

Unexplained Wealth Orders / McMafia Laws

UPDATE

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Unexplained Wealth Orders are now available as an investigatory tool for UK authorities. We have already seen these orders being used in the UK, but what might their implications be for Guernsey?

Introduction

UK law enforcement has recently been given new tools in the form of Unexplained Wealth Orders. These powers, dubbed Mc Mafia laws after the Misha Glenny novel and BBC drama of the same name, have already been put to use. The National Crime Agency obtained the first two such orders to investigate assets believed to be ultimately owned by a politically exposed person from central Asia. The orders relate to two properties, one in London and one in the South East of England.

But what are Unexplained Wealth Orders and what do they mean for Guernsey?

Unexplained Wealth Orders (UWOs)

UWOs are an investigative tool. They are intended to assist UK law enforcement in targeting money laundering, and to make the UK a less attractive location for the housing of illicit assets. They require respondents to confirm their connection to specified property, explain how they obtained it and in particular how the acquisition was funded.

Certain law enforcement agencies can seek UWOs by making an application to Court and satisfying the Court that an UWO should be granted. The following conditions must be met:

- The respondent holds the asset concerned;
- The asset has a value in excess of £50,000;
- There must be reasonable grounds for suspecting that the known source of the respondent's lawfully obtained income would have been insufficient for the respondent to acquire the asset; and
- The respondent must be:
 - a non-European Economic Area politically exposed person; or
 - a person for whom there are reasonable grounds for suspecting has been involved in serious crime (in the UK or elsewhere), or who is connected to such a person.
 - Serious crime covers a range of offences which include trafficking in people, drugs and firearms, together with a range of economic offences such as money laundering and bribery.

The power is investigatory, it is not of itself a power to recover assets, but it does interact with such powers.

Though the power to obtain a UWO only came into effect on 31 January 2018, it is not limited to property acquired on or after that date. Past acquisitions fall within the remit of UWOs.

Responding to UWOs

A UWO requires a respondent to explain how they lawfully acquired the property in question. Should the respondent fail to respond, or provide an inadequate response:

- this may be used as evidence against them in civil recovery processes;
- an offence may be committed where, in response to a UWO, a false or misleading statement is given knowingly or recklessly; and/ or
- an interim freezing order may be made, to prevent the respondent from disposing of the asset concerned prior to responding fully to the UWO.

Evidence obtained in response to a UWO can be used in any legal proceedings. However such evidence cannot be used in subsequent criminal proceedings against the respondent, save for in limited exceptions circumstances such as perjury proceedings. The power appears to be more orientated to civil recovery rather than criminal prosecution. However as the information can be held indefinitely and shared with other agencies, it seems likely that it would be used in broader investigations.

Guernsey Implications

UWOs arise under a UK power; they do not constitute part of Guernsey law. Nevertheless, they are international in outlook.

- The respondent need not be a UK resident. There is no requirement that the respondent be a natural person, so investment vehicles such as trust, companies, LLPs etc. can be subject to UWOs.
- There is no requirement that the property in question be located in the UK, it may therefore concern foreign sited assets.
- Where a serious crime is concerned, it need not have been committed in the UK.

As a consequence, persons located in or with a connection to Guernsey may well be impacted by UWOs. Though not directly enforceable in Guernsey, an enforcement agency may seek foreign assistance to enforce such orders extraterritorially. We may therefore anticipate UWOs being registered and recognised in the Bailiwick courts.

Care must therefore be taken when handling UWOs to ensure Guernsey recipients understand their obligations of disclosure but also those of client confidentiality. Additionally, enforceable or not, awareness of a UWO may trigger GFSC and SAR disclosure obligations. The default position is therefore to handle UWOs with care and if in doubt as to their meaning and effect, seek advice.

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