



## BRIEFING FOR MPS ON ECONOMIC CRIME

Issued 1 December 2021

Text of ICAEW briefing for MPs on proposed economic crime reforms; notably Companies House reform, the Registration of Overseas Entities Bill, and Corporate Criminal Liability for failure to prevent economic crime.

Chartered Accountants are a force for tackling economic crime both domestically and internationally, with evidence that higher numbers of professional accountants in a country is linked with better scores in corruption indexes.

ICAEW works to equip Chartered Accountants with the knowledge to detect and report money laundering activity, and be a strong gatekeeper to the financial system.

We are strongly supportive of the government's proposed reforms to Companies House that will require verification of the identity of directors, and those forming companies, plus measures to improve the accuracy of information on the company registry. This could be the single biggest strike against money laundering, and the proposals should be enacted without delay.

The proposed register of overseas entities owning UK land may have some deterrent effect on the use of UK land for money laundering. However, serious criminals are likely to provide false information about the beneficial ownership of the properties they acquire. There would also be challenges in verification of the information provided, especially when it relates to entities in unfamiliar foreign jurisdictions. We would suggest that government first introduces verification of those forming UK companies (as part of Companies House reforms), and then reflects on the successes and challenges of this verification exercise before extending the regime to overseas entities.

Economic crime is a scourge on our society and we support additional measures to ensure that companies who perpetrate such crimes are held accountable for their actions. Given the very wide scope of economic crime it is important that any corporate criminal liability for failure to prevent economic crime is scoped and designed in an appropriate and workable way, and that victims are not penalised.

This briefing submitted on 1 December 2021 has been prepared by the ICAEW Trust and Ethics Department.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 157,800 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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## COMPANIES HOUSE REFORM

1. The proposed reforms to Companies House, referred to as 'Corporate Transparency and Register Reform' have three main aims, broadly to:
  - Strengthen the powers of Companies House to query and reject filings;
  - Increase the accuracy of the information on the company register;
  - Reduce the abuse of personal information that is held on the register.
2. Some of the headline proposals include:
  - Verification of identity of individuals forming companies and being appointed as directors;
  - Powers for Companies House to query and reject information over which it has concerns, or for entities assessed as high risk;
  - Option for individuals to have certain sensitive personal data suppressed on the register for example if they consider they are at risk of fraud or other harm; and an easier route to get false information about individuals and companies corrected or removed.

### Benefits of the reforms

3. The key benefits of the reforms fall under the following areas:
  - Enterprise – the Companies House register is used extensively by business, to research suppliers, competitors, and potential business partners. Having a reliable and up to date register means the value of the information to UK business is enhanced. Government estimate that the current economic value of the register is £3 billion per annum, so improvements to the register will boost its value further.
  - Economic Crime – the proposed reforms will tackle the use of UK companies to perpetrate fraud and wider economic crime.
  - National Security and anti-corruption – the reforms will help to tackle criminal and corrupt actors who use opaque companies to abuse the UK financial system and corporate framework.

### Accountancy sector views

4. An economic crime lead at a large accountancy firm described the proposed Companies House reforms as the 'single biggest strike against money laundering'.
5. ICAEW has said for many years that the ability of anyone to form a UK limited company (often in 10 minutes for £12) with no requirement to prove who they are is a huge gap in our country's money laundering defences. We strongly support the reforms that will close this loophole.
6. Increasing the accuracy and reliability of the information on the Companies House register will also provide greater comfort to accountants and other professionals over who they are seeking to do business with, reducing the risk of taking on clients involved in wrongdoing.
7. The accountancy sector is a victim of wide-ranging frauds related to the Companies House register:
  - Companies falsely claim to have had their accounts prepared by, or audited by, a firm of Chartered Accountants. These companies seek to misuse the good reputation of our firms to lend false credibility to their financial statements.
  - Companies are frequently set up using the registered office address of Chartered Accountancy firms without permission. This 'squatting' at our firms' addresses is done to strengthen the perception of trustworthiness of the company, and it often done by criminals looking to perpetrate fraud against investors or consumers.

