

# Economic Crime and Corporate Transparency Act 2023

## WHAT DIRECTORS NEED TO KNOW

By James Orloff, Partner at Spector Constant & Williams

There are essentially three key elements to the Economic Crime and Corporate Transparency Act 2023 (ECCTA):

- Reforms to Companies House to improve the accessibility and transparency of corporate information.
- Reforms to the law on attribution of corporate criminal liability for economic crimes, specifically a broadening of the 'identification doctrine'.
- The introduction of a new corporate Failure to Prevent Fraud (FTPF) offence for 'large companies'.

### WHEN IS ECCTA COMING INTO FORCE?

ECCTA received Royal assent in October 2023 and is coming into force in stages with secondary legislation being used to implement some of the key changes. The provisions already in force and the expected timeline for others is:

- Dec 2023 - Changes to the identification doctrine are now in force.
- 4 March 2024 - Many of the reforms relating to Companies House and corporate filing requirements.
- The measures relating to the FTPF offence will not come into force until the Government publishes statutory guidance relating to the offence. The

expectation is that this statutory guidance will be published in 2024 and the offence will come into force in the months thereafter.

### RECOMMENDED ACTIONS

Actions proposed for the board's consideration relate to updating company secretarial/corporate processes, implementing controls relating to the identification doctrine and implementing or developing internal processes and controls around fraud.

Also consider ensuring that the board is kept up to date in relation to the progress of ECCTA and any further dates for implementation of the obligations contained within ECCTA.

### In terms of specific recommended actions for each element of ECCTA:

#### COMPANY SECRETARIAL/CORPORATE

- Monitoring the identity verification requirements including ensuring the board, PSCs and relevant officers of RLEs have up to date identity documents for when they are required to verify their identity.
- Introducing new policies for when information about a director changes (such as home address) to ensure this information is shared with Companies House when required by ECCTA.

- Reviewing the appropriateness of the company's registered office address and how to allocate and monitor the company's email account with Companies House.
- Ensuring that the company is aware of who its shareholders are and that it holds up to date information about them on its register of members.
- Reviewing historic filings that have been made at Companies House for accuracy to ensure that no future filings can be rejected for inconsistency.
- Reviewing how the company typically makes filings at Companies House and whether this system can continue in light of the new restrictions on who is able to file documents at Companies House.

## IDENTIFICATION DOCTRINE

- Using the definition under the reformed identification doctrine, identifying the senior managers in the company and communicating this reform to them and what it means. This system to be maintained and monitored on a regular basis.
- Ensuring that (where applicable) human resources are fully aware of the updated identification doctrine and incorporate appropriate notification processes to compliance/legal when senior managers join or leave the company.
- Ensuring that (where applicable) internal audit are fully aware of the updated identification doctrine and incorporate appropriate audit checks in their processes.
- Reviewing, and where necessary updating, whistleblowing processes, policies and training.

## FTPF OFFENCE

- Carrying out a risk assessment to identify those parts of the company with high-risk of potential economic crime, such as procurement. Incorporating this output in the company's broader risk assessment.
- Creating or updating a CEO statement (or similar) to clearly outline the company's position on fraud and economic crime.
- Reviewing existing related policies or considering implementation of such.
- Reviewing existing processes and making

recommendations for improving those processes in relation to fraud risk.

- Reviewing existing third-party due diligence processes and making recommendations for improving those processes in relation to fraud.
- Auditing third party contracts to assess the existing contractual controls in place to manage fraud risk and identifying gaps or weaknesses to be remedied.
- Creating or updating tailored fraud awareness training for the company and third parties.
- Implementing monitoring activities to monitor the effectiveness of the fraud risk controls.
- Introducing fraud audit practices.
- Introducing or updating a whistleblowing/speak-up system to include fraud reports.
- verification documents for directors and persons of significant control (PSCs) and company email addresses.

## I. FURTHER DETAILS ABOUT ECCTA

ECCTA is a new piece of legislation (which received Royal Assent on 26 October 2023) that is intended to prevent abuse of UK corporate structures and to reduce economic crime. It follows other measures introduced by the government, including the overseas entity register. ECCTA aims to achieve this by a variety of means as follows.

### I.1 CHANGING THE ROLE OF COMPANIES HOUSE

ECCTA changes the role of Companies House from a passive receiver of documents to an active gatekeeper of company information, with new powers to ensure the information on the register is correct, including the powers to require additional information, report discrepancies, disclose information and impose fines and criminal sanctions.

It is anticipated that Companies House will be actively involved in preventing economic crime.

Companies House has stated that its fees payable by companies to Companies House will be increased to fund its new functions. Fee increases will take effect from 1 May 2024.

## 1.2 INFORMATION SHARING

ECCTA makes it easier for businesses in regulated sectors (for example, banks) to share customer information with each other, and with third party intermediaries (for example the National Fraud Database) for the purposes of preventing, investigating and detecting economic crime. However, businesses must continue to adhere to data protection legislation (including GDPR) when sharing data.

