

Economic Crime and Corporate Transparency Act (Lecture A840 – 19.29 minutes)

On 26 October 2023, the Economic Crime and Corporate Transparency Act 2023 ('the Act') received Royal Assent and became law. The Act introduces several wide-ranging reforms with the objective of tackling economic crime and improving transparency over corporate entities. However, it should be emphasised that at the time of preparing these notes, secondary legislation was needed to implement a majority of the measures contained in the Act and the timing of this secondary legislation is unclear. There will also be changes made to the systems at Companies House to deal with the Act.

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 money laundering and other unorthodox acts. The long-awaited Companies House reforms also form part of the Act.

As a high-level overview, the new measures include:

- Reforms that prevent the abuse of limited partnerships.
- New powers to enable the seizure and recover suspected crypto assets.
- Reforms to provide businesses with more confidence to share information and tackle economic crime.
- A new 'Failure to Prevent Fraud' offence which will only apply to large corporates.
- New identity verification for registered company directors, people with significant control and those who file on behalf of companies.
- Improvements to the information filed on the public record (ie, financial information) so that it is more accurate.
- The Registrar will have more effective investigation and enforcement powers.
- Introducing better cross-checking of data with other governmental bodies.
- Enhancing the protection of personal information sent to Companies House.
- New filing requirements for small companies.

1.1 Failure to Prevent Fraud

A new offence of 'Failure to Prevent Fraud' has been introduced by the Act. This will hold an organisation to account if they profit from fraud committed by their employees.

Potentially, this new offence is very unusual and very significant because it is a strict liability criminal offence.

This new offence essentially builds on the existing offence of failure to prevent bribery under the Bribery Act 2010 and a failure to prevent the facilitation of tax evasion under the Criminal Finances Act 2017. Secondary legislation is awaited where this new offence is concerned (in particular guidance is awaited on the 'reasonable procedures' defence to the offence).

As noted earlier, this offence only applies to larger 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 organisation which is the parent undertaking of a group will also be within scope of the offence when it meets at least two out of the following criteria in the financial year preceding the year of the fraud offence:

- an aggregate turnover of over £36 million net (or £43.2 million gross);
- total assets over £18 million net (or £21.6 million gross); and/or
- more than 250 aggregate employees.

Under the Act, such an organisation will be liable if it fails to prevent a specified fraud where:

- an 'associated person'¹ of the organisation commits the fraud; and
- the fraud is intended to benefit the organisation or a person to whom services are provided on behalf of the organisation.

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.

Schedule 13 to the Act contains specific fraud offences which includes:

- fraud by false representation;
- fraud by abuse of position; and
- fraud by failing to disclose information.

¹ An 'associated person' is defined as an employee, agent or subsidiary of the organisation (as well as any others who perform services for, or on its behalf). This is broader than the definition in the Bribery Act 2010, which includes a rebuttable presumption that an employee is an associated person, but in relation to agents and subsidiaries applies a test to determine if the associated person performs services for, or on behalf of, the organisation in the circumstances.

Secondary legislation can be passed by the government which can add or remove offences from Schedule 13.

An organisation will have a defence where it can show it had either 'reasonable procedures' in place to prevent the fraud; or that it was not reasonable for the organisation not to have such procedures in place.

As noted earlier in this section of the notes, the government will need to publish guidance on what it considers to be 'reasonable procedures' in this regard. Organisations caught under the scope of this new offence will need to carry out a risk assessment to re-examine their fraud detection and prevention procedures.

1.2 New identity procedures

New identity (ID) procedures for individuals are brought in by the Act with the aim of improving the information at Companies House. This will apply to all new and existing directors registered at Companies House, People with Significant Control (PSCs) and those who are delivering documents to Companies House.

The verification procedures will be carried out either by Companies House itself (using electronic ID checks) or by an authorised company service provider (eg, an accountancy firm using normal Anti-Money Laundering Regulations protocol).

Again, secondary legislation will need to be published by the government and an update of the systems at Companies House to enable relevant ID checks to be carried out.

1.3 Filing requirements

Probably *the* issue of most interest to accountants acting for small and micro-entities.

The first thing to note is that small companies will no longer have the option to prepare and file abridged accounts. The Act also removes the option to file 'filleted' accounts. Instead, small companies will be required to file **both** the profit and loss account and directors' report. Micro-entities will be required to file their profit and loss account (although there is no requirement for micro-entities to prepare a directors' report, hence there will be no need to lodge one at Companies House).

It has been difficult for Companies House to determine whether an exemption taken by the company was valid. For example, whether the entity is, in fact, a micro-entity, or not, because the profit and loss account was not lodged with the Registrar so one of the criteria for taking the exemption was unavailable. The Registrar was therefore reliant on the two remaining criteria (being balance sheet total and employee numbers) so provided these were within the limits, the Registrar had to accept the exemption was available.

The Act includes provisions which allow the Registrar to make the profit and loss accounts of small or micro-entities (or parts thereof) unavailable for inspection. This may provide some element of relief for those concerned about trading information becoming publicly available which could be deemed 'commercially sensitive'.

Hence, filing the profit and loss account with Companies House will enable them to verify that companies are filing the accounts correctly (ie, the company is, in fact, a micro-entity or small hence relevant exemptions taken by the entity are valid). We are currently waiting on the regulations, so there is still uncertainty concerning how this will be finally implemented.

Many small companies and micro-entities are currently entitled to claim audit exemption. Where advantage of audit exemption is taken, a statement under s477 of the Companies Act 2006 is required to be made on the balance sheet. The Act includes a further requirement where companies (including dormant companies) claim audit exemption. This additional statement must identify the exemption being taken and confirm that the company qualifies for the exemption.

1.4 Register of Overseas Entities

The Register of Overseas Entities aims to enhance transparency around aspects of 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.

This particular register came into force in August 2022. All companies on the register will need to lodge an updated statement on an annual basis confirming that the information held by Companies House is correct and up to date. This is required even if nothing has changed. Entities on the register should note that it is a criminal offence not to file the updated statement and the offence is punishable by prosecution or a financial penalty should they not file.