

ENGLAND AND WALES

The Economic Crime and Corporate Transparency Act 2023 – an overview

The Economic Crime and Corporate Transparency Act 2023 (**ECCTA**) received Royal Assent in October 2023 and aims to reform the law relating to economic crime and corporate transparency. These reforms were begun by the passing of the Economic Crime (Transparency and Enforcement) Act 2022 (**ECA**), which we have previously [written about](#), but ECCTA goes further and, in some cases, amends the ECA.

As such, ECCTA is a wide-ranging piece of legislation, touching on many areas. Certain parts are already in force, while others require secondary legislation before they can take effect. This overview summarises the key provisions. More detailed notes about specific areas will follow.

REGISTER OF OVERSEAS ENTITIES (ROE)

The ROE was established pursuant to the ECA and, broadly, requires the registration of overseas entities which hold UK property and such entities' beneficial owners. ECCTA will result in several amendments to the current ROE regime. These amends generally close gaps which were left open by the ECA and as a result, ECCTA is an attempt to ensure that the true beneficial owners of UK property



are registered, rather than other entities within the corporate structure. Many of the amends are now in force, but in some important cases are subject to transitional provisions that defer their practical effect until after 4 June 2024. Other measures require the drafting of secondary legislation before they can take effect.

The most significant changes expand the scope of who constitutes a registrable beneficial owner (**RBO**) where trusts are involved in the structure.

For example, ECCTA widens the definition of an RBO so that any corporate trustee in the chain of ownership will need to be registered, regardless of whether

it was exempt from registration under the ECA. So, where an overseas entity is owned by a UK company which is then owned by a corporate trustee, the current ROE regime would only require the registration of the UK company as an RBO; however, the new regime will require details of the corporate trustee to be registered as well.

Currently, where UK property is owned by an overseas entity, which is acting as a nominee, the details of the beneficial owners of that nominee entity are required to be registered. ECCTA will close this loophole, such that the true beneficial owners of the property will need to be registered.

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Another key change is that overseas entities which have not complied with their ROE updating duties or which have failed to provide additional information requested by the Registrar of Companies will not be able to register title to property at HM Land Registry and so will be prevented from buying or selling UK property until they comply.

Trust information held on the ROE which is currently protected from disclosure except to government and law enforcement is expected to become disclosable on application. Further regulations are needed on this particular change to determine who may bring such an application and on what grounds. Such secondary legislation is expected to be published later this year.

COMPANIES HOUSE

ECCTA widens the powers and role of the Registrar of Companies and tightens the information and filing requirements for bodies corporate and limited partnerships.

Prior to ECCTA, Companies House was essentially a repository for certain information which, by law, had to be filed by (mainly) corporate entities. As such, the

reliability of the register was restricted by the accuracy of the information provided, with the Registrar of Companies having limited power to query any aspects of this information, correct errors and follow up on inconsistencies. Under the provisions of ECCTA, the Registrar of Companies is better able to question the information provided and even reject it in certain cases.

Other provisions tighten requirements in relation to certain administrative details, such as registered office addresses and company names, some of which are already in effect.

Perhaps the most significant change for the majority of entities will be the requirement to verify the identity of both new and existing directors, members of limited liability partnerships, persons with significant control and certain people connected with limited partnerships. Although not yet in force, this will require such persons to verify their identity with Companies House (probably by scanning in a form of photo ID) and, in the case of directors, will preclude their being appointed until completed.

Currently governed by the Limited Partnerships Act 1907, limited partnerships will find that their information provisions and filing requirements will be quite substantially increased by ECCTA. The new provisions seek to better align these requirements with those in place for bodies corporate and so, for example, comprehensive information about the partners will need to be filed going forward.

