

Legal Update

UK Government's Economic Crime Plan – where are we going?

On 12 July 2019, the UK government published its "Economic Crime Plan, 2019 to 2022" (the "**Paper**"), a policy paper setting out seven strategic priorities, each with action plans ("**Actions**"), for combatting economic crime. Those priority areas are stated policy objectives developed by the Economic Crime Strategic Board, a new ministerial level public-private taskforce created by the Cabinet in January 2019 with a mandate to set priorities and direct resources pursuant to the UK Government's Serious and Organised Crime Strategy. The Paper provides a "*collective articulation of the action being taken by the public and private sectors*" in preventing and combatting economic crime. The existence of a policy paper at all setting out a plan against which the government's progress can be measured will be viewed by many as a positive development in terms of accountability. This Update highlights some key features of the strategic priorities of the Paper as well as their accompanying Actions, evaluates some of the criticisms which have already been made of the Paper, and asks whether any observations can be drawn regarding the general direction of travel of legislation and enforcement in these areas.

THEMES

Public-private collaboration

A central recurring theme of the Paper is the importance of proactive and constant engagement between the public and private sectors and the need to take a holistic approach to combating

economic crime, given that often no single organisation or authority has clear line of sight over the information and intelligence required to prevent or detect economic crime. The Paper envisages that such an approach will include increased public-private collaboration, resource pooling, and information sharing.

Funding challenges

One of the notable features of the Paper is that whilst it appears to set out an ambitious and coherent vision of work in the coming years, it is relatively light on detail. Importantly, conspicuous by its absence is an indication as to how pursuit of the strategic priorities and Actions will be funded. The Paper notes £48m of previously announced funding for the National Crime Agency ("**NCA**") alongside a contribution from banks of £6.5m in 2019/20 earmarked to improve the regime for Suspicious Activity Reports ("**SARs**"), but does not outline a detailed long term plan as to levels and sources of funding. It has been suggested by some commentators that the emphasis on increasing cooperation between the public and private sectors may well soon expressly encompass funding. The government press release accompanying the Paper suggests that further financial contributions from the financial sector are expected, although the amounts announced to date look insignificant against the estimated £100-150m total cost of the SARs Transformation Programme as outlined in the Paper.

Professional enablers

The tenor of the Paper suggests that a degree of regulatory and law enforcement focus will remain on so-called “*professional enablers*” – professionals such as accountants, real estate professionals and lawyers who might complicitly, negligently, or unwittingly facilitate money laundering. The continued use of this term reflects the ongoing scrutiny (and, in some circles, distrust) of the role of professional, regulated firms in economic crime activity. Much has been written about the focus on such firms and whether or not labels such as “*professional enablers*” are accurate or helpful, and on 26 July 2019, the Solicitors Regulation Authority announced an increase of 43% in the number of SARs filed by law firms in 2018, compared with 2017. It is clear that the role of professional regulators will remain a priority for the NCA and for the Office for Professional Body Anti-Money Laundering Supervision, the regulator recently established to oversee the 22 separate anti-money laundering (“**AML**”) regulators for professional bodies.

Patchwork of reports

The Paper is best understood in the context of numerous other reports published over the past few years in relation to economic crime. In particular, the Paper builds on the UK government’s 2016 AML/CTF Action Plan, 2017 Anti-Corruption Strategy, and 2018 Serious and Organised Crime Strategy, and seems to be the overarching policy piece of a much broader picture of evaluation and reform of the UK’s framework relating to economic crime matters. It follows (most recently) a House of Commons Treasury Committee’s report on Economic Crime (March 2019), the government’s response (May 2019), as well as the Law Commission’s report on reform of the UK’s AML framework (June 2019).

The Paper also follows the Financial Action Task Force’s (“**FATF**”) mutual evaluation of the effectiveness of the UK’s AML and counter-financing of terrorism (“**CFT**”) measures (December 2018), which was broadly positive in its assessment of the UK’s AML/CTF regime, finding that the UK had one of the strongest overall AML/CTF frameworks of the 60 or so countries assessed to date. In particular, it praised the UK’s understanding of risk, its response to terrorist financing, and its targeted sanctions regime.

