The UK Government Unveils a New 'Economic Crime and Corporate Transparency' Bill to Clamp Down on Financial Crime

*In our latest article, **George Jones** explores the recent Economic Crime and Corporate Transparency Bill, including the proposed powers and regulatory reforms that arise from it, which aims to tackle the abuse of UK corporate entities as vehicles for financial crime.*

In the midst of an escalating war in Ukraine, calls became ever louder for new legislation to tackle economic crime and money laundering, with wealthy individuals, such as Russian Oligarchs, often being the target of criticism. This bill is an attempt to answer such calls. The bill (in its current form found here) follows on from the Economic Crime (Transparency and Enforcement) Act 2022, which was given Royal Assent in March 2022, and comes as part of legislative reforms to limit the exploitation of UK corporate structures by fraudsters, kleptocrats and organised criminal networks. The bill is currently at the Report Stage with the Committee Stage having concluded on Tuesday 29th November 2022. It is expected that the bill will receive Royal Assent in the Spring of 2023.

What are the New Reforms?

The new measures introduce significant changes, such as new registration and transparency requirements for companies and limited partnerships, as well as increased powers for the public company registry, Companies House. Below is a summary of the major amendments.

Identity Verification Requirements

Following the bill, new and existing registered company directors, persons with significant control ('PSCs'), LLP members and those delivering documents to the Registrar will need to verify their identity with Companies House:

- Directors – verification will need to be provided before they can begin to act and confirmation that they have not been disqualified must be provided on appointment. A company must ensure that the verification process has concluded before a director commences their role and applications for a company's formation will need to state that the identities of each director have been verified.

- PSCs – within 14 days of appointment, a PSC must verify their identity. Relevant Legal Entities ('RLE') must verify the identity of their relevant officer within 28 days of appointment. The RLE is obliged to maintain this verified status of their registered officer for as long as they are registered at Companies House. It is optional for a relevant company to provide confirmation of verification of its PSCs to Companies House. In this instance, the obligation falls on the PSC itself to comply.

- LLP members – the government has stated that any entity registered at Companies House will fall within the transparency requirements. This includes LLPs. However, the bill itself does not cover LLPs and secondary legislation is expected to be passed to amend the relevant law in relation to LLPs.

- Individuals delivering documents to the Registrar – individuals who deliver documents on behalf of themselves or another person must have their identity verified. In both cases, documents delivered by this individual must be accompanied by a statement that the individual's identity has been verified. Where documents are being delivered on behalf of another, the individual must have the other person's authority to deliver the documents.

Following amendments at the Committee Stage, it is proposed that the Government would be able to extend these requirements to overseas companies who are required to register in the UK (the register of overseas entities that own qualifying real estate in the UK was established by the previous Economic Crime (Transparency and Enforcement) Act 2022).

Details of the proposed process for verification have been set out in a Government factsheet (found here). There will be two routes: direct verification through Companies House; or verification through an Authorised Corporate Service Provider ('ACSP'). The former should be a quick and simple process whereby a photo is taken of an individual and compared to an identifying document. The individual's identity is then verified. The latter involves an ACSP acting as an intermediary. The identity verification process will build on existing due diligence checks they are obliged to conduct for their clients. However, the precise details for these processes are yet to be confirmed.

Nevertheless, it is hoped that the measures set out will strengthen the reliability of data held by the Registrar and can be used to effectively support business and law enforcement investigations.

Companies House

Companies House will have new powers to check, challenge and decline incorrect or fraudulent information, enabling it to more tightly control the creation of corporate entities and query any suspicious appointments or filings. For example, where a filing is inconsistent with other information it holds, the Registrar may query and, if necessary, reject it. Alternatively, Companies House could request further information about the filing. A criminal offence would be committed for a failure to comply.