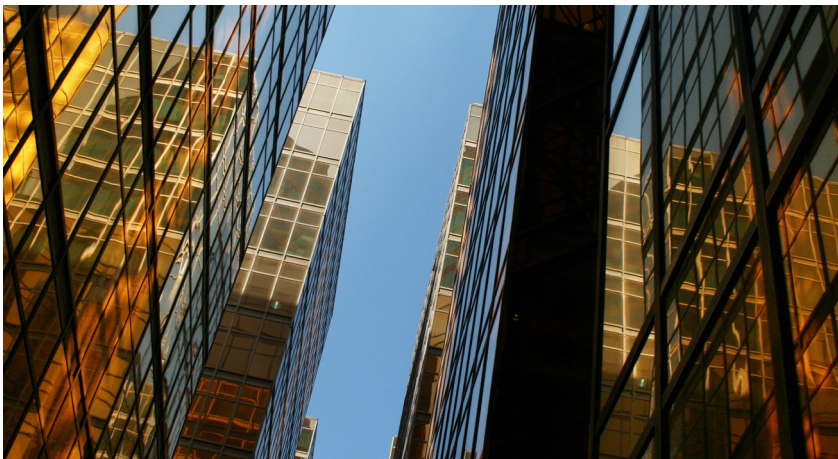
The process of filing itself will also be more tightly regulated, with only ID verified persons or Authorised Corporate Service Providers (such as solicitors) permitted to make filings.

Strict penalties will apply for failure to comply, including fines and imprisonment. The person making the filing or causing the filing to be made could also be guilty of a criminal offence if such filings include any false statements.

CORPORATE CRIMINAL LIABILITY

Failure to prevent fraud

A new offence, failure to prevent fraud, has been created by ECCTA. This will hold large organisations liable for certain fraud offences which are committed by their associates (being an employee, agent, subsidiary or someone who performs services on the organisation's behalf) if the organisation benefits from the fraud and does not have reasonable fraud prevention procedures in place. What constitutes "reasonable fraud prevention procedures" has not yet been clarified but we expect governmental guidance to be issued in due course.



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The offence applies to “large” organisations only, i.e. those that in the financial year preceding the offence satisfy at least two of the following three conditions:

- a turnover of more than £36 million
- a balance sheet total of more than £18 million
- more than 250 employees.

Corporate groups are caught if they cumulatively satisfy two of these thresholds. Although “smaller” entities are not caught directly by the legislation, we expect that those organisations which do satisfy the thresholds, will require their suppliers and other entities involved with their businesses to evidence that they have the appropriate procedures in place, resulting in the legislation having a wider remit than appears on a literal reading.

An organisation found guilty of the offence could be liable to an unlimited fine and of course, there is likely to be significant reputational damage.

Identification principle changes

Until the coming into force of ECCTA, a body corporate could only be found criminally liable for an offence if the actual offence was committed by an individual who represented the entity’s “directing mind and will”. As organisations have grown in size and management complexity over the last 50 years, this became an increasingly difficult criteria to fulfil, with the end result being that it was usually smaller organisations that were prosecuted.



ECCTA has now amended this area of the law by putting in place a new test whereby an organisation can be found liable if a “senior manager” acting within the scope of their authority commits one of the specified economic crime offences set out in the legislation.

If found guilty, the organisation will be subject to a (potentially unlimited) fine and the individual in question may also be imprisoned.

CRYPTOASSETS

Additional powers have been granted to law enforcement agencies so that they are better able to seize and recover cryptoassets which are either associated with illicit activity or constitute the proceeds of crime.

MONEY LAUNDERING

ECCTA aims to tighten legislation which deals with money laundering by providing law enforcement agencies with new intelligence gathering powers and enabling businesses to share information between themselves more easily for the purposes of preventing, detecting and investigating economic crime.

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPs)

SLAPPs, being legal actions essentially intended to harass and intimidate the other side, have become rather a media focus, often being brought against investigative journalists and other writers. ECCTA seeks to provide the defendants of these actions with more rights and protection.

REMOVAL OF STATUTORY CAP ON SOLICITORS’ REGULATION AUTHORITY (SRA) FINANCIAL PENALTIES

The SRA is the body which regulates solicitors in England and Wales. Prior to ECCTA coming into force, the SRA was restrained by a £25,000 cap on any financial penalty it awarded; this cap has now been abolished and no limit applies.

Disclaimer

This note reflects the law as at 22 April 2024. The circumstances of each case vary and this note should not be relied upon in place of specific legal advice. In particular, ECCTA is a lengthy, detailed and complex piece of legislation. This note provides a brief summary of the key provisions only.

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