The City of London Law Society

The Law Society

Economic Crime and Corporate Transparency Bill 2022

7 October 2022

Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society** and, together with the CLLS, the **Committees**). The members of the Joint Working Party are set out in the Appendix to this note.

2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to company law and partnership law.

5. We have prepared this paper with a degree of urgency with a view to contributing to debate and discussion of the Bill as it enters Committee stage, and our comments should be seen in that context. We look forward to continuing to contribute to that discussion as the Bill continues to make its way through Parliament.

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Our comments

Background

6. The Committees welcome the introduction of the Economic Crime and Corporate Transparency Bill 2022 (the **Bill**) into Parliament. We support the Government's ongoing commitment to tackling economic crime, preventing the misuse and abuse of limited partnerships and corporate structures and increasing the integrity of the registers maintained by the Registrars of Companies (collectively, the **Registrar**).

7. In particular, we support measures to enhance the Registrar's powers to query, correct and remove information on the various public registers for which they are responsible. The Registrar's current powers are limited, often meaning that simple corrections to filings that have been made in good faith but which are incorrect are not possible without a court order, which in turn can cause difficulties, expense and administrative burdens for businesses.

8. We welcome the opportunity to engage with the Government on the drafting and passage of the Bill. We are conscious that the Government is not consulting formally on the Bill, but we hope our comments in this paper will help the Government consider the issues arising from some of the proposals and serve to improve or clarify certain points in the draft legislation.

9. We have grouped our comments below on the Bill by topic. However, we would note that the topics and issues outlined below span various pieces of legislation, including the Companies Act 2006, the Limited Partnerships Act 1907 and the Economic Crime (Transparency and Enforcement) Act 2022. We have sought to explain the relevance of our comments to all three pieces of legislation, but, where we have not done so, our comments on one piece of legislation are likely to apply equally to other legislation where similar changes are proposed.

10. For ease, we have set out below the topics covered by this paper and the specific aspects of each that form the basis of our comments. Whilst we wish to reiterate the importance of all these points, we would place particular emphasis on certain critical points, which we have indicated in **bold text** in the table below and highlighted in yellow in the title sub-divisions of this paper.

Topic	**Aspects covered in this paper**
Company names	Names containing computer code Anti-phoenix provisions Power to change wrongly-registered name
Individuals and their identity	Requirement to include forename and surname of members Disclosure and use of information on members **Process of identity verification** **Scope of purpose of reverification** Power to suspend an individual's verified status **Prohibition on individual acting as a director unless verified** **Prohibition on acting as a director unless notified**
Authorised corporate service providers	Who can qualify as an ACSP Power to suspend an ASCP's authorisation
Delivery to the Registrar	Delivery by disqualified persons
Power to correct the register	**Scope of the proposed new Registrar's power** **Power to remove material that has legal consequences** **Power to reject documents due to discrepancies**
Disclosure of information	**The scope of the proposed Registrar's power to disclose**
Limited partnerships	**Requirement for a registered office in the UK** **Requirement to notify new general partners** **Automatic dissolution where no general partners** Requirement for limited partners to provide service address Requirement to give notice of dissolution Proposed duties of (and offences by) limited partners Continuing registration following dissolution Requirement to produce accounts to HMRC Publication in the Gazette Power to apply company law to limited partnerships
Register of Overseas Entities	**Amendments to Schedule 4A to the Land Registration Act 2002**

11. We have considered the following general themes in preparing this response:

- **Proportionality**: achieving the objectives of the Bill whilst avoiding imposing a disproportionate burden or risk of criminal liability on persons who take reasonable measures to comply.
- **Clarity and certainty**: ensuring the law is easy to understand, particularly for small businesses that may not have access to specialist company lawyers, and that it is not ambiguous or open to misinterpretation.

- **The UK as a destination for business**: seeking to avoid legitimate businesses being deterred from the UK or choosing to incorporate their entities in another jurisdiction.

12. The Bill deals primarily with companies and limited partnerships. We assume that, where the Bill proposes to make changes to company law, the Government may intend (through secondary legislation) to apply similar changes to the framework for limited liability partnerships (LLPs) and unregistered companies (as defined in regulation 2(a) of the Unregistered Companies Regulations 2009 (SI 2009/2436)). We welcome the opportunity to engage with the Government on any such secondary legislation in due course.

13. Parts 4 and 5 of, and Schedules 6, 7 and 8 to, the Bill fall outside the scope of the Joint Working Party's review and, accordingly, we have not commented on those parts of the Bill.

14. Our comments in this paper are limited to the Bill as it would apply in England and Wales.

15. As a general and overarching comment, we note that most of the changes the Bill seeks to make would significantly expand the role, authority and responsibilities of the Registrar and their team, in line with the Government's previously indicated objectives. We welcome this additional flexibility and the commitment in the Autumn 2021 Budget to increase investment in Companies House, as we consider adequate resourcing will be key to the success of these reforms.

16. We also note that, in many places, the Bill would provide the Secretary of State with power to prescribe further detail by way of secondary legislation. In some cases, the Secretary of State would have power to sub-delegate authority to the Registrar. Whilst we do not oppose the use of secondary legislation (and, indeed, believe it is useful and efficient when used properly), we are concerned to ensure that legislation made in this way receives the same level of scrutiny and debate as primary legislation. Ultimately, we are concerned to ensure that any new legislation within or resulting from the Bill is of the highest quality.

17. In this paper, unless specified otherwise, references to **sections** are to sections (or proposed new sections) of the Companies Act 2006, and references to **clauses** are to clauses of the Bill.

18. In this paper, we use the following additional defined terms:

ACSP: authorised corporate service provider

CA 2006: the Companies Act 2006

ECTEA: the Economic Crime (Transparency and Enforcement) Act 2022

Explanatory Notes: the explanatory notes to the Bill

HMRC: His Majesty's Revenue and Customs

LPA 1907: the Limited Partnerships Act 1907

MLR: the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692)

PSC Regs: the Register of People with Significant Control Regulations 2016 (SI 2016/339)

RLE: relevant legal entity

ROE Verification Regs: the Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (SI 2022/725)

Company names

Names containing computer code

19. Clause 11(2) would insert a new section 57A prohibiting a company from being registered under a name that contains "computer code". The Bill does not define "computer code". This may create uncertainty over whether a proposed name complies with the new provisions.

