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RE: Clarifications from Economic Crime and Corporate Transparency Bill Public Bill Committee, Day 5, Thursday 17th November

Dear Seema,

Following the Public Bill Committee session of the Economic Crime and Corporate Transparency Bill on 17th November, I would like to follow up with more detail on areas which we had discussed and on which I committed to provide further information.

i. New clause 30

You have asked me to expand on the provisions concerning bankruptcy and general partners who are legal entities, and whether new clause 30 allows for loopholes.

First, it may be helpful to clarify that the Government has tabled an amendment to the Bill (95) which inserts new provisions into the Limited Partnership Act 1907 which prescribe that a limited partnership is dissolved if (a) it ceases to have any general partners, (b) it ceases to have any limited partners, or (c) each general partner is either insolvent or disqualified under the directors disqualification legislation, irrespective of whether they became insolvent or disqualified before or after the Bill's amendments come into force.

Moving onto new clause 30, this provides that where a limited partnership is dissolved and has at least one general partner, the general partner must notify the registrar of a dissolution or be liable to an offence. That is regardless of whether the general partner is solvent: a general partner who is insolvent is nevertheless responsible for informing the registrar of the limited partnership's dissolution.

In terms of general partners who are legal entities, the same rule applies. For example, if the sole general partner is a company which becomes insolvent, that company is still responsible for making the notification of dissolution to the registrar.

For completeness, where there are no general partners – for example because they are all natural persons who have died – the limited partners are responsible for notifying the registrar. They are similarly subject to a criminal offence for failure to make the notification, and the notification must be made regardless of whether the limited partner is solvent or insolvent. This is true whether the limited partner is a natural person or a corporate.

ii. Clause 120: mental disorder of a limited partner

During the debate of clause 120, you mentioned Professor Elspeth Berry's written evidence, highlighting that clause 120 appears to render the mental health disorder of a limited partner as a ground for the limited partnership's dissolution.

This is intended to be a simple change in terminology to make the legislation fit for the modern age. The Partnership Act 1890 already provides that "the Court may decree a dissolution of the partnership" in such cases on application by a partner. It is important to note that the Court has discretion in such cases; it is highly unlikely that a Court would dissolve the partnership if a partner suffered from a mental illness but was nevertheless able to carry out their responsibilities.

iii. Amendment 165

When debating amendment 165, you raised that all information about partnership dissolution should be shown on the companies register, so that innocent third parties can access it.

As you are aware, the Gazette is the official public record and is available to everyone to search, including third parties that have made a contract with a limited partnership. When the registrar uses the "confirmation-of-dissolution" power in new section 18 of the 1907 Act (introduced by clause 125) the way the dissolution of the limited partnership is confirmed is by publication of a dissolution notice in the Gazette. And where the registrar receives a valid deregistration application under new section 25 of the 1907 Act (introduced by clause 127) the registrar must publish a deregistration notice in the Gazette. The registrar will also annotate a limited partnership's record when it is dissolved and/or deregistered. I am concerned that requiring Companies House to also publish notices of dissolution or deregistration on their website might be duplicative and possibly confusing. However, I appreciate the intention is to ensure that information is easily accessible and will further consider the proposal that you have set out.

iv. Clause 127: voluntary de-registration of LPs

In your remarks on clause 127, you mentioned that the clause enables partnerships to apply to be de-registered. You then queried whether this gives an opportunity to partnerships who have been involved in economic crime to avoid investigation.

Clause 127 would allow a limited partnership to deregister if all of the partners in the partnership – including the limited partners – agree to do so. This will not give the opportunity to avoid investigation. Limited partnerships in England and Wales, and in Northern Ireland, are not legally separate to their partners. So it would be the individuals, rather than the partnership itself, that law enforcers would investigate. The registrar would still have access to the limited partnership's records after it was dissolved and would be able to make them accessible to law enforcers.

This would also be true in Scotland, where limited partnerships have separate legal personality. Any relevant records pertaining to the limited partnership would still be on record and available to law enforcers.

v. Extending investigation provisions in Part 14 of the Companies Act 1985 to Limited Partnerships

I have asked my officials to explore which provisions of Part 14 of the Companies Act 1985 might be applied or adapted to limited partnerships so that I can consider this more fully.

It is worth emphasising the importance of the flexibility that clause 131 of the Bill provides in this context, which inserts a new section 7A into the Limited Partnerships Act 1907 which allows the Secretary of State to make regulations which make provision in relation to limited partnerships that corresponds or is similar to any provision relating to companies – such as s.447 of the 1985 Act.

vi. Clarification over regulation-making procedures

You asked for clarification of the regulation-making procedures in clauses 131 and 133. In relation to the s.7A regulation-making power, the general rule is that they are subject to the affirmative procedure – see s.7A(5). But regulations under s.7A are subject to the negative resolution procedure if they only make provision that corresponds or is similar to company law provision which is made, or capable of being, made by regulations subject to the negative resolution procedure.

