

What brand owners should know about the Economic Crime and Corporate Transparency Act 2023

The Economic Crime and Corporate Transparency Act 2023 (“ECCTA”), which received Royal Assent on 26 October 2023 and is coming into force in phases, is an ambitious piece of reforming legislation aimed at preventing the abuse of corporate structures and tackling economic crime. It amends the Companies Act 2006 (“CA”) and other related legislation as well as introducing new standalone provisions.

The reforms introduced by the ECCTA largely fall into two broad, complementary categories:

1. Expanded requirements and potential liability for companies and directors
2. Increased gatekeeping, investigative and enforcement powers for Companies House

For brand owners, the new provisions offer a welcome strengthening of the protections against fraud, minimising the opportunities for individuals to set up fraudulent companies using an identical or similar name to that of an existing business.

In this article, we highlight some of the key changes and their potential benefits.

ID verification for directors

The ECCTA introduces a requirement for directors, people with significant control and those acting on behalf of a company to verify their identity. This will be rolled out in two phases.

From autumn 2025, all new directors and people with significant control will need to verify their identity, and existing directors and people with significant control will have a 12-month transition period to do so. From spring 2026, those acting on behalf of a company will have to verify their identity before being able to file information with Companies House.

Under the new section 167M of the CA, an individual acting as a director without ID verification will commit an offence and be liable to a fine, as will any company (and its officers in default) who fails to ensure its directors have verified their identities.

This change will make it harder for individuals to set up a company anonymously, using a fictitious identity, or using someone else’s identity. It is also intended to make it harder for people to hide their company control through nominees or opaque corporate structures.

Appropriate registered email address

Under the new section 88A of the CA, and from 4 March 2024, all companies will need to provide an ‘appropriate email address’ to Companies House. This will not be made public. An email address is an ‘appropriate email address’ if, in the ordinary course of events, emails sent to it by the registrar would be expected to come to the attention of a person acting on behalf of the company.

Companies (and their officers in default) will commit an offence and be liable to a fine if they fail to maintain such an address without reasonable excuse.



Appropriate registered office address

Under the newly substituted section 86 of the CA, and from 4 March 2024, all companies must have an 'appropriate address' as their registered office.

An address is an "appropriate address" if, in the ordinary course of events –

- (a) a document addressed to the company, and delivered there by hand or by post, would be expected to come to the attention of a person acting on behalf of the company, and
- (b) the delivery of documents there is capable of being recorded by the obtaining of an acknowledgement of delivery.

If a company fails to comply without reasonable excuse, the company (and its officers in default) will have committed an offence and be liable to a fine. Under the new section 1097A, the Secretary of State can also authorise or require the registrar to change a company's registered address if satisfied it is not an 'appropriate address'.

The intention behind these provisions was to ensure that companies do not use PO boxes for their registered office addresses, and to prevent innocent parties having their addresses misappropriated by companies. These provisions should also assist brand owners looking to contact companies in relation to potential or actual disputes.

Statement as to lawful purposes

Under an amended section 9 and a new section 853BA of the CA, and from 4 March 2024, a statement must be made:

- a) By the subscribers of a company, on application for incorporation, that they wish to form the company for lawful purposes; and
- b) By the company, alongside its annual confirmation statement, that its intended future activities are lawful.

These requirements are intended to emphasise to companies the lack of tolerance for unlawful activities and the fact that action will be taken against them if they are found to be conducting such activities.



Company names

There were already a number of prohibitions on company names in place, such as where a name is the same as or 'too like' another company name. The ECCTA has expanded these prohibitions – for example, they now include circumstances such as where a name suggests a connection with a foreign government or where it includes computer code.

Most relevant to this article, however, is the new section 53A. This provides that a company cannot be registered by a name if, in the opinion of the Secretary of State, registration by that name is intended to facilitate –

- (a) the commission of an offence involving dishonesty or deception, or
- (b) the carrying out of conduct that, if carried out in any part of the United Kingdom, would amount to such an offence.

Under the new section 76A, it is possible for the Secretary of State to direct a company to change its name where the name has been used or is intended to be used in this way. A company and its officers in default will commit an offence and be liable for a fine if they do not comply with this direction, and the new section 76D also allows the registrar to intervene to change the company's name in such circumstances.

When working with brand owners who have identified company names of concern, the usual process is to i) write to the company in the first instance, ii) liaise with Companies House, iii) go to the Company Names Tribunal (discussed below). These new provisions allow Companies House to intervene in cases of fraud where it could not previously, potentially reducing the need for brand owners to take further legal action against, for example, companies set up in a similar name for the purposes of counterfeiting their products.

The ECCTA also impacts upon the Company Names Tribunal ("CNT") which, under section 69 of the CA, adjudicates on objections made by applicants to registered company names, where the name is –

- a) the same as an existing name in which the applicant has goodwill, or
- b) sufficiently similar to that name that its use is likely to mislead members of the public by suggesting a connection between the company and the applicant.

This CNT is intended for dealing specifically with 'opportunistic' registrations, i.e. those which have been made in order to prevent another person registering the name entirely or to extract money from a person seeking to use the name.

The ECCTA amends section 69 of the CA so that:

- a) the CNT can consider use of a similar name both inside and outside of the UK, rather than just inside the UK, where the public outside of the UK would be likely to be misled;
- b) members or directors of the registered company at the time of registration can be joined as respondents; and
- c) respondents can no longer use the defences that they (i) are operating under the name, (ii) are proposing to do so and have incurred substantial start-up costs in preparation, or (iii) were operating under the name and are now dormant.

These changes in scope ensure that brand owners with goodwill in a name have greater recourse against opportunistic company registrations, particularly given the narrowing of the defences available to respondents.



Other expanded powers for Companies House

The ECCTA introduces a raft of new powers for Companies House. These are intended to fundamentally change its role from a passive recipient of information to a more active gatekeeper over company creation and custodian of more reliable data.

Companies House will be able to reject documents on the basis of inconsistencies, require inconsistencies to be resolved, and annotate/remove material from the register.

The new section 1002A allows the registrar to strike off a company if it has reasonable cause to believe any information contained in the application for registration is materially misleading, false or deceptive.

The registrar has also been empowered in relation to investigation and information-sharing. The new section 1062A allows it to analyse information on the register and information received from external sources for the purposes of crime detection and prevention.

The new sections 1110E to 1110G give any person the right to disclose information to the registrar to enable it to exercise its functions, and the registrar can make the same disclosures to any person or public authority.

Significantly, the Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024, made under the new section 1132A, allow the registrar to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to a relevant offence under the CA. The scope of 'relevant offences' includes all those listed in this article.

The sum effect of these enhanced powers is to minimise the extent to which companies can be used to carry out unlawful activities through increased scrutiny, enhanced information-sharing and the swift imposition of penalties. These changes herald increased collaboration between brand owners, Companies House and law enforcement in matters of fraud.

