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The Economic Crime and Corporate Transparency Act 2023

On 26 October 2023, the Economic Crime and Corporate Transparency Act 2023 passed into law. The Act introduces wide-ranging reforms with the objective of tackling economic crime and improving transparency over corporate entities.

The Act builds on the Economic Crime (Transparency and Enforcement) Act 2022 which was introduced in light of Russia's invasion of Ukraine. Together, these Acts provide additional powers to tackle issues such as money laundering. The long-awaited Companies House reforms also form part of the Act.

What are the changes?

Companies House

The Act aims to give greater powers to the registrar, Companies House, to make it an 'active gatekeeper' over company creation and a custodian of more reliable data. Some of the changes to be introduced to achieve this include:

- An individual must not act as a director of a company unless their identity has been verified.
- Individuals or firms delivering documents to Companies House must also have had their own identity verified.
- Companies will be required to have an 'appropriate address' as their registered office (i.e. one where documents sent to it can be expected to reach someone acting on behalf of the company and be recorded by an acknowledgement of delivery).
- Companies House will get greater powers to give notice to reject documents for inconsistencies, give notice to remove inconsistencies and remove and/or change names on the public register.
- Companies House will get powers to strike companies off the register if there is reasonable cause to believe the company has been registered on a false basis.
- Abolition of the requirements for a company to keep its own register of directors, register of directors' residential addresses, register of secretaries and register of people with

significant control, instead requiring the information to be provided to Companies House.

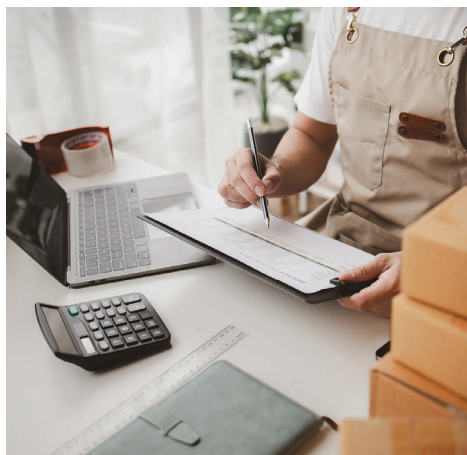
Unsurprisingly, this will result in increases to the fees being charged by Companies House (such as Confirmation Statement filing fees) in order to cover its increased costs, although the exact details of the increases have not yet been published.

Limited partnerships

The Act also introduces reforms for limited partnerships, tightening registration requirements, requiring a connection to the UK to be maintained, increasing transparency and giving greater power to Companies House to de-register limited partnerships, where appropriate.

Micro and small companies – accounting and reporting

From an accounting and business perspective, some of the biggest changes relate to small companies. Specifically, small companies will have to file their profit and loss account and their directors' report, both of which they could often previously claim exemptions from.



Micro companies will also have to file their profit and loss statements, although they will still not be required to either prepare or file a directors' report.

However, in a softening of the initial proposals, while both micro and small entities will be required to file their profit and loss account, there will be an ability to apply for these to not be visible on the public record. The process for this is still yet to be confirmed.

Nonetheless, these changes will likely be the main concern of small businesses who may re-consider whether the benefits of limited liability still outweigh the drawbacks in their particular circumstances.

Failure to prevent fraud offence

Under this new offence introduced by the Act, a large organisation will be liable where a person associated with the organisation (e.g. an employee, agent or subsidiary etc.), commits a specified fraud offence which is intended to benefit the organisation.

This offence will only apply to companies and partnerships which meet at least two of the following criteria in the financial year preceding the year of the fraud offence:



- more than 250 employees
- more than £36 million turnover and/or
- more than £18 million in total assets on the balance sheet.

An important point to emphasise where this offence is concerned is that it is not confined to just the UK. If an associated person commits fraud under UK law (or targets UK victims), the organisation can be prosecuted even when the organisation and associated person are based overseas.

There will, however, be a defence if the organisation had reasonable prevention procedures in place.

Register of Overseas Entities

Also as a reminder, previous changes to legislation introduced the Register of Overseas Entities in August 2022. This enhances transparency around aspects of entity ownership. Where an entity does not declare their beneficial owner, they will face restrictions on selling their property. Where it can be proven that a person has broken the rules, they can face up to five years in prison.

How does it impact me?

This will depend on the size and type of business, with the varying aspects of the Act applying to different entities in different ways.

However, a core theme is that the reporting and filing requirements of limited companies and limited liability partnerships will become more stringent and so you should ensure that the information and documents you (or your accountants or solicitors) file are accurate and complete.

Another consideration for businesses is whether they have reasonable anti-fraud procedures in place, which will likely require a risk-assessment to be performed. Although the 'failure to prevent fraud' offence will only apply to large businesses, having anti-fraud procedures in place does come with an obvious benefit for any sized-business and so it is worth thinking about.

As mentioned above, this may also present the opportunity to consider if limited liability is worth the cost for your business, not only from increasing fees but also the need for small entities to publish a profit and loss statement. There will be many other factors to consider as

part of that of course, such as the tax treatment of income/profits, requirements of banks and succession planning, however this may be the time to start that discussion.

Does anything need to change?

For the changes to take effect, there will need to be further legislative changes, as mentioned below, but also changes to the systems at Companies House to enable them to deal with the new requirements.

Companies House has also announced an increase to its fees, which are effective from 1 May 2024, which will fund their additional workload.

What are the timescales?

The Act has already been passed into law by Parliament although not all aspects will take effect until the relevant statutory instruments have been made by the Secretary of State or the Lord Chancellor.

On 4 March a second statutory instrument came into effect which brings the first element of these changes into force. These initial changes relate to Companies House powers and include:

- greater powers to query information and request supporting evidence
- stronger checks on company names
- new rules for registered office addresses (including the prohibition of PO boxes)
- a requirement for all companies to supply a registered email address
- a requirement for all companies to confirm they're forming the company for a lawful purpose when they incorporate and to confirm its intended future activities will be lawful on their confirmation statement
- the ability to annotate the register when information appears confusing or misleading

- taking steps to clean up the register, using data matching to identify and remove inaccurate information and
- sharing data with other government departments and law enforcement agencies.

While these initial changes should not be overlooked as they will have implications for all companies, we are still awaiting details for some of the wider proposals set to be introduced by the Act.

However, we are still awaiting further details on when the more notable changes, in particular those around micro and small company filing requirements, will take effect.