

LOOKING AHEAD

ASSET RECOVERY AND THE ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

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This year we saw the introduction of the Economic Crime (Transparency and Enforcement) Act 2022, which included (1) the introduction of a register of overseas owners of UK real property, and (2) broadening the scope of unexplained wealth orders (UWOs). In September this year the government also introduced the new Economic Crime and Corporate Transparency Bill (the “Bill”), which continues this trend, promising to

“bear down further on kleptocrats, criminals and terrorists who abuse our financial system, strengthening the UK’s reputation as a place where legitimate business can thrive, whilst driving dirty money out of the UK”.

Two of the Bills proposals are of interest for the purposes of asset-tracing and recoverability:

1. Company information and ID requirements on new and existing company directors and persons with significant control; and
2. Civil recovery powers for law enforcement over cryptoassets.



Company registration and ID requirements

The key new proposals under the Bill are:

1. New requirements on companies and limited partnerships for their registered office to be at an “appropriate address”. They must also have an “appropriate” registered email address. Such addresses would be “appropriate”, essentially, if documents or emails delivered to those addresses would be expected to come to the attention of a person acting on behalf of the company.
2. ID verification for company directors, persons with significant control and those delivering documents to the registrar will be carried out either by the Secretary of State or through an “authorised corporate service provider” regime overseen by the Secretary of State.
3. Stricter requirements on companies’ registers of members, specifying that an individual’s name in the register must include a forename and surname, and a one-off requirement to file the register of members together with the company’s next annual return.

Will this make it easier for victims of fraud to use corporate information to trace assets and beneficial ownership? The changes are targeted at improving the accuracy of information held by Companies House – for example by preventing the use of anonymous P.O. boxes as registered addresses, or false or abbreviated names for directors or persons with significant control. This ought, in turn, to make it easier to identify the true owners of UK companies and the links between corporate networks, as well as making it easier to contact and serve proceedings on corporate defendants.

But while these changes will undoubtedly increase the amount of information available to the registrar, much of that information will not be publicly available due to confidentiality or data protection. The real impact, therefore, will depend on whether Companies House actually has the resources and capability to effectively police the information provided to it.

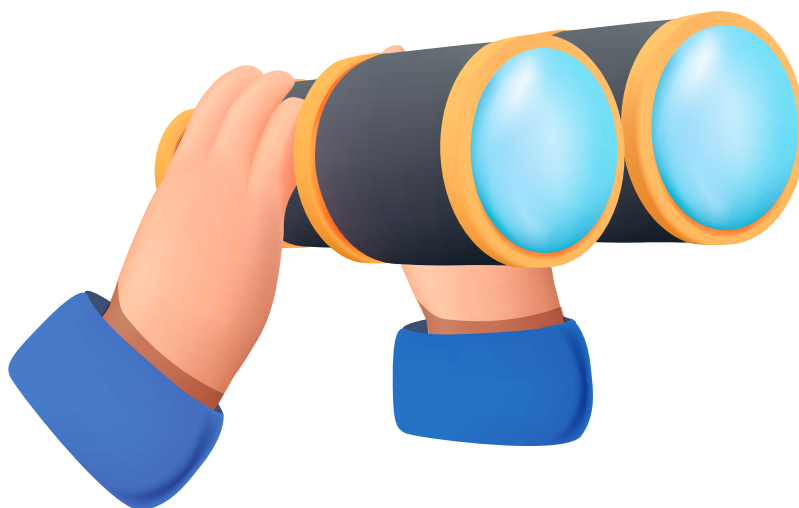


Civil recovery of cryptoassets under POCA 2002

The second key area of the Bill for asset-tracing and recoverability is the extension to cryptoassets of existing law enforcement powers to seize, freeze, and confiscate proceeds of crime.

Of particular interest is the way that the extraterritorial jurisdiction of the UK would work in relation to cryptoassets under the civil recovery regime in Part 5 of POCA 2002. By their nature, cryptoassets are “decentralised” - existing in digital form on the blockchain with no central administration, instead operating through a majority consensus of network participants meaning it is often difficult to establish a nexus to any particular national territory.

In civil recovery proceedings under POCA, the UK courts have extraterritorial jurisdiction where property is obtained through unlawful conduct and:



1. if the conduct occurs overseas, the conduct must be unlawful both under the law of that country as well as under UK law (dual criminality); and
2. if the property is overseas, there must be a “connection” between the case and the UK.

Despite this jurisdiction, the efficacy of extraterritorial powers under POCA depends in many cases on the assistance of overseas law enforcement agencies in facilitating the recovery of property.

The new Bill appears to take advantage of the decentralised nature of cryptoassets in order to tackle these challenges of extraterritoriality, by introducing a very broad definition of “UK-connected cryptoasset service providers” in respect of which UK authorities could obtain freezing and forfeiture orders over the wallets they administer.

Under the current draft, this definition would include exchange providers and wallet providers who:

1. are acting in the course of business carried on by them in the United Kingdom; or
2. have customer terms and conditions which provide for UK court dispute resolution; or
3. hold any customer data in the United Kingdom; or
4. have their registered office or, if they do not have one, their head office in the UK, and their day-to-day management is the responsibility of that or another UK office.

Note the breadth of these criteria, and that only one would need to be fulfilled for a crypto exchange or wallet provider to fall within them. Crypto providers may therefore wish to keep a close eye on any developments to these definitions as the Bill progresses, and to prepare themselves for potentially processing and responding to freezing and forfeiture orders by UK authorities.

The Bill also contains provisions for anyone claiming legitimate ownership of detained cryptoassets (including victims of fraud) to apply to a magistrates’ court for release of those assets. This would of course only be available to the extent that law enforcement agencies decide to investigate the particular fraud in question. How law enforcers may respond to victims’ requests that they exercise their new powers, will remain to be seen. Nevertheless, this could form a useful tool in the arsenal of those seeking to trace and recover stolen assets where there is a UK nexus.

At the time of writing, the Bill has had its second reading in the House of Commons and is now at Committee stage. The Public Bill Committee is scheduled to report back by 29 November 2022.

