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First Unexplained Wealth Order Challenge Treads Familiar Ground for Compliance Professionals

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The High Court has dismissed a challenge to the first Unexplained Wealth Order ("**UWO**"). This case was the first test for the UWO regime. The judgment covers a number of issues which are familiar to compliance professionals, such as whether a firm was a state-owned enterprise and an individual's source of wealth.

UWOs: A Brief Recap

A UWO is an investigative order made in the High Court which compels a person holding certain property to provide relevant information including details of the interest they hold, how they acquired the property, and how they paid for it. The UWO was designed to plug perceived gaps in the UK's anti-money laundering regime. For example, prior to the introduction of UWOs, UK law enforcement could not seek forfeiture of an asset via the civil recovery regime solely on the basis that a defendant had no identifiable lawful income to warrant their lifestyle and purchases. However, if a person now fails to comply with a UWO, without reasonable excuse, there is a rebuttable presumption that the property is recoverable under the civil recovery regime.

A UWO can target any type of property, located anywhere in the world, that is held by: (1) a politically exposed person ("**PEP**") from outside the European Economic Area; or (2) a person reasonably suspected of past or present involvement in serious crime (in the UK or elsewhere) or of being connected to such a person.

Regulated firms will be familiar with the focus on PEPs. The rationale behind this focus is that individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk, as their position may make them vulnerable to corruption. This risk also extends to members of their immediate families and to known close associates.

In order for a UWO to be granted, it must be shown that: (1) there is reasonable cause to believe that the respondent is one of the types described above, that they hold the property and that it is worth more than £50,000; and (2) there is reasonable cause to suspect that the respondent's known sources of lawfully obtained income were insufficient to allow them to acquire the property.

Background to the Case of Mrs A

In February 2018, the National Crime Agency ("**NCA**") reported that it had secured the first two UWOs to investigate two high-value real estate assets (one in London and one in the South East of England) worth a

total of £22 million that were believed to be ultimately owned by a PEP. The NCA also obtained interim freezing orders meaning the properties could not be sold, transferred or dissipated.[1]

In July, the High Court heard a challenge brought by the respondent. The judge refused an application for the case to be heard in private, but made an anonymity order. The respondent to the UWO, subject to that order, is referred to as "Mrs A".

Mrs A's husband, Mr A, had been the chairman of the leading bank in a non-EEA country, in which the relevant government had a controlling stake. In 2016, Mr A had been convicted of various fraud-related offences in connection with his role at the bank and was sentenced to fifteen years in prison.

Challenges by Mrs A: Familiar Ground for Compliance Professionals

Mrs A challenged the UWO on eight separate grounds. In a judgment handed down this week, the Court took a broad approach and dismissed these challenges, though it is anticipated that there may be an appeal.

Some of the points raised by Mrs A will be familiar to compliance professionals. For example, it is not unheard of for counterparties to express surprise when they are informed they are considered to work for a state-owned enterprise ("**SOE**"), or to be an SOE, or that they are a PEP or a government official for the purposes of an AML regime or internal compliance policies and procedures.

Mrs A challenged her status as a PEP and it is interesting to see a High Court judge address the issue. Mrs A's PEP status was predicated on the PEP status of her husband, Mr A, and whether or not Mr A was employed by a bank that was an SOE. The judge decided that the evidence (including an interview given by Mr A in the media and the bank's annual reports) indicated that the relevant government had a majority shareholding in the bank and had ultimate control of the bank. As a result, Mr A was a PEP, and his wife, Mrs A, was therefore also a PEP. The judge considered that it was not necessary for him to determine whether the bank would have been an SOE if the relevant government had only a minority shareholding.

Mrs A also challenged whether there was reasonable cause to suspect that her known sources of lawfully obtained income were insufficient to allow her to acquire the property. This essentially was a discussion about Mr and Mrs A's source of wealth. When seeking to establish a PEP's source of wealth and source of funds, a compliance professional may conduct research, ask questions and request supporting documentation. Having conducted a similar exercise within adversarial court proceedings, the judge took the view that as Mr A was a state employee between 1993 and 2015, it is very unlikely that such a position would have generated sufficient income to fund the acquisition of a property with a purchase price of £11.5 million.

Conclusion

Most practitioners expected the first UWO case to relate to the ownership of high-value real estate by a PEP. The focus on PEPs in AML enforcement appears set to continue, with the Serious Fraud Office announcing this week that it was pursuing civil recovery proceedings in relation to other non-EEA PEPs. This activity will be welcomed by compliance professionals who devote significant resources to managing the risks presented by PEPs and have at times wondered if UK enforcement in relation to PEP issues would ever increase.

1 http://www.nationalcrimeagency.gov.uk/news/1297-nca-secures-first-unexplained-wealth-orders

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