

# THE ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT 2023 – CHANGE IS ON ITS WAY!

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"The new Economic Crime and Corporate Transparency Act 2023 received royal assent... on 26 October 2023."

The new Economic Crime and Corporate Transparency Act 2023 (the "Act") received royal assent and became law on 26 October 2023, with most changes to be rolled out over time. The Act follows the Economic Crime (Transparency and Enforcement) Act 2022 ("ECTEA 2022"), which was fast-tracked through parliament following the Russian invasion of Ukraine and allowed the government to move quickly in imposing sanctions. For instance, the ECTEA 2022 created a register of overseas

entities to target foreign criminals using UK property to launder money and sought to reform the UK's unexplained wealth order regime. The Act builds on the ECTEA 2022 and seeks to deal with economic crime by preventing the abuse of corporate structures in the UK and improving corporate transparency.

## KEY CORPORATE LAW CHANGES

This article focuses on the key corporate law changes in the Act. Described as introducing the biggest changes to Companies House since corporate registrations were established in 1844, many of the changes will make substantial amendments to the Companies Act 2006 and will require secondary legislation, in addition to extensive transformational developments to Companies House and its systems.

## ENHANCED POWERS FOR COMPANIES HOUSE

The Act provides greater powers to the Companies House Registrar, making its role more that of a gatekeeper. The Registrar will be able to query or reject filings; request further information be provided in relation to filings; remove information already on the register in some cases; share information with other government departments and law enforcement agencies; and require information to be filed electronically.

The Registrar will also be able to impose a civil financial penalty up to a maximum of £10,000 if it is satisfied that a person has engaged in conduct amounting to a "relevant offence" under the Act.

## IDENTITY VERIFICATION

"The biggest changes to Companies House since corporate registrations were established in 1844."

The new requirements for mandatory identity verification are particularly significant and will affect new and existing directors, LLP members, persons with significant control ("PSCs") and relevant legal entities under the PSC regime, general partners of LPs, and individuals filing documents at Companies House. The aim is to prevent fraudulent appointments and other fictitious information from making its way onto the public register. Failure to comply with identity verification requirements under the Act is an offence, although existing companies will have a transitional period to comply.

There will be two ways to verify:

- direct verification by Companies House using a digital service that links a person with a primary identity document (e.g. a passport or driving licence); and
- indirect verification using an Authorised Corporate Service Provider ("ACSP"). An ACSP is an intermediary, who may file information at Companies House on behalf of a company for instance (e.g. an accountant, law firm or company formation agent), and who is authorised for these purposes by the Registrar.

## OTHER RELEVANT CHANGES

Other key changes include:

- **registered office:** a requirement on a company to ensure that its registered office is, at all times, an "appropriate address";
- **email address:** a requirement that all companies must have a registered email address;
- **company names:** expansion of the circumstances in which the use of a company name can be prohibited to include names that could facilitate the commission of offences involving dishonesty or deception, or which wrongly suggest a connection with a foreign government or various international bodies;
- **company formation:** additional statements will be required to confirm formation for a lawful purpose and that subscribers, directors and PSCs are not disqualified directors;
- **company registers:** the Act abolishes the requirement for companies to keep their own register of directors, directors' residential addresses, secretaries, and PSCs. This means that the public will instead rely on filings at Companies House, which will become the single and verified source of information for company registers;
- **register of members:** a requirement for a company to keep its own register of members, as it will no longer be able to hold this centrally at Companies House, and to include certain additional information in the register;
- **disqualification of directors:** disqualification will be possible where there are persistent breaches of company filing obligations and identity verification requirements. Also, individuals subject to UK sanctions may not act as directors;

"The new requirements for mandatory identity verification are particularly significant."

- **register of overseas entities:** the Act makes a number of changes, including to capture beneficial owners that are trustees or under nominee arrangements, and amends the definition of “registered overseas entity” in land registration legislation so that if an overseas entity fails to respond to any requests for information from the Registrar it will not be able to dispose of UK real estate assets;
- **accounts and reports:** clarifying and streamlining the rules for small companies and micro-entities (which had benefited from more relaxed regulation) by changing filing requirements and removing the ability for small companies to prepare and file abridged accounts and introducing software-only filing; and
- **limited partnerships:** the Act strengthens registration, filing and transparency requirements for limited partnerships, and provides new powers for the Registrar to deregister LPs in certain circumstances (e.g. if an LP ceases to have a general partner or limited partner).

## NEW CRIMINAL OFFENCES

**"The Act abolishes the requirement for companies to keep their own register of directors, directors' residential addresses, secretaries, and PSCs."**

The Act introduces a new criminal offence of “failure to prevent fraud” (including false accounting offences) that will make companies and partnerships liable for failing to stop employees, agents or subsidiary undertakings committing fraud for the benefit of the organisation or its customers. The offence applies only to large companies meeting two of the three following criteria in the financial year preceding the year in which the fraud offence is committed: (a) more than 250 employees; (b) more than £36m annual turnover; or (c) more than £18m total balance sheet assets.

The Act also extends the identification doctrine, which provides that a body corporate can be liable for offences committed by people who form its “directing mind and will”. The Act includes a definition of “senior manager”, which is more broadly defined so that if a senior manager acting within the actual or apparent scope of their authority commits (or attempts or conspires to commit) an economic crime offence as set out in the Act, the organisation is also guilty of the offence. For these purposes, “senior manager”, in relation to a body corporate or partnership, means an individual who plays a significant role in: (a) the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership is to be managed or organised; or (b) the actual managing or organising of the whole or a substantial part of those activities.

## TIMING

The Act requires clarificatory secondary legislation in relation to certain areas and implementing guidance, as well as systems development at Companies House, and so most of its provisions are not yet in force and will only become effective through commencement regulations. The Act provides for certain provisions giving the power to make regulations to come into force on the date of royal assent and for the amendment to the identification doctrine for economic crimes to come into effect on 26 December 2023.

The first commencement regulations for the Act, which were made on 13 November 2023 and published on 16 November 2023, bring into force on 15 January 2024 certain provisions which establish national security-related defences, exemptions and exceptions to new requirements concerning company names, identity verification requirements and false statement offences.

Beyond that, the timeline for implementation is currently unclear, although Companies House has indicated that it anticipates that certain measures will become live in early 2024, including new rules relating to company names, registered office and email addresses. These measures will not include the introduction of the identity verification requirements.

The government has also indicated that the ban on corporate directors (subject to a limited “principle-based” exception), which has been in the pipeline since 2015, will be introduced in parallel with the implementation of the Act but the timing is uncertain.

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## CONCLUSION

The incoming changes will have a far-reaching impact on the current administrative practices of UK companies (and other entities) and new elements, such as identity verification, will need to be factored into transaction timelines, particularly in relation to director appointments, company filings and new company incorporations.

We will be keeping an eye on developments, including the timing of implementation and any transitional arrangements, as well as further detail provided in secondary legislation, and will provide further updates on the substantive provisions coming into force, including those earmarked for early 2024, once the timing becomes clearer.

For further information or queries on these changes and developments, please reach out to a member of the WFW London corporate team or your usual WFW contact.

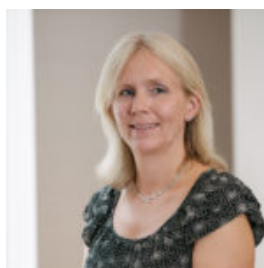
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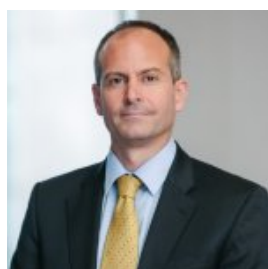
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