Companies House investigative and enforcement powers will also be upgraded, allowing it to better cross-check data with private and public sector bodies and raise any issues of suspicious activity with the requisite authorities. Having previously been criticised as vulnerable to exploitation and misuse, the bill envisages that these reforms will enable Companies House to act as an '*active gatekeeper over company creation and custodian of more reliable data*'.[1]

Limited Partnerships ('LP')

The bill creates more stringent registration and transparency requirements for limited partnerships, including Scottish limited partnerships. For example, all LP members must provide certain information to Companies House, including the partner's name, date of birth, nationality and usual residential address.

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[1] https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/fact-sheet-economic-crime-and-corporate-transparency-bill-overarching

The bill also includes provisions requiring UK LPs to maintain a UK connection. LPs will need to have a registered office at an 'appropriate address' (an address where it is reasonable for one to expect that delivery of a document to this address would come to the LP's attention and the delivery of the document would be acknowledged) and the office must be in the jurisdiction of registration. In the UK, the registered office could be at:

i. The LP's principal place of business;

ii. If the LP has a GP who is an individual, the residential address of that GP;

iii. If the LP has a GP who is a legal entity, the registered or principal office of that GP; or

iv. An address of an authorised corporate service provider acting for the LP.

Furthermore, Companies House will have the power to de-register limited partnerships in certain situations, such as where the partnership is: dissolved; no longer carrying on business; or where the court orders that it is in the public's interest.

Crypto Assets

The bill amends the criminal confiscation powers under Parts 2, 3 and 4 of the Proceeds of Crime Act 2002 (POCA) to enable law enforcement to act more swiftly and efficiently to seize and recover crypto assets. For example, officers will be able to seize crypto assets during an investigation without having to have arrested an individual for committing an offence. This change is important given that cryptocurrencies are one of the main vehicles used for ransomware.

Part 5 of the POCA will also be amended to ensure crypto assets fall within the scope of civil forfeiture powers in order to offset the threat posed by those who can avoid criminal prosecution but yet still use their funds for criminal or terror related purposes.

Other Anti-Money Laundering Powers

The bill will make it easier for firms to disclose information where it is for the purpose of preventing, investigating or detecting economic crime. Civil liability for a breach of confidentiality by firms who disclose information for this reason will be disapplied.

Gathering intelligence information from businesses in relation to money laundering by the National Crime Agency's Financial Intelligence Unit will be made easier, as the requirement for a pre-existing Suspicious Activity Report to have been submitted before an Information Order can be made will be removed, enabling information to be gathered proactively.

The Serious Fraud Office's ('SFO') investigative powers under the Criminal Justice Act 1987 will also be enhanced. Currently, section 2 of the Act grants the agency the power to compel an individual to answer questions, furnish information or produce documents which, can be done at a pre-investigation stage where the investigation relates to suspected international bribery and corruption. For all other cases, these powers could only be used once a director of the SFO decided to commence an investigation. The bill aims to expand this power and enable the SFO's powers under section 2 to be exercised at the pre-investigation stage in relation to all SFO cases, such as in relation to suspected fraud or money laundering.

Additionally, the requirement for a statutory instrument to be laid each time the UK's High-Risk Third Countries list needs updating will also be removed and the Treasury would be given the power to amend and publish this list.

Solicitors Regulation Authority ('SRA')

The SRA would see its powers enhanced, as the cap placed on fines for firms by the Solicitors Act 1974 would be removed where the misconduct relates to 'economic crime.' In July 2022, the maximum penalty that the SRA could issue in this scenario was £25,000. The bill proposes that the SRA would be able to impose an unlimited fine in relation to disciplinary matters involving economic crime.

Concluding Comment

The reforms have been welcomed by campaigners such as Transparency International UK, who have described them as 'long overdue.' However, others, such as Spotlight on Corruption, are concerned that, despite the fact that the powers of Companies House and law enforcement agencies have been extended, they will lack the financial capacity to perform these new functions as there is no sign that additional funding has been granted for these organisations.

Ultimately these transparency initiatives are a positive step to prevent those with the wrong intentions from registering their corporate entity at Companies House. However, should the bill be approved, these new provisions may well cause delay as further checks have practical implications. Businesses should begin to consider how they will abide by this legislation, particularly in relation to the new verification of identity requirements.