8. At present it is very difficult for our firms to get this fraudulent information removed from the Companies House register, and often a court process is involved. There is a real risk to consumers of being misled by inaccurate and fraudulent information about a company's link to a Chartered Accountancy firm.

### **Challenges – progress and funding**

9. There has been extensive work done by government and Companies House themselves in recent years on the reforms that need to be made. It is crucial that momentum is not lost – due to other government priorities relating to EU withdrawal, covid, and Audit and Corporate Governance Reform there is a real danger that the much-needed reforms to Companies House will slip down the legislative agenda. There is a clear way forward in terms of the policies to achieve reform, but legislation must be brought to parliament before actions can be progressed.
10. There is also the question of funding: - comprehensive system upgrades will be needed at Companies House, and their resourcing needs/running costs need to increase substantially to enable Companies House to perform the envisaged wider role.
11. We are pleased to see that the recent spending review announced HM Treasury will provide BEIS with £63 million over the Spending Review period to support reform of Companies House. It is essential that this funding is delivered without delay.

### **REGISTRATION OF OVERSEAS ENTITIES**

12. The stated policy aim of the registration of overseas entities bill is to prevent and combat the use of land in the UK for the purpose of money laundering or investing illicit funds. We believe that the establishment of the proposed register may have some deterrent effect on these activities. We would caution however that serious criminals intent on using the UK property market for these purposes are likely to provide false information in relation to the beneficial ownership of the properties they acquire. There would be challenges in verification of the information provided, especially when it relates to ownership vehicles in unfamiliar foreign jurisdictions.
13. While the registration of overseas entities could form part of the UK's money laundering defences, we would suggest that government first introduces verification of those forming UK companies (as part of Companies House reforms), and then reflects on the successes and challenges of this verification exercise before extending the regime to overseas entities.
14. There is a risk that the proposed register would have a dampening effect on overseas investment into the UK property market. To minimise this, the registration process needs to be simple, efficient and low cost. We are concerned that the potential criminal sanctions proposed for administrative oversights may be too heavy handed.
15. Of concern to legitimate investors is the public disclosure element of the proposed register which could include a wide range of personal data. By way of just one example, many high net worth individuals that our members have advised are extremely concerned about personal security, both on their own behalf and also for family members. Law enforcement access to the register would be a proportionate use of the data, but we would query the both the necessity and the value in making the full details of such registers public.
16. There may be further clarity needed on which entities would become registrable on the proposed register. While the conditions are appropriate for UK entities, we question how easily these conditions can be transposed for some overseas entities with different ownership structures, and subject to different legislative systems. This may lead to uncertainty in foreign jurisdictions as to who should be registered, and clarifying guidance may be required for a number of types of overseas corporate vehicle.

