (including property) in the UK;
- The register has retrospective effect. Along with any future purchases, any overseas entity currently holding UK land that it purchased after 1 January 1999 (in England and Wales) or 8 December 2014 (in Scotland) will be required to register – there is a transitional period of six months following the entry into force of the new law for those registrations to be made;
- When applying for registration, the overseas entity will be required to identify any so-called “Registrable Beneficial Owners”. Under the new law these are defined as anyone who: (a) holds, directly or indirectly, 25% or more of the shares in the entity; (b) holds, directly or indirectly, 25% or more of the voting rights in the entity; (c) holds the right, directly or indirectly, to appoint or remove a majority of the entity’s board of directors; (d) has the right to exercise, or actually exercises, significant influence or control over the entity; or, (e) has the right to exercise, or actually exercises, significant influence or control over a trust or other entity (as set out in the new law) that meets any of the above conditions;
- Registered overseas entities will have to annually update the register by declaring any changes to their “Registrable Beneficial Owners”;
- The register is open to the public – members of the public will therefore be able to check the register (for free) and they can require a copy of any material on the register that is available for inspection (some material will not be available for inspection);
- Failure to comply with the obligation to register and make annual declarations, for both the relevant entity and its officers, is punishable by a fine, or imprisonment of up to five years, or both; and,
- An overseas entity can’t be registered as the owner of UK land with the UK Land Registry until the beneficial ownership has been registered (i.e. with Companies House), subject to some limited exemptions, and, there are also restrictions on the disposal of UK land by overseas entities unless those entities are registered or otherwise exempt.

What is new about the Unexplained Wealth Orders regime?

Under the UK’s Unexplained Wealth Orders regime (UWOs, which were introduced in 2018 and have been applied in a few cases) a court (upon an application made by an enforcement authority) can order an individual who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear to be disproportionate to their known income. UWOs therefore help enforcement authorities to identify and then (with ancillary orders) freeze the assets of individuals who are reasonably suspected to have been enriched by criminal activity, including corruption, both in the UK and abroad. UWOs therefore bolster the ability of enforcement authorities to recover the proceeds of crime, and to tackle money laundering, corruption and terrorist financing.

The new law makes wide-ranging amendments to the existing legal framework that governs UWOs, including the following:

- Where the holder of property is not an individual, an application for a UWO can specify a number of types of individuals, including a director, manager, secretary or partner to act as the so-called “responsible officer” for the entity in question, upon whom the UWO will be served – this should act as a disincentive to individuals attempting to use complex ownership structures such as shell companies to try and hide their beneficial interests in property;
- With regard to the requirements for making a UWO, creating an alternative test for the court to apply where the court would need to be satisfied that, either: there are reasonable grounds for suspecting that the known sources of the lawfully obtained income of the individual in question would have been insufficient for the purposes of enabling the individual to obtain the property in question; or, (as per the new law) that the property has been obtained through unlawful conduct. Under the legislation being amended, a person obtains property through unlawful conduct (whether his/her own conduct or another’s) if he/she obtains property by or in return for the conduct, and, in deciding whether any property was obtained through unlawful conduct: it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct – arguably this new (unlawful conduct) alternative establishes a lower test for the provision of a UWO;
- Where an interim freezing order has been made, extending the period for the enforcement authority to make a determination about what enforcement or investigatory proceedings ought to be made in relation to property in question – this will buy enforcement authorities more time; and,
- Limiting an enforcement authority’s liability for costs in legal proceedings concerning UWOs or interim freezing orders – this should protect enforcement authorities from incurring significant costs if they bring a reasonable case (properly) that eventually does not succeed.

What is new about the sanctions regime?