Companies House will also be able to analyse and disclose any information provided to it to any person or public authority for the purposes of crime prevention or detection.

## 1.3 PREVENTING ABUSE OF PERSONAL INFORMATION

ECCTA increases the protection of personal information held by companies and provided to Companies House. Any person whose details appear on the register at Companies House can apply to have their personal information (including residential address and signature) suppressed from public view.

## 1.4 IDENTITY VERIFICATION

All directors, PSCs and registerable relevant officers of relevant legal entities (RLEs) will be required to verify their identity at Companies House unless they are exempt (for example, for national security reasons). Failure to do so will be punishable by a fine.

It is anticipated that identity verification will only happen once per individual unless Companies House requires otherwise.

The details around the process of identity verification have yet to be published, however it is likely to be achieved through a digital service that links a person with a primary identity document, such as a passport or driving licence.

## 1.5 FILING AT COMPANIES HOUSE

There will be two routes for a company to file documents at Companies House. Either an officer or employee of the company, whose identity has been verified, can do so or the filing must be done by an Authorised Corporate Service Provider (ACSP) (such as a law/accountancy firm who has registered as an ACSP at Companies House).

Under the provisions of ECCTA, it will be a criminal offence for any person to knowingly deliver a false, deceptive or misleading filing or statement to Companies House. This offence is punishable by up to two years imprisonment.

## 1.6 DIRECTORS

### IDENTITY VERIFICATION

All newly appointed and existing directors will be required to verify their identity at Companies House.

Directors are prohibited from acting unless their identity has been verified. It is an offence for a person to act as a director without first verifying their identity.

The transitional provisions of ECCTA will specify a date by which all directors must have verified their identity at Companies House. This date is currently unknown.

## 1.7 COMPANY ADMINISTRATION

Under the provisions of ECCTA, a company's registered office must be an "appropriate address". An "appropriate address" must be one where a delivery can be acknowledged and come to the attention of a person acting on behalf of the company (that is, not a PO Box). If a company's registered office address is not an "appropriate address" then Companies House will have the power to change it to a default address.

Companies will be required to maintain a registered appropriate email address for communication with Companies House. The email address will be an "appropriate email address" if emails sent to it by Companies House would be expected to come to the attention of a person acting on behalf of the company.

ECCTA places new obligations on shareholders to provide companies with required information about themselves, including full details of their name and service address. If any of this information changes, shareholders are under an obligation to update the company within two months of the change taking place.

## 1.8 ACCOUNTS AND REPORTS

ECCTA aims to make filing requirements for micro-entities and small companies clearer for companies to understand:

- Unless exempt from audit, micro-entities will be required to file a balance sheet and a profit and loss account.
- Small companies that do not meet the micro-entity threshold will be required to file annual accounts (i.e., a balance sheet and a profit and loss account) and a directors' report. Small companies will no longer be able to file abridged accounts or filleted accounts.

### 1.9 THE IDENTIFICATION DOCTRINE

ECCTA reforms the concept of identity doctrine whereby criminal liability for economic crimes attaches to a corporate entity (companies and partnerships). Section 196 of ECCTA has broadened this doctrine by extending the persons whose conduct may result in corporate liability in respect of economic crimes to include senior managers acting within the actual or apparent scope of their authority, thus furthering the ability of the Serious Fraud Office to bring a corporate prosecution.

### 1.10 THE FTPF OFFENCE

ECCTA introduces a new corporate offence of failing to prevent fraud. The key components of this offence are:

- It can only be committed by "large organisations" (Under s.201 that is one which satisfies two or more of the following conditions in a financial year: of having more than 250 employees; more than £36 million turnover; or more than £18 million in assets).
- The offence will be committed if a person (such as an employee, agent or subsidiary of the company) associated with the large organisation commits a specified fraud offence (detailed in Schedule 13 of ECCTA) intending to benefit the organisation or any person to whom the person provides services on behalf of the organisation. If an organisation is found guilty of the offence, then it can be punished with an unlimited fine.
- It will not be necessary to prove that a company's management knew about or ordered the fraud.

It will be a defence for a company to prove that at the time the offence was committed it had in place appropriate prevention procedures. Before the offence comes into effect the government is required to issue guidance in relation to these procedures.



James Orloff, Partner  
james.orloff@scwlegal.co.uk



Zahrah Fakim, Associate  
zahrah.fakim@scwlegal.co.uk



Ariana Ioannou, Associate  
ariana.ioannou@scwlegal.co.uk

Spector Constant & Williams Limited  
4<sup>th</sup> Floor, 75 Wells Street  
London W1T 3QH  
Telephone +44 (0)20 7269 5120  
Fax +44 (0)20 7269 5121  
DX 138877 Mayfair  
scwlegal.co.uk