**CORPORATE CRIMINAL LIABILITY FOR FAILURE TO PREVENT ECONOMIC CRIME**

17. Public trust in business has been damaged by corporate scandals in recent years. There is a perception that large companies and their personnel are not held accountable for their actions and that criminal law sanctions are more readily applied to private individuals than to those involved in a business capacity even where the conduct involved is of a similar nature. These perceptions risk not only damaging the reputation of business but also trust in the criminal justice system. We therefore support some additional measures to ensure that companies are held accountable for their actions, but it is important that these are scoped and designed in an appropriate and workable way.
18. 'Failure to prevent offences' are suited to specific offences so that specific prevention systems can be implemented. We note that the failure to prevent bribery and tax evasion measures have been successful in that they have increased the focus of corporates on having sufficient measures (eg, adequate procedures under the Bribery Act) in place to prevent these crimes. However, bribery and tax evasion are both relatively narrow offences compared to fraud and economic crime, and compliance has been fairly easy for most businesses.
19. Fraud is not limited to manipulation of statutory accounts – something which it may be foreseeable to prevent through adequate controls and procedures.
20. The wide-ranging nature of economic crime means that it may be entirely impractical for a business to be able to prevent the crime from taking place. For example, how will a bank prevent a customer from depositing dirty money into an account as a result of the customer becoming a money mule? While the bank can comply with applicable regulations on cash deposits (eg, client due diligence) and take action once suspicions of the criminal activity have been identified, it is hard to see how the bank could have prevented the economic crime in the first place. If failure to prevent all economic crime were to be included within corporate criminal liability, then further thought would be needed on how this would increase protection to society, and how the law would be capable of implementation on a practical basis.
21. Those businesses which are in the regulated sector for the Money Laundering Regulations (such as banks, accountants and lawyers) already have extensive obligations to mitigate the risk of their facilities being abused by third parties for economic crime, and to report knowledge or reasonable grounds for suspicion of such crimes. It could be considered whether this regime should be extended to other businesses which are not currently in the scope of the Money Laundering Regulations, albeit in a modified way. This would be a regulatory alternative to criminal liability.
22. If corporate criminal liability for failure to prevent economic crime were introduced, the scope would need to be set very carefully. Particular types of economic crime could be specified. These offences may not all be obvious 'economic crimes' as such but they are crimes that may result in the proceeds of crime (and so potential money laundering offences) eg:
  - offences in relation to wildlife;
  - environmental crimes (eg, developers damaging protected trees and other offences which are currently seen as part of the cost of doing business); and
  - modern slavery.

These are crimes where there is a public interest in ensuring that corporates are behaving in both a legal and responsible way, and where there would be justified public outrage if a company were not held accountable for conducting or enabling such activity.
23. For a company to be liable under the Bribery Act, it is a requirement that the person who commits the offence intends for the company to benefit. If the failure to prevent approach is extended to economic crime, it will be important that it applies only where the relevant company is a perpetrator (companies are often victims of economic crime, not perpetrators). In general, it would seem unjust that if a business fell victim to fraud, that it would also receive a penalty for having inadequate controls to prevent the fraud from taking place.

## ICAEW'S ROLE AS A REGULATOR

24. Chartered accountants are a force for tackling economic crime both domestically and internationally, with evidence that higher numbers of professional accountants in a country is linked with better scores in corruption indexes.
25. It is vital for regulated professions and organisations to be vigilant, understand who they are doing business with and report suspicious activities.
26. ICAEW is the largest accountancy professional body anti-money laundering supervisor in the UK, supervising around 11,000 firms.
27. We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct.
28. ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).
29. Our role is to:
  - **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
  - **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
  - **provide** robust anti-money laundering supervision and monitoring;
  - **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
  - **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
  - **respond** and comment on proposed changes to the law and regulation; and
  - **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

## ICAEW AND HMRC AML TRAINING FILM

30. ICAEW and HMRC have co-produced a new Anti-Money Laundering training film that will launch in January 2022.
31. All Too Familiar is a 16-minute high-quality drama film which explores the degree of trust still placed in personal and professional relationships and whether trust is enough in the fight against economic crime.
32. This educational film aims to challenge mindsets and provoke discussion on the need for greater professional scepticism when faced with potential money laundering risks.
33. Following the launch, the film will initially be made available to ICAEW member firms and HMRC supervised businesses. Then ICAEW and HMRC will license the film to other UK and international supervisory bodies.
34. All Too Familiar will be supplemented by training materials which allow firms/businesses to facilitate training sessions with their staff and enable viewers to examine the hypothetical situations in detail.
35. Through this collaboration, ICAEW and HMRC are working to reduce the likelihood of accountants effectively becoming enablers or facilitators as part of their professional role.

## FURTHER INFORMATION

36. As part of our Royal Charter, we have a duty to inform policy in the public interest.

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