However, FATF’s mutual evaluation also found that there are parts of the framework requiring further development, notably: (1) the SARs and AML/CFT supervisory regime; (2) the role and resourcing of the UK Financial Intelligence Unit (“**UKFIU**”), which is the arm of the NCA responsible for reviewing and analysing SARs; and (3) reform of Companies House and registries of ultimate beneficial owners. Each of these areas is addressed in the Paper.

STRATEGIC PRIORITIES

1. ***“Understanding the Threat and Performance Metrics: develop a better understanding of the threat posed by economic crime and our performance in combatting economic crime”***

The Paper finds that gaps exist in the current collective understanding of the threat of economic crime and puts forward ways in which those gaps should be closed. Of particular note is an Action to deploy a system which measures and monitors the effectiveness of the UK’s response to economic crime, and which adopts an outcome-based approach through use of performance indicators.

2. ***“Better Information-Sharing: pursue better sharing and usage of information to combat economic crime within and between the public and private sectors across all participants”***

The second strategic priority relates to improving the sharing of financial intelligence, data, and resources amongst and between the public and private sectors, and explores various ways in which the position can be reviewed and enhanced. To this end, the government intends shortly to establish a public-private working group with public and cross-sectoral private sector representatives, including representatives from the Information Commissioner’s Office (“**ICO**”), which will review the framework for how information is, and should be, shared. It is expected that the working group’s review will lead to guidance statements as to how such information should be shared and on what legal basis. The inclusion of the ICO in the working group is critical given the growing tension between, on the one hand, rising pressure on financial institutions and other corporates to share more information - including confidential and

sensitive customer information – with regulators and law enforcement agencies and, on the other, the increasingly onerous obligations and sanctions on the same financial institutions and corporates to protect certain types of information, perhaps most notably personal information pursuant to GDPR.

3. ***“Powers, Procedures and Tools: ensure the powers, procedures and tools of law enforcement, the justice system and the private sector are as effective as possible”***

The Paper emphasises the importance of ensuring that the entire system is working holistically for the effective recovery or disposal of the proceeds of crime. Alongside the release of the Paper, the government also published its Asset Recovery Action Plan, another policy paper specifically concerning the effectiveness of the UK’s framework for the recovery of criminal proceeds, principally under the Proceeds of Crime Act 2002 (“POCA”) and, more recently, the Criminal Finances Act 2017. Proposals to enhance powers under POCA will be outlined by December 2021 and may include amendments to complement anticipated changes to the SAR regime.

4. ***“Enhanced capabilities: strengthen the capabilities of law enforcement, the justice system and private sector to detect, deter and disrupt economic crime”***

The fourth strategic priority is similar to the third in that it relates to the ability of the framework as a whole, and its constituent parts, to combat economic crime, save that here the focus is on the structural and organisational, rather than legislative, aspects of the framework in the UK. The relevant Actions include the following noteworthy developments:

- (a) reform of the SAR regime. This follows the findings of recent other reports (for example, the Law Commission’s report in June 2019) and is aimed ultimately at enhancing the intelligence value of SARs. The role of the UKFIU in connection with SARs and its funding model will also be reviewed and revamped to address criticisms made in the FATF evaluation;
- (b) the establishment by 2026 of a new

Economic Crime Court which will be dedicated to deal with fraud and other economic crime matters, including cybercrime. This reflects a broader trend in the UK court system of developing specialist courts in appropriate areas (such as the introduction of the Financial List in 2015 and the launch of the Business and Property Courts structure in 2017);

- (c) a review of how a new interbank payment system in development, the New Payments Architecture, could be used for the detection of economic crime. This reflects a broader increased industry and regulatory focus on the use of technology and automated systems for the combating of economic crime.

5. ***“Risk-Based Supervision and Risk Management: build greater resilience to economic crime by enhancing the management of economic crime risk in the private sector and the risk-based approach to supervision”***

Reflecting the central theme of greater collaboration between the public and private sectors, one of the proposed actions pursuant to this strategic priority is the establishment of a “new, senior-level Innovation Working Group” which will promote the innovation and enhancement of regulatory technology solutions to combat economic crime. Separately, but also to ensure that the UK’s framework keeps pace with criminal practices, it is intended that by 2020 the FCA will be established as the supervisor of cryptocurrencies for AML/CFT purposes.

