

Criminal Assets Bureau

Opening Statement to the Joint Oireachtas Committee on Justice

Proceeds of Crime (Gross Human Rights Abuses) Bill 2020 [Private Members' Bill]

1. The Criminal Assets Bureau ('CAB') welcomes the opportunity to address the Joint Oireachtas Committee on Justice on the proposed Proceeds of Crime (Gross Human Rights Abuses) Bill 2020 ('the Bill')
2. While CAB acknowledges the positive intentions behind the advancement of the Bill it has concerns that those intentions may not be realised under its terms.
3. The Proceeds of Crime Acts ('PoCA') is a statutory scheme which essentially provides for the freezing and confiscation of assets which have been proved on the civil standard to be the proceeds of crime. No prior conviction is necessary. If CAB can provide evidence which, on the balance of probabilities, persuades the High Court that an asset is the proceeds of crime then that asset shall –subject to an exemption for injustice - be confiscated. Belief evidence and hearsay evidence are, to a limited extent, permitted in such applications.
4. Proceedings taken under the PoCA are referred to as *in rem*. In basic terms, this means they are taken 'against the property' itself as opposed to the person in possession or control of the asset. This has significant implications when in the context of the EU restrictive measures against Russia and Belarusⁱ ('the Restrictive Measures'), which seeks to freeze assets on the basis of the identity of their owner and not on the basis of its provenance. It appears that the Bill at least in part seeks to confiscate assets seized under the Restrictive Measures.
5. The concerns of CAB in relation to the efficacy of the Bill is twofold:
 - a. Firstly, the Bill presupposes the existence of an identifiable category of assets which have been acquired by or in connection with conduct – amounting to or in connection with a gross human rights abuse (as defined in the Bill) - which is a recognised offence in this jurisdiction but not in the jurisdiction in which it was committed. In the absence of any clear examples, CAB has significant doubt as whether such a category of assets exists.

While CAB recognises that assets can be acquired through a limited number of offences which can take place in connection with gross human rights abuses for example, corruption, this is almost certainly going to be recognised as a criminal offence *per se* in the jurisdiction in which it occurred. The dual criminality provision under the PoCA as currently drafted does not require the home

jurisdiction to acknowledge a specific offence or offences as having taken place, it merely requires corruption *per se* to be recognised as a criminal offence in that jurisdiction. The Bill will have no practical benefit in such circumstances.

- b. Secondly, even assuming that such a category of assets intended to be targeted by the Bill exists, it is the view of CAB that the evidential challenge of proving the occurrence of criminality in an uncooperative jurisdiction would likely render the chances of Ireland successfully confiscating such assets insurmountable.

[END]

ⁱ <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>