

## The Action Plan—tackling money laundering and terrorist funding

17/05/2016

**Corporate Crime analysis: What are the primary proposals included in the government's so-called Action Plan?** Bella Coates, a barrister at QEB Hollis Whiteman Chambers, explores the Action Plan and examines government proposals to reform suspicious activity reports (SARs) regime and introduce unexplained wealth orders (UWOs) found in the Action Plan.

### Original news

Action Plan against money laundering and terrorist funding, LNB News 21/04/2016 96

*An Action Plan published by the Treasury and the Home Office sets out the government's plan to stop money laundering and the funding of terrorism. The Action Plan outlines the measures the government will introduce to stop money laundering, when these measures are due to be completed and the actions taken by the government so far. The plan is published along with a consultation asking for views on potential changes to legislation and options to reform the anti-money laundering (AML) and counter-financing of terrorism regime. The consultation closes on 2 June 2016.*

### What has prompted the government's Action Plan?

The Action Plan was drafted in response to the 'UK national risk assessment of money laundering and terrorist financing' report (the risk assessment report) published in October 2015. The risk assessment report concluded that the:

- collective knowledge of UK law enforcement agencies, supervisors and the private sector was not yet sufficiently advanced
- effectiveness of the supervisory regime was inconsistent, and
- response from law enforcement agencies was weak

### What are the proposals contained in the Action Plan?

The Action Plan proposes three methods for reform:

- developing a stronger partnership with the private sector
- enhancing the law enforcement response
- improving the supervisory regime and increasing the government's international reach in combating money laundering and anti-terrorist financing

The Action Plan endorses a risk-based approach to tackling money laundering and terrorist financing and emphasises the importance of efficiency.

### What are the key issues to watch out for?

Of particular interest in the Action Plan are proposals to reform the SARs regime and to introduce UWOs.

#### SARs

The current position in respect of SARs is set out in Part 7 of the Proceeds of Crime Act 2002 (POCA 2002) and Part 3 of the Terrorism Act 2000 (TA 2000). Under these provisions, persons in the regulated sector are required to submit a SAR if they know, suspect or have reasonable grounds for knowing or suspecting that a person is engaged in, or is attempting to engage in, money laundering or terrorist financing.

The prohibited acts for which a SAR must be submitted are identified in POCA 2002, ss 327–329 POCA and TA 2000, ss 15–18. They include:

- concealing, disguising, converting, transferring or removing criminal property
- fundraising or using or possessing money for the purposes of terrorism

If a body in the regulated sector wishes to conduct a transaction or undertake any other activity about which they have concerns, the consent of the National Crime Agency (NCA) must be obtained before such a step is taken. If a SAR is submitted and consent is granted, the reporter gains a statutory defence, should the SAR lead to a money laundering or terrorist financing prosecution.

Proposed changes include shifting the focus of SARs from suspicious transactions to entities that are identified as posing a high-risk of money laundering or terrorist financing. A new, tiered approach is proposed, which would prioritise SARs in respect of these high-risk entities. This proactive stance aims to conserve resources currently expended on reacting to SARs in respect of numerous low-risk transactions.

Proposed changes also include doing away with the current consent regime, which is widely regarded as inefficient. The NCA aims to turn around consent decisions within seven days. In reality, consent decisions often take much longer, causing unpopular delays within the fast-paced financial sector.

Rather than the statutory defence afforded to reporters who have sought and been granted consent, the Action Plan proposes a power to grant immunity to reporters who take certain courses of action (such as maintaining a customer relationship when to terminate it would alert the subject to the existence of a law enforcement investigation).

Finally, the government plans to improve the intelligence capabilities of the Financial Intelligence Unit and to facilitate improved analysis of SARs. This analysis would aim to identify typologies of money laundering—information that could then be fed back into the private sector so that financial institutions are better able to identify money laundering risks. Any changes that will streamline the SAR process and enable financial institutions to carry on business with the minimum amount of regulatory disruption and delay will inevitably find favour with the private sector.

#### UWOs

The Action Plan also proposes the use of UWOs. These are orders that require parties to demonstrate the legitimacy of unexplained wealth. UWOs (already in operation in Ireland, Australia and Colombia) provide a non-conviction-based remedy that passes the burden to the asset-owner to show that their wealth is derived from legitimate sources. In cases where an explanation is absent or deemed to be unsatisfactory, UWOs might also confer linked civil forfeiture powers. As a civil remedy, UWOs would be decided on the balance of probabilities.

The potential use of UWOs has been the focus of mainstream debate in the UK since 2015. In its report, 'Empowering the UK to Recover Corrupt Assets' published in June 2015, Transparency International suggested that UWOs could be used as an alternative to the current confiscation regime as a means of asset recovery. In August 2015, Eric Pickles (the UK anti-corruption champion) spoke out in favour of their introduction.

At present, many financial institutions must establish the source of their clients' wealth as part of their internal AML policy. This can be a challenging process, since many high-net-worth individuals place a particular premium on privacy and are reluctant to reveal details of their wealth, which often extends far beyond their relationship with that particular financial institution. UWOs will pose an inevitable threat to an individual's right to privacy in their financial affairs.

The Action Plan does not make clear how UWOs would work in practice. For example, the Action Plan does not explain what constitutes unexplained wealth. Similarly, the Action Plan does not define what would amount to a satisfactory explanation for unexplained wealth.

Another practical issue is the question of who will be responsible for identifying unexplained wealth—will this duty fall on the financial institutions who already feel over-burdened by time-consuming regulatory obligations?

In the light of the 'Panama Papers' document leak and the concern highlighted in the recent mayoral elections that many London properties are owned by overseas companies, this move towards transparency is perceived by some as a positive step in the fight against financial crime in the UK. However, UWOs are at present more widely regarded as a draconian measure that undermine the presumption of innocence and that would prove to be unwieldy and unpopular in practice.

*Bella Coates has significant experience in the field of banking regulation. She was instructed by the financial crime team of a large international bank to advise on a complex regulatory exercise from August to December 2015. This included*

*advising on AML legislation and policy in both the UK and in secrecy jurisdictions. Bella has significant experience of working closely with bankers, offering advice and guidance on the day-to-day implementation of AML policy. Through this exercise, she gained valuable insight into the demands and challenges faced by bankers, particularly with respect to client management. In early 2016, Bella was instructed by another large international bank, again advising on the bank's internal AML regime. Bella is familiar with the statutory AML obligations both in the UK and abroad and has particular experience of how these obligations are translated into internal policy and, in turn, how this policy works in practice.*

*Bella would like to thank Kathryn Hughes, pupil barrister at QEB Hollis Whiteman, for her valuable input throughout the interview.*

*Interviewed by Kate Beaumont.*

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