6. ***“Transparency of Ownership: improve our systems for transparency of ownership of legal entities and legal arrangements”***

The Paper refers to the FATF mutual evaluation report’s recognition that the UK is “a global leader in promoting corporate transparency”, although further improvements to the quality of the information held at Companies House were also recommended. The Actions arising out of this strategic priority are aimed at reforming Companies House and bolstering its legal powers to query and seek corroboration on

information submitted to it, amend and update errors on the companies register, and work more closely with law enforcement and other partners to support investigation into illicit activity.

From a legislative perspective, of particular note is the action plan by January 2020 to require regulated firms to report discrepancies between information they hold on their clients, and information available on the same clients at Companies House, as regards beneficial ownership. Another Action is to establish a public register of beneficial owners of non-UK entities that own or buy UK property, now a major focus of UK crime enforcement, given that UK property has in recent times been a popular asset of choice for money launderers and criminals engaging in bribery and corruption. In March 2019, Her Majesty's Revenue & Customs, the UK tax authority, raided 50 estate agencies suspected of failing to register under AML rules.

7. ***"International Strategy: deliver an ambitious international strategy to enhance security, prosperity and the UK's global influence"***

The Paper recognises that economic criminals do not limit themselves to acting in certain jurisdictions only, and that the proceeds of crime do not recognise borders. A number of Actions have therefore been drawn up to enhance the ways in which the UK's various agencies can partner and support other countries' efforts to fight economic crime, including through engagement with and providing funding to inter-government organisations such as FATF, the Egmont Group, and the International Anti-Corruption Coordination Centre, which was established in 2017 under the auspices of the NCA.

OBSERVATIONS

Being a policy paper setting out the strategic direction of the UK's efforts in combatting economic crime, the Paper sets out the priority areas within the UK's economic crime framework and aims to identify the activities which need to be undertaken in the short and medium term, rather than impose specific, prescriptive plans requiring immediate implementation.

The main criticisms of the Paper so far have

concerned two points. The first concerns the role of banks in shaping the Paper itself and their influence thereafter through the Economic Crime Strategic Board. The Economic Crime Strategic Board, which commissioned the Paper, includes participants not only from government, law enforcement and regulators, but also compliance representatives from major financial institutions. Some commentators have expressed concern as to whether the banking industry is thus able to shape policy as to how banks should be regulated. On the other hand, other commentators note the importance of a real partnership between the public and private sectors in respect of economic crime, and have observed that it should make sense to obtain input from the major actors who are best able to detect and report it. There is no suggestion, for example, that obtaining the banks' input for reform of the SARs regime is not sensible or unnecessary, given that they are the primary "users" of it.

A second criticism of the Paper is that it does not go far enough in dealing with all aspects of economic crime; for example, in strengthening the legal framework for corporate criminal liability and the difficulties in prosecuting large corporates in particular given the need under the current law first to identify a corporate's "directing mind(s)" and to prove to a criminal standard of proof that the relevant acts or intention were attributable to that individual. The broad expectation, as reflected in the Treasury Committee's report on economic crime published in March 2019, is that the framework will be reformed so as to hold corporates liable for a "failure to prevent" economic crimes such as money laundering, mirroring the equivalent offence in the UK Bribery Act 2010, which has been widely recognised as a successful piece of legislation and which was described in the FATF mutual evaluation as "a robust legal framework".

Overall, publication of the Plan is helpful in signalling the general direction of travel of the economic crime framework in the UK. Although the framework will doubtless be described rhetorically as an ever-evolving "journey", what is clear is that there will be greater regulatory and law enforcement expectation of participation and cooperation from the private sector, and businesses can expect increased scrutiny and robustness from

the framework as regards their prevention and reporting of economic crime. Ultimately, corporates can expect in the near future to be held to account on an outcome- / results-driven basis pursuant to a “failure to prevent” economic crime, and so will be well advised to ensure that their systems, procedures, and staff are sufficiently prepared and trained to manage their economic crime risks.

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- responding to specific inquiries regarding typologies that may indicate money laundering or related financial crime risk
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- advising on regulatory and law enforcement reviews of all aspects of compliance programmes, including reviews of various transaction monitoring, screening, and payment alert systems
- analysing applicable data privacy laws across various jurisdictions for regulatory or law enforcement requests and investigations, intra-group information sharing, and other financial crime risk management purposes.

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