20. **We recommend that the Government produce guidance on the meaning of "computer code"**. This guidance could be given a statutory footing (as with guidance under section 9 of the Bribery Act 2010 or under paragraph 24(1) of Schedule 1A to the CA 2006). In particular, we recommend that any such guidance clarify that commonly used URL suffixes (such as ".com" and ".co.uk") will be acceptable under the new provisions.

21. Clause 19(3) would insert a new section 76C giving the Registrar the power to change a name which, in their opinion, contains computer code.

22. Under other provisions concerning prohibited names, the Registrar would first need to issue a direction to the company to change its name. Only if the company failed to comply with the direction would the Registrar be able to determine a new name (under new section 76D, to be inserted by clause 20). Moreover, in those cases, the company would have a statutory right to challenge the Registrar's direction. (See, for example, new sections 76A(5) and 76B(5).)

23. These provisions do not appear in section 76C. As a result, subject to any applicable principles of administrative law, the Registrar would appear to be able to exercise the power in section 76C in their absolute discretion without prior notice to the company concerned.[1] This may be because the Government feels that the menace sections 57A and 76C are designed to address (malicious infection of IT systems) requires the Registrar to act quickly. However, as drafted, the Bill provides no right of appeal for a company affected by a decision under section 76C.

24. **We recommend that section 76C be amended to include a right of appeal by a company**, with the effect that, if successful, the company's name would remain unchanged and would be regarded as never having been changed. We have included suggested wording in Schedule 1.

Anti-phoenix provisions

25. Clause 13(2) would insert a new section 57C prohibiting the re-registration or incorporation of a company (a **second company**) under a name that is the same as or similar to a name which the Registrar has directed another company (the **first company**) to change. The clear and sensible purpose of this is to prevent persons from circumventing restrictions or name-change directions by incorporating a new company or utilising an existing company ("phoenixing").

26. The prohibition applies only if a person has, or has had, a "relevant relationship" with the two companies. Section 57C(4) defines this as being an officer, member or former member of the companies. We make three comments on this concept.

27. As sections 57C(1)(a) and (b) are drafted, the reference to "both companies" might be read as requiring the person in question to have the *same* relevant relationship with each company (e.g. to be a director of both, or a member of both). We assume this is not the intention and that the prohibition should apply where a person is (say) a director of one company and a member of the other. To clarify this, **we recommend replacing the words "both companies" in each place in section 57C with the words "each company"**.

28. Section 57C(4)(b) refers to "member" and "former member", but section 57C(4)(a) refers only to "officer" and not "former officer". We are not sure why this is. In relation to the similar new section 1198B, the Explanatory Notes explain (at paragraph 181) that these concepts are to extend to former officers and former members. We assume the same position is to apply to section 57C.

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[1] This is acknowledged by proposed section 76C(3), which states that a direction to the company to change its name lapses if the Registrar makes a determination under section 76C(1).

Given the words "or has had" in sections 57C(1)(a) and (b) would capture former relevant relationships, **we recommend deleting the words "or former member" in section 57C(4)(b)**, which appear to be redundant. This would align section 57C with the intention set out in the Explanatory Notes.

29. Section 57C(4)(b) refers only to members. This refers to persons stated (or formerly stated) in the company's register of members. It would seem possible for a person (**X**) to circumvent this restriction by exercising control or influence over the second company indirectly in some way. This might include by:

- interposing a legal vehicle between X and the second company;
- arranging for one or more other persons to hold the shares in the second company as nominee for X; and/or
- arranging for one or more other persons to be appointed as directors of the second company and to take instructions from X.

In each case, this would appear to break the link required to establish a "relevant relationship" (subject to X being deemed a shadow director).

30. To address this, the Government may wish to consider:

- extending section 57C(4) to persons with significant control and RLEs[2]; and
- clarifying that section 57C(4)(a) extends to shadow directors.

31. We have included suggested wording for the three points above in Schedule 2.

32. Our comments apply also to clause 26, which would insert a new section 1198B to create a similar prohibition in relation to the name under which a company carries on business in the UK.

Power to change wrongly-registered name

33. Clause 18(2) would insert a new section 76B giving the Secretary of State the power to direct a company to change its name in certain circumstances. These include where the Secretary of State *had grounds* for forming the view that the company's name was offensive (section 53(b)) or suggested a connection with a foreign government (new section 56A) when the name was registered but *did not in fact* form that view at that time.

34. We support a power for the Secretary of State to uphold the integrity of the register by removing offensive and misleading names. However, this must also recognise that a company may have acquired a name legitimately and in good faith, relied on the Registrar accepting and registering that name, and subsequently built up goodwill in that name over time.

35. We query whether it is right for the Secretary of State to revisit a decision that should have been made on registration, particularly with no deadline for doing so. We draw particular attention to the grounds in sections 53(b) and 56A, which are subjective and susceptible to change over time. (What might be considered offensive some time after a company's name is registered may not have been offensive at the time of registration.)

36. We recognise that section 76B(5) provides a right of appeal against a direction by the Secretary of State. However, the potential for a direction at any time creates uncertainty for companies and a risk that their goodwill may be damaged. **We therefore recommend imposing a limitation period on the Secretary of State's power in section 76B**.

37. In addition, as drafted, it seems that section 76B could be used to direct the change of a name that was registered before the power existed. Again, we query whether this is appropriate,

[2] We deliberately refer to PSCs and RLEs, rather than registrable persons and registrable RLEs.

particularly for persons who applied to register a company name (and whose application was accepted) with no expectation of such a power being created. **We therefore recommend applying this power only to names registered after section 76B comes into effect**.

