

Legal Q&A

Nicola Rout answers your insolvency queries

Q What do I need to know about the Economic Crime (Transparency and Enforcement) Act 2022?

A The Economic Crime (Transparency and Enforcement) Act 2022 (ECCTA) introduced wide-ranging reforms to enhance the accessibility and transparency of corporate information held by Companies House, largely driven by the conflict in Ukraine and the rise in complex ownership structures. Such structures often involve international investment, which has led to an inability to ascertain the beneficial owners of companies or properties. These reforms include:

1. Widening the scope of Companies House's power, enabling it to request further information and reject filings. Companies House will now be 'an active gatekeeper' rather than acting as a passive post box. It will be able to levy financial penalties.
2. Protecting the personal information of directors and persons of significant control from public view.
3. Introducing identity verification for all directors, persons of significant control and registerable officers of relevant legal entities. It will be a criminal offence to act as a director unless their identity has been verified. The company that permitted the unverified director to act will be criminally liable.
4. Disqualification of directors with three or more breaches of company legislation, including non-compliance with filing obligations.

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5. Filings at Companies House can now only be done by a verified officer of the company or an authorised corporate service provider. False or misleading filings will be a criminal offence.
6. A company needs to have a registered email address designated for communications with Companies House, but it cannot be an info@-type address. IPs should ensure they have control of such addresses or see that they are changed upon appointment.
7. Statutory registers will be held at Companies House, which should make delivery up of records easier for IPs.
8. Companies with more than 250 employees, over £36 million of turnover or over £18 million in assets will become liable under a new offence of failure to prevent a fraud if the company is unable to prove that it took reasonable steps to prevent a fraud.

Q Are there any provisions of particular application to me if I have undertaken an appointment?

A The Information Sharing (Disclosure by the Registrar) Regulations 2024 came into force on 22 May 2024 and relate to the powers conferred in s1110F(1)(c) of the Companies Act 2006, which was inserted by section 94 of the ECCTA.

Section 1110F(1)(c) states that the registrar may disclose information to any person in connection with the exercise of the registrar's function, to a public authority in connection with the exercise of its function or to a person of a description and for a purpose specified in regulations made by the secretary of state.

The Information Sharing Regulations provide that the registrar may disclose information to anyone acting as an IP, including the Official Receiver. Information can be shared if it would assist with making an application to court in respect of:

1. Fraudulent trading
2. Wrongful trading
3. Adjustment of withdrawals
4. Transactions at an undervalue
5. Preferences
6. Extortionate credit transactions

There are other additional provisions under Scottish insolvency law.

The registrar may disclose any information to an IP if the registrar is satisfied that it is necessary to help an IP trace, realise or recover property in judicial or administrative proceedings relating to insolvency law where the assets of a debtor are subject to court supervision or control for the purposes of a reorganisation or liquidation.

This section will override other powers introduced by the ECCTA to protect personal information, and is designed to strengthen the transparency and integrity of the registers held at Companies House. It further demonstrates a commitment to the prevention of unlawful activities, in particular economic crime.

It will also assist in any investigation into the directors of the insolvent company and enable the IP to ascertain whether there are claims to be made. This perhaps points to a new willingness by Companies House to become more engaged in legal proceedings and enables IPs to exercise their powers of investigation, making claims against directors easier to pursue.

At the time of writing, it is unclear as to how information requests will be made to the registrar and whether there will be a prescribed process.



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