There are a number of new elements to sanctions under the new law, as follows:

- To date, civil monetary penalties could be imposed for financial sanctions breaches on the basis that the UK sanctions regulator, the Office of Financial Sanctions Implementation (OFSI), could demonstrate that a person knew, or had reasonable cause to suspect, that sanctions were being breached. The new law (which amends the existing legal framework that governs sanctions) removes this requirement and therefore makes a sanctions infringement a strict liability regulatory offence. This is a very significant change and will make it easier for enforcement authorities to take action;
- The procedures (under the existing legal framework that governs sanctions) under which ministers designate entities and individuals for the purposes of UK sanctions have been simplified. An urgent procedure has also been introduced which makes designating persons much quicker and easier. Now a minister can designate a person or entity where they are already designated by either the US, Australia, Canada or the EU, where it is in the public interest to do so; and,
- The regulator will also be able to name a person who, although they haven’t been fined, has breached financial sanctions.

What’s next?

Having been fast-tracked through the UK legislative process because of recent events in the Ukraine, the new law came into effect on 15 March 2022. Companies House (the official UK registry for companies) is understood to be trying to implement the register as quickly as it can, working with the UK’s three land registries.

Further draft economic crime legislation will be put before the UK Parliament sometime this year aimed at transforming the role of the UK’s Companies House to one where it will also tackle economic crime and promote corporate transparency.

New UK measures on Russia and Belarus

The UK government has also introduced a further raft of measures, broadly as follows:

- Sanctions against 370 more Russian and Belarusian individuals and entities;
- Denying Russia and Belarus access to so-called “Most Favoured Nation” tariff for hundreds of their exports;
- Setting out an initial list of goods worth £900 million (including vodka) which will now face additional 35% tariff, on top of current tariffs; and,
- A ban on exports of luxury goods to Russia.

Takeaways

Although the events in Ukraine have facilitated the expedition of the new law it must be highlighted that the impact of the new law will not just be on entities or individuals connected with Russia but will be much wider. Things to consider now include:

1. All overseas beneficial owners of UK property should consider their registration obligations under the new law, including identification of their beneficial owners – note in particular the retrospective effect (property purchased since 1999 in England and 2014 in Scotland) – extensive information for registration will need to be put together (bear in mind that this could be subject to verification), and a system should be put in place for the annual updating requirement. Take into account that Companies House has experienced backlogs in the past so don’t leave this until the last minute;
2. Those at possible risk of UWOs should undertake a risk assessment to determine this;
3. With regard to sanctions in general, organizations should consider doing the following: (a) undertake a rigorous due diligence screening against individuals and entities on sanctions lists. Be aware of the fact that these lists will expand so extended due diligence on anyone in the region is a wise investment; (b) do a contracts clauses check on relevant contracts to ensure that provisions concerning warranties, force majeure, termination, and, liability are all up to scratch as regards sanctions; (c) update policies, procedures and risk assessments – be prepared to deal with sanctions breaches; (d) where possible and of use (either as an alternative or a complement to contract breach risk), considering obtaining insurance (export credit, political risk, and, trade disruption) against sanctions risks; and, (e) train staff on sanctions issues.

Resources

We report about sanctions issues here <https://www.corderycompliance.com/category/sanctions/>. For the latest round of UK sanctions imposed on Russia see here <https://www.gov.uk/government/news/uk-announces-new-economic-sanctions-against-russia#:~:text=The%20UK%20Government%20has%20today,products%20with%20new%20import%20tariffs>

We report about anti-bribery and corruption issues here <https://www.corderycompliance.com/category/bribery-corruption/>.

For our other news please see here <https://www.corderycompliance.com/news/>.

The UK Economic Crime Transparency & Enforcement Act 2022 can be found here <https://www.legislation.gov.uk/ukpga/2022/10/contents/enacted>.

For more information please contact André Bywater or Jonathan Armstrong who are commercial lawyers with Cordery in London where their focus is on compliance issues.

[Jonathan Armstrong](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH
Office: +44 (0)207 075 1784
Jonathan.armstrong@corderycompliance.com

[André Bywater](#), Cordery, Lexis House, 30 Farringdon Street, London, EC4A 4HH
Office: +44 (0)207 075 1785
Andre.bywater@corderycompliance.com

Farringdon