38. These changes could be achieved by inserting the following as a new subsection (2) in section 76B (and renumbering existing subsection (2) and the following subsections):

> (2) The Secretary of State may not make a direction under subsection (1)(b)—
>
> (a) after the end of the period of [*period*] beginning with the date on which the name was registered, or
>
> (b) in relation to a name that was registered by the registrar before the date on which subsection (1)(b) comes into force.

Individuals and their identity

Names of individuals who are members

39. Clause 44(3) would insert a new section 113(6A) requiring a company to include in its register of members the forename and surname of a member who is an individual.

40. We appreciate that the purpose of this amendment is to enhance transparency of a company's members by requiring a full name. However, a company may not always have this information available to it, particularly if its shares are publicly traded and it is not permitted to restrict a transfer of those shares. A company in this situation risks committing a criminal offence (section 113(7)), despite not having been able to obtain the relevant information.

41. **We recommend including an exception to the offence where a company takes reasonable steps to obtain the full name of a member who is an individual**. This could be achieved by introducing a new subsection (8) as follows (and re-numbering existing subsection (8)):

> (8) But no offence is committed solely by reason of a company not including both the forename and the surname of a member who is an individual if—
>
> (a) the company has taken reasonable steps to obtain the forename and the surname of that individual, and
>
> (b) there is entered in the company's register of members in relation to that individual such information about their name as the company has obtained.

Disclosure and use of information on members

42. Clause 47(6) would insert a new section 120A giving the Secretary of State power to introduce restrictions on the disclosure and use of certain information contained in a company's register of members or index of members' names.

43. At this stage, it is not clear to what information these restrictions are likely to apply. Currently, the only information to be included in a company's register of members is a member's name and address (which the CA 2006 does not expressly require to be a residential address) and the date on which a person became or ceased to be a member (section 113). The Bill would not change this in any material respect.

44. None of this information appears to us to be particularly sensitive or to fall within the categories of information the disclosure or use of which would normally be restricted (e.g. date of birth information or residential address). Furthermore, a company can restrict access to its register of members where an applicant for inspection does not have a "proper purpose".

45. We do, however, note that clause 45 would insert a new section 113A giving the Secretary of

State power to change the information to be set out in a company's register of members, and that this power could, in theory, be used to extend section 113 to date of birth information and/or a residential address.

46. We would welcome the opportunity to engage with the Government on the content and drafting of any regulations to be made under section 113A and/or 120A in due course.

Identity verification

47. Clause 62(4) would introduce mandatory identity verification for company directors and (through direction by the Registrar) registrable persons and relevant officers of registrable RLEs.

48. We fully support new requirements for identity verification as a means of enhancing the integrity of the register and addressing economic crime.

49. The Bill would provide two mechanisms for verification.[3] In both cases, verification would be carried out under a procedure specified in regulations under section 1110B(1). Given the importance of the content of those regulations, we would welcome the opportunity to engage with the Government on that draft legislation.

50. At this stage, we simply note that the verification procedure should be clear, simple, quick and achievable in practice. Companies and their advisers need to be confident that they can navigate the procedure efficiently. The ability to verify individuals quickly, including those from overseas, will be particularly important, given that an individual will commit an offence if they act as a director without being verified (even with our suggestion below of allowing a short "grace period").

51. Finally, we assume that, once an individual has been verified (and assuming no requirement for reverification has arisen (see our comments below), they will not need to be verified again if they are appointed a director of a company, become a registrable person in relation to a company or are admitted as a general partner of a limited partnership. This appears to us to be the effect of the Bill. (See, for example, clause 66, which would amend section 1082 to create unique identifiers for verified individuals.)

52. However, if this is not the case, we would recommend that the Government consider this carefully, as repeat verification of an individual on each appointment as a director, notification as a registrable person and/or admission as a general partner would appear unnecessary and would be burdensome for individuals, businesses and the Registrar.

Reverification

53. Under section 1110B(1), the Secretary of State would be able, through regulations, to impose requirements for "reverification". The Bill and Explanatory Notes provide no information on when reverification would need to be carried out or what information would need to be reverified. We would welcome further clarity and the opportunity to engage with the Government on the drafting of any secondary legislation at the appropriate time.

Suspension of verified status

54. Section 1110A(4) would give the Secretary of State power to specify circumstances in which someone ceases to be an individual whose identity is verified (a **verified individual**). This includes where the person's identity has not been reverified when required (section 1110A(5)(b)). Section 1110A(5)(a) allows the Secretary of State to sub-delegate decisions to the Registrar.

55. We are concerned that this will introduce uncertainty for verified individuals. In particular, a key consequence of an individual ceasing to be verified would be that they may not lawfully act as a director of a UK company. In some cases, this might result in the termination of a director's office and employment and potentially impact their livelihood. It would also impose on a company the burden of needing to find a replacement director, potentially in short order.

[3] Verification by the Registrar (section 1110A(1)(a)) and verification by an ACSP (section 1110A(1)(b)).

56. Our comments on this power should be read alongside our comments on reverification generally (see above). Whilst we agree that a person whose identity has not been reverified when required should cease to be considered verified, we do not see any compelling argument for the Secretary of State to specify other grounds on which an individual ceases to be verified. If there are to be any other grounds, they should be set out in the CA 2006 itself.

57. **We therefore recommend that the Secretary of State's power to provide for an individual's identity to cease to be verified be limited to circumstances where the individual's identity has not been reverified when required**.

58. We have included suggested wording to this effect in Schedule 3.

Prohibition on an individual acting as a director unless verified

59. Clause 39 would insert a new section 167M prohibiting an individual from acting as a director of a company unless their identity has been verified. As section 167M(6) recognises, this would not actually prevent an unverified individual from being appointed as a director. However, it would be a criminal offence for an unverified individual to act as a director. In practice, therefore, an individual's identity will need to be verified before they can be appointed as a director.

60. However, there may be circumstances where a company needs to appoint a director urgently and there is insufficient time to complete identity verification before doing so. For example, a casual vacancy might arise on a company's board (e.g. by the unexpected resignation or the death of a director), leaving the company effectively rudderless if it has no directors or insufficient directors to hold board meetings. This could prove particularly critical for a company that is facing potential solvency difficulties and needs to take decisions quickly.

