

Economic Crime and Corporate Transparency Bill - points for lenders

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Last month, we reported on the Economic Crime (Transparency and Enforcement) Act 2022 which introduced, amongst other measures, a new Register of Overseas Entities which own UK property.

At the time, the government signalled further measures to tackle economic crime and improve transparency in relation to UK corporate entities. A key part of this will be achieved by broad reforms to Companies House and the registration requirements for companies and other business entities. The Economic Crime and Corporate Transparency Bill (the "Bill") was introduced to Parliament on 22 September 2022.

Part 1 – Company registration

Part 1 of the Bill makes changes to the Companies Act 2006 to reform the role of Companies House. Notably, it expands the role and powers of the registrar of Companies (the "**Registrar**") and introduces sweeping new identity verification measures for directors and persons with significant control ("**PSCs**").

Identity verification for directors and PSCs

New identity verification requirements will apply to all new and existing registered company directors, PSCs and those delivering documents to the Registrar. The primary method for verification will be photo ID, linking a person through a photograph with an identity document, such as a passport. There will be two types of verification: direct verification via Companies House, or an indirect route through an authorised third-party provider. Details of the verification process will be set out in regulations. Once verified, a user will have one verified account for use whenever Companies House verification is required.

UK-incorporated companies

- **Identity verification of proposed officers.** Applications to register a company must include a statement confirming the proposed company's directors have verified their identity. If this is not included, the Registrar will reject the application and the company will not be formed.

- **Identity verification of directors.** Every company director who is a natural person will have to verify their identity. An individual must not act as a director unless they have verified their identity, and a company must ensure that an individual does not act as a director unless their identity has been verified. An individual who fails to verify their identity and continues acting as a director, or a company that fails to ensure that an individual has been verified, commits an offence.
- **Identity verification of PSCs.** Any PSC over a company must verify their identity and maintain their verified status as long as they are registered with the Registrar.
- **All directors must be included on the Companies Register.** An individual must not act as a director unless the company has notified the Registrar of the director's appointment within 14 days of their appointment. This notice must state that the director's identity has been verified.
- **Identity verification for persons delivering documents.** An individual delivering documents to the Registrar must have their identity verified. Where an individual delivers documents on behalf of a company, they must confirm that they have authority to do so.

Limited Liability Partnerships

Identity verification rules equivalent to those for company directors will apply to a natural person who is a member of an LLP, including the identity of their PSCs. The key points to note include:

- **Member is a corporate entity.** Where a member is a corporate entity, all of the directors (or equivalent) will be required to verify their identity.
- **LLP is a corporate director.** An LLP will only be able to act as a corporate director if all its members have had their identity verified.

Consequences of failing to comply with identity verification

The consequences of not complying with the verification measures will depend on the circumstances. However, an individual who fails to verify their identity and continues acting as a director, or a company that fails to ensure that an individual has been verified, commits an offence. Possible sanctions include criminal proceedings (resulting in a fine), civil penalties issued by the Registrar, incorporations / registration being rejected, being unable to file statutory filings, the register being annotated to show the individual's status as 'unverified', and for directors, disqualification.

Expanding the role and powers of the Registrar

The Bill introduces new objectives for the Registrar, broadly to maintain the reliability of data at Companies House. This is supported by increased powers to query and remove filings on the register.

Registrar's powers

- **Power to change a company's name.** The Registrar will have the power to direct a company to change its name and, where necessary, to make that change if the company fails to act. A key reason would be where a proposed name suggests a connection, with a foreign government or international body where none exists.
- **Power to reject documents for inconsistencies.** In certain circumstances, the Registrar will be able to reject documents which are inconsistent with information held on the register. A document that is refused under this power is treated as not having been delivered.
- **Power to require additional information.** The Registrar will have the right to require additional information be provided (i) where it is not satisfied a statutory requirement to deliver documents has been complied with, or (ii) in relation to its power to require a company to resolve inconsistencies between a document being submitted and other materials on the register.
- **Power to remove material from the register.** The Registrar will have enhanced powers to remove materials which it has reasonable grounds to believe are inconsistent on the register.
- **Data sharing.** The Registrar will have enhanced powers to share data with law enforcement and other public or regulatory bodies (for example, the electoral commission and anti-money laundering supervisors). It will also have added powers to request and cross-reference data on the register with external data (for example, data at HMRC and the Insolvency Service).

Register of Overseas Entities

The broad impact of the Economic Crime (Transparency and Enforcement) Act 2022 (the "ECA") is that an overseas entity will not be able to own or deal with UK property unless it has been registered on the Register of Overseas Entities held at Companies House. The Bill includes amendments to amend both the ECA and the Land Registration Act 2002 to bring them into line with the amendments proposed to the Companies Act 2006. The main change will be that an overseas entity that has not complied with any relevant registration requirements under the amended Companies Act 2006 will not be regarded as properly registered on the Register of Overseas Entities and so will not be able to deal with UK property.

Part 2 – Limited Partnerships

Part 2 of the Bill sets out amendments to the Limited Partnerships Act 1907 to reform the law applying to Limited Partnerships ("LPs"), in particular in relation to registration and disclosure.

Registration and transparency

The Bill introduces requirements for all LPs to submit to the Registrar more detailed information about their partners, and a statement confirming the accuracy of information held. The key changes include:

- **Details about general nature of partnership business.** LPs will need to specify the nature of their business in their application for registration.