Turning to clause 133, this is a general provision which does three things. First, it provides that any regulation-making power in the Limited Partnership Act 1907 includes power to make consequential etc provision. Second, it defines the terms "affirmative" and "negative" resolution procedure, as those terms appear in the specific powers set out in the Act. Third, it provides that any provision that may be made by regulations under the Act which are subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure. This avoids the need for separate SIs.

vii. Register of Overseas Entities

The Government was asked several questions about the Register of Overseas Entities, including comments on the pace of the legislation that established it, the number of registrations and Companies House staffing levels for the Register.

Legislative scrutiny

Whilst it is true that the expedited Bill provided little time to debate the provisions, the draft Registration of Overseas Entities was thoroughly scrutinised in 2019 by a Joint Ad-Hoc Committee, and one of those who sat on that Committee is a member of this Bill Committee. The Government accepted most of the Committee's recommendations and ensured that the draft Bill was amended prior to introduction in February to reflect this.

Verification and managing officers

You asked how the Government plans to deal with companies whose beneficial ownership cannot be verified and for a definition of a managing officer. Section 44 (interpretation) of the Economic Crime (Transparency and Enforcement) Act 2022 states that "managing officer" in relation to an overseas entity, includes a director, manager, or secretary. The Government considers it should be possible for all overseas entities to have their beneficial ownership verified and to support this, Companies House has recently published a list of registered verifiers on gov.uk. If overseas entities are not already in contact with a potential verifier, they should be urgently seeking advice from an appropriate UK AML supervised professional. If overseas entities are experiencing particular practical difficulties with having their beneficial ownership verified, they should discuss this with Companies House as a matter of urgency.

Level of registrations

You asked about the current level of registrations. The ECTE Act contained a six month transition period to reflect the fact that we expected it would take overseas entities time to register given both the complexity of the requirements and the need to reach a large number of entities based overseas. The requirements are rightly complex, including those relating to the verification of information as they were designed to ensure a robust register – very much in line with Parliament's expectations. In more detail, key factors contributing to the current level of registrations include:

- The requirements are complex, and overseas entities must, among other things, send notices to those they believe are their beneficial owners, and are required to give the recipients a maximum of month to reply; some entities will therefore still be collecting the required information.
- Evidence suggests that some agents are preparing applications in batches, and taking the time to collect all of the required information for each application before submitting any of them.
- There are potential tax implications given the requirement to provide details about associated trusts, and entities may be seeking advice before registering.

- As you noted, some service addresses provided to HM Land Registry have not been kept up to date by overseas entities, such that some entities may not yet have received notifications about the register.
- Some overseas entities have been dissolved, but the land is still registered to them.
- There has been a higher than usual rejection rate for applications for registration, as verifiers are still familiarising themselves with the registration process and requirements.

Despite these factors, the rate of registrations is increasing as awareness spreads. Companies House, HM Land Registry and Government officials are taking a number of actions, and are utilising all available channels, to further raise awareness and encourage early compliance. These include:

- Companies House and HM Land Registry have done a lot of work to ensure they have the correct addresses for overseas entities, including by undertaking research to identify alternative addresses for overseas entities that are yet to register.
- Companies House is working with stakeholders to raise awareness of the requirements and the deadline and to ensure we can reach as many overseas based entities as possible. This includes working with professional body supervisors, industry fora as well as foreign company registries, regulators and governments, who have signalled willingness to help to raise awareness.
- To ensure all overseas entities are aware of the timeframes, Companies House is preparing a second notice letter for overseas entities in scope of the transitional period that have not yet registered.
- Companies House have contacted all verifiers to provide advice on the top reasons for rejected applications for registration, to speed up the process.
- Companies House has contacted all verifiers to ask if they are willing to be on a published list on gov.uk, which will make it easier for overseas entities to find a verifier. The list is expected to grow in the coming weeks.

Companies House resources and enforcement

You also asked about Companies House resources. The rate of registrations has picked up in recent weeks, and there is currently no backlog. Companies House has vast experience of dealing with large volumes of filings, and are not yet working at capacity on applications to the register of overseas entities. There are 8 staff currently working exclusively on registrations. There are an additional 20 staff who are fully trained and offer flexible support according to workload.

You asked how Companies House will enforce non-compliance. Companies House will continue to encourage compliance before the end of the transitional period. HM Land Registry have placed restrictions over all titles held by overseas entities in scope of the register. Companies House will therefore be able to compare registrations against this list after the end of the transitional period. The effect of the failure to register in time is that the restrictions over titles will “bite”, such that the overseas entity will be unable to deal freely with their land. This is a severe and novel sanction and provides a strong deterrent against non-compliance. Overseas

entities will also be unable to register new transactions with the land registries without an overseas entity ID number.

Where enforcement action is required, Companies House will work with law enforcement partners to effectively prioritise investigations. This could result in civil financial penalties being imposed, ultimately leading to a charge being enforced against property owned by the overseas entity if unpaid, or criminal prosecution through the courts.

I look forward to continuing to engage with you and all members of the Public Bill Committee as this Bill is scrutinised. I am sending a copy of this letter to all members of the Public Bill Committee.

Yours ever,

Kevin Hollinrake MP
Minister for Enterprise, Markets and Small Business