61. **We therefore recommend that the legislation allow an unverified individual to be appointed and act as a director, provided that identity verification is subsequently completed within a prescribed period of time**. As the process of identity verification should be relatively straightforward, we do not envisage that a long period of time would be needed.

62. This could be addressed by amending new sections 167M(1)(a) and (2)(a) as follows:

(1) An individual must not act as a director of a company unless—

(a) the individual's identity is verified before the expiry of the period of [*period*] beginning with the date on which the individual was appointed as a director of the company (see section 1110A), or

(b) the individual falls within any exemption that may be specified in regulations made by the Secretary of State for the purposes of this paragraph.

(2) A company must ensure that an individual does not act as a director unless—

(c) the individual's identity is verified before the expiry of the period of [*period*] beginning with the date on which the individual was appointed as a director of the company (see section 1110A), or

(d) the individual falls within any exemption that may be specified in regulations made by the Secretary of State for the purposes of this paragraph.

63. We do not consider that any change need be made to new section 167G, as it should be possible to complete verification of the individual's identity within the 14-day period for delivering notice of the appointment to the Registrar.

Prohibition on acting as a director unless notified

64. Clause 40 would insert a new section 167N prohibiting a person who is appointed as a director otherwise than on incorporation from acting as a director until notice of their appointment is given to the Registrar under new section 167G.

65. We appreciate that section 167N applies only if the notice has not been given within the period set out in section 167G(6). **In our view, this means that a director who acts in that capacity during the 14-day window in section 167G(6) does not commit the offence in section 167N**. However, the proposed wording of section 167N(2) could potentially be read as suggesting that a person is nonetheless prohibited from acting as a director within that 14-day period unless notice has been given.

66. This is problematic where a new director is appointed and needs to act immediately, as it will rarely be possible to give notice under section 167G simultaneously with appointment. This should be seen in the context that section 167M would allow a director who is an individual to act once they have been verified.

67. It is, therefore, important that the legislation make it clear that a director can act during that 14-day period. **We therefore recommend amending section 167N(2) as follows**:

> (2) Following the end of the period mentioned in section 167G(6), the person may not act as a director of the company until notice is given under section 167G.

68. If the Government's intention is that a person should not be permitted to act as a director even within this 14-day period (a position with which we strongly disagree), we strongly recommend that the person in question not be exposed to criminal sanctions while the 14-day period is running. **In that case, we would recommend amending section 167N(3) as follows**:

> (3) A person who contravenes subsection (2) at any time after the end of the period mentioned in section 167G(6) commits an offence.

69. We appreciate that the effect of this is that a person who acts as a director within the 14-day period but not after that period would not commit an offence, even if the notice is not delivered. It may be that the Government wishes to retain an offence to encourage compliance with section 167N(2). If this is the case, **we recommend clarifying that subsequent compliance with section 167G be taken into account** by the relevant prosecuting authority when deciding whether to bring proceedings and by the Registrar when deciding whether to impose a monetary penalty. We would welcome the opportunity to explore appropriate ways of achieving this.

70. In the context of the criminal sanctions that apply in section 167N, **we strongly recommend that the Government or the Registrar produce guidance in due course on when a notice will be considered "given" and how this can be demonstrated**. It is imperative that individuals be given certainty that they will not be committing an offence. We appreciate that the term "given" is used in other parts of the CA 2006 (both existing and new provisions to be inserted by the Bill), as well as new provisions of the LPA 1907 to be inserted by the Bill, and that the Government will need to take those provisions into account as well when formulating guidance.

Authorised corporate service providers

71. The Bill introduces the concept of an ACSP. A person would need to be authorised by the Registrar to act as an ACSP. An ACSP would fulfil two principal functions:

- Delivering documents to the Registrar on behalf of companies.
- Verifying an individual's identity (as an alternative to the verification mechanism to be provided by the Registrar).

72. We note that, in broad outline, this mechanism is similar to the existing procedure by which a person can become an approved verification agent under the ECTEA 2022 and the ROE Verification Regs for the purpose of verifying information to be provided to the Registrar in connection with the Register of Overseas Entities. We support this approach, as it provides consistency between the two regimes.

Qualification as an ACSP

73. Clause 63(4) would insert a new section 1098B setting out the conditions a person must satisfy to apply for authorisation as an ACSP.

74. Specifically, section 1098B(1)(a) states that, to be an authorised ACSP, a person must qualify as a "relevant person" under regulation 8(1) of the MLR 2017. There are no exceptions to this in section 1098B, such that every category of "relevant person" is entitled to apply for authorisation as an ACSP. (We note that this is subject to section 1098B(1)(c), which allows the Secretary of State to specify other requirements a person must meet to apply for authorisation as an ACSP.)

75. Under the verification regime for the Register of Overseas Entities, certain relevant persons are not entitled to carry out verification.[4] These include high value dealers, casinos, art market participants, cryptoasset exchange providers and custodian wallet providers, as well as persons who have committed the "false statement offence" under the ECTEA 2022.

76. In our view, the approach under the ROE Verification Regs is appropriate. The types of relevant person who are entitled to carry out verification for the Register of Overseas Entities are those that enter into business relationships of some duration with the person they verify, who are regulated by a supervisory authority and who are better placed to affirm verification for the Registrar. We believe that the same approach should apply to authorisation as an ACSP.

77. Aligning the two regimes would also have the benefit of creating consistency between verification procedures and requirements, creating a simpler regime overall.

78. We also note the second purpose of the ACSP, namely to deliver documents to the Registrar on behalf of a company. The categories of person who are excluded from conducting verification under the ROE Verification Regs are not those we would typically expect to deliver documents to the Registrar or who are likely to be experienced in doing so.

79. **We therefore recommend that authorisation as an ACSP should not be available to persons listed in regulation 3(2) of the ROE Verification Regs**. We suggest setting this out in regulations made under section 1098B(1)(c). We would welcome the opportunity to engage with the Government on the drafting of those regulations.

