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Unexplained Wealth Orders: UK to enhance extraterritorial enforcement of property

Unexplained Wealth Orders (UWOs) were introduced in the UK Criminal Finances Act 2017, a new law intended to prevent tax evasion and money laundering. This provision allows UK enforcement authorities to seek explanations for the acquisition of property suspected of having been obtained illegally. The scope of a UWO is very broad, allowing for the investigation and seizure of properties located abroad and belonging to individuals residing outside of the UK. A UWO gives enforcement authorities the power to also investigate Politically Exposed Persons (PEPs) and their associates, even if they are not linked to any kind of criminal activity. Previously, British authorities' enforcement powers were limited unless the suspect had already been convicted in his or her country of origin. Under this new provision, respondents must explain how they acquired their assets. If a respondent fails to do so or gives an inadequate response, the additional information can be used in a separate civil recovery process (a measure already existing under the Proceeds of Crime Act) if law enforcement has sufficient evidence.

A new addition to the UK Criminal Finances Act 2017 was introduced in January 2018. UWOs allow UK enforcement authorities, such as the Serious Fraud Office, National Crime Agency and the Financial Conduct Authority, to request orders to investigate the manner in which property was acquired.

UWOs are mainly designed to prevent tax evasion and money laundering in the UK. The orders, however, also apply to suspects residing outside the UK, as well as to any properties located abroad. Before this new regime, the enforcement powers of British authorities were limited, unless the person under suspicion was convicted in his or her country of origin.

If authorities suspect that the source of funds used to purchase property was illegal, UWOs allow authorities to request that owners explain how they obtained the property. If the owners fail to provide sufficient and convincing information, the property can be seized through the Proceeds of Crime Act. The power to seek civil recovery is vested solely with enforcement authorities, similar to the process for acquiring UWOs. A UWO application can be made if an authority believes that a company or an individual has more than GBP 50,000 in real estate, funds or other assets which appear disproportionate to their income.

UWOs also allow authorities to investigate PEPs and individuals suspected of connection to a crime. A PEP is an individual entrusted with a public function by an international

organisation or a state other than the UK or outside the European Economic Area (EEA). A UWO issued in relation to a non-EEA PEP does not require suspicion of association with criminal activity.

The information obtained will be admissible in most legal proceedings, except criminal actions, as this would violate the suspect's rights against self-incrimination. There are, however, no safeguards against criminal charges for the provision of false or misleading information in the process of disclosure following the UWO.

Transparency International UK, which has long advocated for the introduction of UWOs, called for the investigation of five properties, including London apartments believed to be owned by the former prime minister of Pakistan. The organisation also pointed to GBP 4.4 billion worth of properties which may be targeted by the UWO in the UK alone. The proceeds from the sale of seized properties will be used to fund the law enforcement in the UK.

According to UK practitioners, the new regime will likely require cooperation between various enforcement authorities, both in obtaining and the subsequent use of UWOs.

Notably, several procedural issues related to the violation of applicable human rights have been raised regarding the scope of UWOs. UWOs are characterised by a reverse burden of proof which, it can be argued, infringes on an individual's right to not disclose their private information, especially in situations where individuals are not suspected of a crime.

These newly-expanded powers are likely to significantly enhance efforts by UK enforcement authorities to address money laundering and tax evasion issues. The new provision may impact any entity or individual whose properties appear to have a value disproportionate to their income. Companies should be aware of these expanded powers of the UK enforcement authorities, regardless of their place of residence or the country where their property is located. Additionally, if a UWO is issued against a company, the company bears the burden of proof to prevent the property under investigation from being seized. Companies and individuals who face a UWO should be prepared to provide exhaustive information.