- **Required information about partners.** For partners and proposed partners who are individuals, the Registrar will require their name, date of birth and nationality, usual residential address, parts of the UK or other country in which the individual is resident, and, for general partners, a service address.
- **Registered office address.** General partners of an LP will have a duty to ensure the LP's registered office address is in the original jurisdiction of registration (i.e. in the same part of the UK in which the LP is registered).
- **Change in partners.** General partners will need to notify the Registrar of changes to the partners, changes to information about partners, and changes occurring between the date of application of the LPs registration and its registration, within 14 days of the change occurring.
- **Notification of other changes in the LP.** LPs will need to notify the Registrar of changes to the firm name, principal place of business and general nature of the LP's business, within 14 days.
- **Confirmation statements.** LPs will be required to submit a confirmation statement, confirming information held about it on the register is correct. This statement will have to be delivered within 14 days after every review period. This is generally every 12 months from the date the LP registered or last submitted a statement.

The Registrar will be restricted from disclosing protected date of birth information or protected residential addresses on the register unless specific conditions apply (for example, the information is already publicly available or the court orders disclosure).

There will be a transitional period of six months, allowing existing LPs to submit updated statements on newly required information on partners. Failure to comply will result in the deregistration of the LP at the end of the transitional period. For LPs registered after the Bill is enacted, a confirmation statement is to be submitted within one year of the original date of registration.

New sanctions and offences

The summary table below sets out the new criminal offences proposed by the Bill, including information on the relevant sanctions and on whom they fall.

Measure	Offence	Sanction	Who the sanction falls on
Company names	Failure to respond to the direction to change a name	Criminal fine	The company and any officers in default.
	Using as a business name a name which the Registrar has directed be changed	Criminal fine	The company and any officers in default.

Registrar's power to request information	Failure to respond to a request for information	Criminal fine Prison sentence of up to 2 years	The entity and every officer in default
Data sharing	Disclosing HMRC information which can be used to identify an individual	Criminal fine Prison sentence of up to 2 years	The person who discloses the information
Identity verification	Acting as a company director without notifying the Registrar of the directorship	Criminal fine A compliance notice A financial penalty	The director acting as a company director without verifying
	Acting as a company director without verifying identity or breaching due to ensure that an unverified individual does not act as a company director	Criminal fine A compliance notice A financial penalty	The company including every individual in default
	Failure to comply with a direction from the Registrar to provide a verification statement	Criminal fine A compliance notice A financial penalty	The persons and relevant legal entities (and their officers in default) making the application to Companies House
	Failure to comply with the duty to maintain the verified identity status of a person with significant control	Criminal fine A compliance notice A financial penalty	The persons and relevant legal entities (and their officers in default).
Limited Partnerships	Failure to have a registered office address in the original jurisdiction of registration	Criminal fine	The general partners of the limited partnership
	Failure to notify the Registrar of changes in information on its general partners	Criminal fine	The general partners of the limited partnership

	Failure to provide a confirmation statement/late filing	Criminal fine	The general partners of the limited partnership
	Failure to update the Registrar of changes to a limited partnership	Criminal fine	The general partners of the limited partnership
	Failure to notify the Registrar of changes in the limited partnership	Criminal fine	The general partners of the limited partnership

Next Steps

At present, the Bill is with a Public Bill Committee, who are due to report back by 29 November 2022. The Bill is expected to become law during the course of 2023. Nonetheless, now is a good time to reflect on how the Bill might affect your business.

What do the reforms mean for lenders?

Assuming the Bill is passed into law, it will be prudent for lenders to start thinking now about how the Bill might affect their transactions. Early considerations may include:

- **SPV Borrowers.** Where a special purpose vehicle (“SPV”) funding structure is being used, every director of the SPV, and any PSCs, will need to verify their identity before an application for formation can be made. This is because an application for formation of a company must confirm that the proposed directors, and any PSCs, have been verified. Any failure will result in the Registrar rejecting the application and the SPV not being formed.

Lenders may wish to engage with borrowers at the outset of the transaction to ensure verification is in hand.

We note that it is unclear at this stage how the identity of overseas directors (i.e. non-UK passport holders) will be verified. The verification process to be introduced for these individuals could be more complex and take longer, potentially causing delays to the lender’s timeline.

- **Condition precedents (“CPs”).** In practical terms, before an individual can act as a director, they will need to (i) verify their identity with the Registrar, and then (ii) notify the Registrar of their appointment as a director within 14 days of such appointment, with this notice confirming that their identity has been verified.

The Bill clarifies that any action taken by an unverified director remains valid. It would, however, be prudent to consider including new identity verification CPs to drawdown, requiring evidence that the directors of each relevant obligor have been verified. Where directors are to be appointed, evidence should also be required that verification will be completed within the 14-day timeframe.

- **Continuing obligations.** The Bill states that subsequent legislation will set out requirements for 'reverification' (i.e. situations when an individual will need to verify again), including possibly introducing grounds to suspend an individual's verified status in certain circumstances. An individual who fails to appropriately verify, or ceases to be verified, commits a criminal offence. This is punishable by a fine of up to £5,000. The public register may also be annotated to show the individual's status as 'unverified'. For directors, failing to verify could result in the termination of their appointment, and a prohibition on them acting as a director of the company.

Lenders may require specific covenants on the borrower company to procure that the officers of the company remain appropriately verified throughout the term of the transaction. This would avoid issues arising in respect of the ongoing management of the borrower, the transaction, and dealings with third parties e.g. in respect of disposals and/or refinances.