Suspension of authorisation as an ACSP

80. Section 1098G would give the Secretary of State power, by regulations, to set out circumstances in which a person's authorisation as an ACSP can be suspended. It also allows the Secretary of State to confer discretion on the Registrar.

81. The provision of corporate services – particularly delivery of documents to the Registrar – is central to the business model of trust or corporate service providers and can be a significant function of certain other professional services firms (including legal and accountancy firms). On sections 1098A-1098I coming into force, these firms will need to register as ACSPs and maintain that status to continue delivering those services.

82. It is therefore important for these firms to understand, as early and clearly as possible, the criteria according to which their future authorisation could be suspended. **We would ask the Government to indicate, at the earliest opportunity, the likely circumstances in which authorisation as an ACSP could be suspended**. We would welcome the opportunity to engage with the Government on the drafting of the relevant regulations.

4 See regulation 3 of the ROE Verification Regs.

Delivering documents to the Registrar

Delivery by disqualified persons

83. Clause 70 would insert a new section 1067B prohibiting a disqualified person from delivering documents to the Registrar (whether on their own behalf or on behalf of someone else). Instead, a disqualified person would need to instruct an ACSP to deliver documents on their behalf.

84. We understand the policy behind section 1067B. However, the Government may wish to consider whether this may lead to unintended adverse consequences. A person who becomes disqualified may nonetheless be under an obligation to deliver documents to the Registrar. For example:

- Although (under new section 169A) a director who becomes disqualified automatically ceases to hold office by virtue of that appointment, the same is not true of a company secretary, who would continue to hold office but become unable to deliver documents. This may place such a person in breach of certain statutory duties or expose them, as an officer of the company, to penalties for breach of offences in the CA 2006.

- It is not clear whether a registrable person who has become disqualified would be permitted to apply to the Registrar to suppress their details from public view under regulation 36, or to require the Registrar to refrain from disclosing their residential address under regulation 25, of the PSC Regs.

85. The Explanatory Notes recognise this but provide only one solution, namely to instruct an ACSP. We query whether a person who has become disqualified would be able to retain an ACSP to deliver documents on their behalf without difficulty, given that an ACSP may be wary of establishing a business relationship with a disqualified person.

86. Finally, it is not immediately clear that all grounds on which a person may be disqualified from acting as a director are appropriate reasons to prohibit a person from delivering documents to the Registrar. For example, whilst it makes sense for an undischarged bankrupt to be restricted from managing a business, the policy reason for preventing such a person from making filings at Companies House is less obvious.

87. **We therefore recommend that the Government consider carefully whether section 1067B is likely to deter or prevent necessary filings**, contributing to a potential weakening of the integrity of the register, rather than strengthening it.

88. One option may be to require an individual who delivers a document to the Registrar to state whether they are a disqualified person, rather than to confirm that they are not disqualified. Under the proposed new powers to scrutinise information, the Registrar would be able to take the individual's disqualification into account when gauging the reliability of the documents delivered, to request further information (including why the person has been disqualified and why they have not instructed an ACSP to make the filing) and, ultimately, to reject the filing if appropriate. The individual in question would then need to redeliver the document through an ACSP.

89. To be clear, we agree that an individual who is disqualified should not be permitted to deliver documents to the Registrar on behalf of someone else.

90. We have included suggested wording to this effect in Schedule 4. However, we would emphasise that this is only one approach that the Government might consider, and we would welcome the opportunity to engage with the Government on other ways to address these potential issues.

The Registrar's powers to correct the register

Scope of the new power

91. Clause 82(2) would amend section 1094 to expand the Registrar's power to remove material from the register.

92. We welcome changes to expand the Registrar's power. The Registrar's current powers to remove material are limited and inconsistent, making it difficult for companies and their officers to correct inaccuracies in the register. In some cases, a company can apply under section 1076 to replace a document that did not meet the proper requirements for delivery. In other cases, a company can apply to make a second filing of a document that has previously been delivered. However, these two mechanisms cover only a fraction of filings. In all other circumstances, a company must seek an order of the court to rectify the register. This is often too costly or time-consuming to be worthwhile.

93. A common example we have encountered in practice is where a company has innocently but incorrectly identified a person as a registrable person or registrable RLE and filed that person's details at Companies House. Under current powers, the Registrar is unable to correct this. Rather, it is necessary to file a form PSC07 stating that the person in question ceased to be a registrable person or registrable RLE on the same date as that on which they were (incorrectly) reported to have become a registrable person or registrable RLE. The intended effect is that the person is shown as not having been a registrable person or registrable RLE for any appreciable length of time. However, the incorrect record remains on the register.

94. Another example is where a company files accounts which it later discovers to be defective. The company can file a copy of its revised accounts. However, to our knowledge, there is no mechanism for removing the copy of the defective accounts on the register without obtaining a court order to that effect. This can be confusing for persons doing business with the company, who will look to the company's accounts to understand its financial position.

95. **We therefore recommend that the Government scrutinise the proposed expansion of the Registrar's powers to correct the register and remove incorrect material to ensure that they are wide enough to cover the full range of circumstances in which information may need to be corrected**.

Changes that have legal consequences

96. Currently, under section 1094(3), the Registrar may not remove from the register material the registration of which had legal consequences (**legal consequence material**). Currently, this requires a court order. The rationale for this is that the removal of legal consequence material is more significant and more often the subject of disputes between companies or their members, and that changes to legal consequence material may have an adverse impact on third parties.

97. Clause 82(2) would amend section 1094(3) to give the Registrar the power to remove legal consequence material from the register, provided the Registrar is satisfied that the interest of the company or the applicant in removing the material outweighs any interest of other persons in the material continuing to appear on the register.

98. The amendment represents a significant redirection of the power to remove legal consequence material from the court, which exercises significant oversight and has the experience and authority to hear argument from counsel and resolve disputes, to the Registrar, who, despite having considerable experience and legal knowledge, does not occupy the same position.

99. We see utility in expanding the Registrar's power to remove legal consequence material in circumstances where the company and any other obviously interested parties have consented to the change, either by making the application or by supporting it in some way as part of the determination process (to be set out in regulations made under new section 1094A(2)).

100. However, we do not believe it is appropriate for the Registrar to have the power to remove or alter legal consequence material:

- on its own motion (other than changes specifically provided for by the CA 2006, such as a change by the Registrar of a company's name or registered office); or
- on an application which is contested.

In our view, it remains appropriate for the court, as an experienced arbiter of disputes, to decide

whether changes or removals of this kind should be made.

101. **We therefore recommend excluding the power to remove legal consequence material on the Registrar's own motion or on a contested application**.

102. We also note that the Bill would remove the non-exhaustive list of matters that amount to legal consequence material (currently set out in section 1094(3)). There may be value in retaining a non-exhaustive list of this kind to aid companies and the Registrar. This could be done using regulations under new section 1094(4).

103. This could be addressed by amending section 1094 as follows:

(3) The registrar may exercise the power to remove from the register anything the registration of which had legal consequences ("legal consequence material") only if satisfied that the interest of the company, or (if different) the applicant, in removing the material outweighs any interest of other persons in the material continuing to appear on the register.

(4) But the registrar may not exercise the power to remove legal consequence material from the register—

(a) on the registrar's own motion, or

(b) on an application to which any person has made objection under provision made by regulations made under section 1094A(2).

(5) The Secretary of State may by regulations—

(a) provide that the registrar's power to remove material from the register under this section following an application is limited to material of a description specified in the regulations;

(b) provide that material of a description specified in the regulations is to be regarded as legal consequence material.

(6) Regulations under this section are subject to the negative resolution procedure.

Period for rejecting discrepancies

104. Clause 76 would insert a new section 1073A, giving the Registrar a new power to refuse to accept and register a document if (broadly speaking) the document appears to be inconsistent with other information on the register and, as a result, the Registrar doubts whether the document is accurate.

105. We support this new power. This, combined with the proposed expansion of the Registrar's power to remove material and the proposed power in new section 1092A to request information, goes a long way to enabling the Registrar to pursue its new objectives in new section 1081A.

106. However, it is important that the Registrar's power to reject documents not impede the smooth and efficient functioning of Companies House, on which companies and their advisers have come to rely. A company will need comfort that it can proceed rapidly after making a filing at Companies House, particularly where the filing has legal consequences, such as the registration of a capital reduction order or resolution, an arrangement or reconstruction under Part 26 or Part 26A of the CA 2006, or a change in the company's registered office. In some circumstances, such as notifying the appointment of a new director or filing a Form MR01, the impact of any delay could be very significant.

107. As a result, **we recommend including a limit on the period within which the Registrar can reject a document due to a perceived inconsistency**. If the Registrar were not to exercise their power of rejection during that period, the document would be deemed accepted and the Registrar would be obliged to register it.

108. The precise time limit may need to depend on the nature of the document being delivered to the Registrar. Where a person makes an application to the Registrar to be processed on a "same-day basis" (e.g. to incorporate a company, change a name or register a capital reduction), the Registrar should be required to exercise its power of rejection on that day or, if the document is delivered after a specified time on that day, by a specified time on the next business day. In all other cases, the period for rejecting a document should be short to ensure that applicants are not placed into a period of uncertainty.

109. To be clear, these time limits would operate to shut down the Registrar's ability to refuse to accept and register a document because a perceived inconsistency. They would *not* prevent the Registrar from exercising the powers under section 1094 to remove material on the register after the time limit has expired or under section 1092A to require a person to provide additional information.

110. We have not provided specific drafting for this mechanism. We would welcome the opportunity to engage with the Government to discuss this or alternative mechanisms for providing certainty to persons delivering documents to the Registrar.

Disclosure of information

111. Clause 90(3) would insert a new section 1110F setting out the circumstances in which the Registrar would be permitted to disclose information. As information on the public record is freely available, we have reviewed this proposed new power in the context of information that is not available to the public (**non-public information**).

112. We note that, by virtue of clause 122(1) and paragraphs 5 and 6 of Schedule 3 to the Bill, the power to disclose information under section 1110F would also apply to:

- protected date of birth information relating to a partner in a limited partnership or the registered officer of a general partner;
- protected residential address information relating to a partner in a limited partnership, the registered officer of a general partner or the named contact for a general partner's managing officer;
- information about trusts that is included in the Register of Overseas Entities; and
- protected date of birth information or protected residential address information of an individual whose details are included in the Register of Overseas Entities.

113. Currently, the Registrar may disclose non-public information only in limited circumstances and to specified persons. For example, under the Companies (Disclosure of Address) Regulations 2009 (SI 2009/214), the Registrar may disclose "protected information" (effectively, a person's residential address) only to credit reference agencies or to a public authority specified in Schedule 1 to those Regulations. That list is extensive, but it is nonetheless defined and limited.

114. Similar provisions apply to the disclosure of:

- restricted DOB information under section 1087B(2) and regulations 2 and 3 of the Companies (Disclosure of Date of Birth Information) Regulations 2015 (SI 2015/1694);
- usual residential address information under regulations 22 and 23 of the PSC Regs;
- secured information under regulation 34 of the PSC Regs; and
- protected information under regulation 6 of the Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations 2022 (SI 2022/870).

115. Section 24 of the ECTEA 2022 also contemplates that regulations will be made with similar

provision for protected date of birth and protected residential address information, although, to our knowledge, no such regulations have yet been made.

116. Moreover, under section 23 of the ECTEA 2022, the Registrar may not disclose information on trusts contained in the Register of Overseas Entities to any person other than HMRC.

117. Section 1110F would expand the Registrar's powers to disclose non-public information significantly and materially in three respects:

- The Registrar would be authorised to disclose non-public information to any public authority, rather than public authorities specified in a list. The definition of "public authority" in section 1110F(2) is open-ended and could include organisations of many different kinds and purposes, including authorities located outside the UK.

- Separately, the Registrar would be authorised to disclose non-public information to any person in connection with the exercise of any of the Registrar's functions. The person to whom information is disclosed might not be a public authority and could be located outside the UK.

- The power in section 1110F would appear to apply to information the disclosure of which is not currently contemplated by legislation.

118. This power would be subject only to the limited restrictions in new section 1110G. The sheer breadth of this power is further emphasised by section 1110G(1), which would effectively exonerate the Registrar of any breach of confidentiality or other restriction on disclosure that would otherwise arise from a disclosure under section 1110F.

119. Whilst we appreciate the desire to provide the Registrar with more flexible powers to disclose non-public information for appropriate purposes, in our view, **proposed section 1110F as drafted represents a disproportionate and unnecessary expansion of the Registrar's powers, a material incursion into the privacy of data subjects and a potentially dangerous precedent for future legislation**.

120. Whilst we agree that there is simplicity in consolidating the Registrar's powers of disclosure into a single provision in section 1110F, **we believe there is no compelling reason to depart from the existing framework of specifying the authorities to which non-public information can be disclosed**.

121. We appreciate that there may be a legitimate imperative for the Registrar, and the Government more widely, to be able to disclose non-public information more widely. However, this can be achieved by beginning with a list of specified public authorities to which disclosure may be made, with the ability for the Secretary of State to amend or supplement that list from time to time by secondary legislation. This could be done by way of order made under the negative resolution procedure so as to allow the Government to act quickly where necessary.

122. We believe changes to sections 1110F and 1110G are required to address these concerns. We have set out suggested drafting in Schedule 5, but we would welcome the opportunity to engage more deeply with the Government on this point.

Limited partnerships

References below to sections are to sections of the LPA 1907 (unless otherwise stated)

Requirement to have registered office in the UK

123. Clause 103(4) would insert a new section 8E requiring a limited partnership to maintain a registered office in the part of the UK in which it is registered. The address would need to satisfy one of four conditions in section 8E(2)(c). Under clause 104, existing limited partnerships would have six months from what would be section 103(3) coming into force to notify the Registrar of

their new registered office.

124. We appreciate that the purpose of this requirement is to ensure a limited partnership maintains a connection with the UK and that there is an address which the Registrar can use for communicating with the limited partnership (paragraph 433 of the Explanatory Notes).

125. Limited partnerships present themselves for a range of uses, including co-investment in real estate and private wealth planning. As the Government will be aware, limited partnerships are also regularly used as fund structures. One consequence of requiring limited partnerships to maintain a registered office in the UK is that a fund structured as a limited partnership whose principal place of business is outside the UK would then be classified as an UK alternative investment fund (**UK AIF**). This might result in the manager of the fund (the **AIFM**) coming within the scope of (or becoming subject to additional requirements under) the Alternative Investment Fund Manager Regulations 2013 (SI 2013/1773) (the **AIFM Regs**) and the associated parts of the Financial Conduct Authority (**FCA**) Handbook.

126. The consequences of a fund being classified as an UK alternative investment fund (**UK AIF**) are potentially significant. For instance, a UK AIFM managing such a fund that is not marketed in the UK (in the circumstances contemplated by article 34 of the EU Alternative Investment Fund Managers Directive (the **AIFMD**)) would need to appoint a depositary for the fund and produce annual reports in line with the requirements of the AIFMD.

127. These consequences are unlikely to have been contemplated by the sponsor of an existing fund when the fund was established. In particular, the sponsor is unlikely to have marketed the fund on the basis that it might become a UK AIF. The potential increased costs associated with a greater degree of regulation are unlikely to be welcomed by investors in the fund.

128. These issues potentially affect existing funds structured as UK limited partnerships. For new funds, the automatic application of the AIFM Regs may potentially deter sponsors and investors from choosing a UK limited partnership as their fund vehicle, in turn detracting from the UK's position as an attractive place in which to raise investment. To be clear, many sponsors will be comfortable with their fund being classified as a UK AIF. But the automatic classification that arises from the proposals in the Bill removes any element of choice.

129. As we see it, the policy objective behind requiring a limited partnership to maintain a registered office in the UK is not to bring UK limited partnerships within the AIF regime. Indeed, following the UK's withdrawal from the European Union, the Government has expressed an active desire to remove barriers to investment, rather than create new ones.

130. **We therefore recommend that measures be introduced to ensure that funds structured as limited partnerships are not automatically categorised as UK AIFs solely by virtue of having a registered office in the UK**.

131. There are various ways this could be addressed, but we suggest two possible approaches:

- Provide in legislation that a limited partnership will not be considered a UK AIF solely by virtue of having a registered office located within the UK. This would achieve the Government's policy objective in the Bill whilst avoiding bringing funds within the AIF regime that are not already within it.

  This approach would require amendments to the AIFM Regs (for example, by amending the definition of "UK AIF" in regulation 2(1) of the AIFM Regs) and the FCA Handbook. Whilst we appreciate that these legislative amendments could be made in the Bill, we query whether that is the correct place to introduce them.

- Create an exemption. Section 8E could be amended to give the Secretary of State power, by regulations, to exempt certain limited partnerships from the requirement to maintain a registered office in the UK. This could be subject to the limited partnership meeting certain conditions, including (in the particular circumstances we describe) meeting certain characteristics of a fund and maintaining a "designated address" in the UK to which the Registrar may send correspondence.

132. We have no strong inclination towards one approach or another. However, we do feel that this topic merits broader discussion between the Government and relevant stakeholders. We would welcome the opportunity to be involved in that discussion.

133. we note that the six-month transitional period provided for by clause 104 may not be sufficient for the manager of a fund established as UK limited partnerships to take the action necessary to comply with additional AIFMD requirements (such as to appoint a depositary) if the fund becomes a UK AIF. **We therefore recommend extending the transitional period in clause 104 to 12 months**.

134. Should the Government opt for the second approach outlined above, we have included drafting in Schedule 6 that illustrates how the approach might work.

New general partners

135. Clause 111 would insert a new section 8U prohibiting a general partner who is appointed after registration from taking part in the management of a limited partnership until notice of their appointment is given to the Registrar under new section 8Q. Our comments on this are similar to those for the equivalent provision for directors in new section 167N of the CA 2006.

136. **We therefore recommend amending section 8U(2) as follows**:

(2) Following the end of the period mentioned in section 8Q(11), the general partner may not take part in the management of the partnership business until notice is given under section 8Q.

137. If the Government's intention is that a general partner should not be permitted to take part in management even within this 14-day period (a position with which we strongly disagree for the same reasons as we given in relation to section 167N), we strongly recommend that the general partner not be exposed to criminal sanctions while the 14-day period is running. If this is the case, **we recommend clarifying that subsequent compliance with section 8Q be taken into account** by the relevant prosecuting authority when deciding whether to bring proceedings and by the Registrar when deciding whether to impose a monetary penalty. We would welcome the opportunity to explore appropriate ways of achieving this.

Outgoing general partners

138. Clause 119(2)(c) would insert a new section 6(2B) stating that a limited partnership will dissolve automatically if it has no general partners.

139. This may prove problematic where—

- the last remaining general partner dies or is dissolved; or
- the partners are required to remove a general partner under new section 8J (to be inserted by clause 107(3)) or under the limited partnership agreement.

140. Dissolution of the partnership seems a severe and disproportionate result in these circumstances and could materially and negatively affect limited partners. **We therefore recommend that the automatic dissolution of a limited partnership in these circumstances be deferred to give the limited partners time to appoint a replacement**.

141. This could be achieved by amending section 6(2B) as follows:

(2B) A limited partnership is dissolved if it—

(a) ceases to have a general partner and no person is admitted as a general partner in the limited partnership before the end of the period of [*time period*] beginning with the date on which it ceased to have a general partner, or

(b) ceases to have a limited partner.

Service address

142. The Bill would introduce a requirement for partners in a limited partnership to provide a service address to the Registrar. Under paragraph 2 of the new Schedule to the LPA 1907, a limited partner who is an individual would not need to provide a service address. However, under paragraph 3, a limited partner that is a legal entity *would* need to provide a service address.

143. It is not clear to us why this is. Limited partners are passive investors and there should not ordinarily be any need for the Registrar or third parties to correspond with them. For lack of a better analogy, limited partners are effectively akin to members of a company. We note that there is no requirement for a member of a company to provide a service address to the Registrar.

144. Therefore, unless there is a compelling reason not to, **we recommend removing the requirement for limited partners that are legal entities to provide a service address**. This could be addressed by inserting the words "in the case of a general partner," at the start of paragraph 3(1)(c) of the proposed new Schedule to the LPA 1907.

Dissolution

145. Clause 119(2)(e) would insert new sections 6(3A) and (3B) requiring:

- the general partner(s) in a limited partnership to notify the Registrar if the partnership is dissolved with at least one general partner; or
- the limited partners in a limited partnership to notify the Registrar if the partnership is dissolved without any general partners.

146. Clause 119(3) would insert a new section 6ZA making failure to comply with this requirement a criminal offence.

147. We make three comments on this.

148. First, we note that clause 125(2) would insert a new section 18 giving the Registrar the power, on their own motion, to publish a notice in the Gazette if it believes that a limited partnership has been dissolved. Under new section 18(6), the effect of that notice would be to dissolve the limited partnership if it had not already been dissolved by the time the Registrar published the notice.

149. We assume that a partner in a limited partnership should not be required to give the Registrar notice under section 6(3A) or (3B)[5] (and, so, should not commit an offence under section 6ZA) if the limited partnership is dissolved under section 18(6), as the Registrar will already be aware of the dissolution and the partners themselves might not.

150. Second, in strict legal terms, as a matter of partnership law, whenever there is a change in the partners of a partnership, the position is understood to be that the partnership is dissolved and a new partnership created under the same name (assuming that this is what the partners have agreed).[6] *Lindley and Banks* refer to this as a "technical dissolution".[7] The position is no different for a change in the partners of a limited partnership.

151. As this is not, in practice, a real dissolution, and as the Registrar should in any event be notified of any change in the partners (under new section 8Q), the partners should not be required to give notice under section 6(3A) or (3B) on a "technical dissolution".

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5 We note that, as the Bill is currently drafted, in the circumstances described in section 6(3B), the limited partnership should already have dissolved automatically under section 6(2B), and it should not be possible for it to be dissolved under section 18(6). However, it may be worth including provision to this effect in any event for clarity. Furthermore, if our suggested amendment to section 6(2B) is adopted, there could be a short window between the limited partnership ceasing to have any general partners and it being dissolved, within which dissolution could, in theory, occur under section 18(6).

6 See *Hadlee v Commissioner of Inland Revenue* [1989] NZLR 447, 455.

7 See *Lindley & Banks on Partnership*, 20th ed., para. 24-02.

152. To address both points, **we recommend inserting a new subsection (3E) into section 6 as follows**:

> (3E) Subsections (3A) and (3B) do not apply where a limited partnership is dissolved—
>
> (a) in circumstances described in section 18(6),
>
> (b) as a result of any partner in the limited partnership ceasing to be a partner in circumstances where the partners have agreed that the limited partnership will continue as between the remaining partners, or
>
> (c) as a result of the admission of any person as a partner in the limited partnership in circumstances where the existing partners have agreed that the limited partnership will continue as between that partner and the existing partners.

153. We also note that there is currently no time limit for a notification under section 6(3A) or (3B). This may create uncertainty for the partners in a limited partnership. **We recommend including a time limit for these notifications**.

154. Third, we are concerned by the new requirement for limited partners to notify the Registrar of a dissolution. Section 6(1) states that a limited partner must not take part in the management of the limited partnership's business. A limited partner who does so risks incurring unlimited liability for the partnership's debts and obligations.

155. New section 6A(A1) (to be inserted by clause 119(4)(b)) would provide that a limited partner would not being regarded as taking part in the management of the partnership's business merely by appointing a person to wind the partnership up under section 6(3B). However, this does not extend to giving notice to the Registrar of the partnership being dissolved or applying to the court under new section 6(3BA).

156. **To clarify that limited partners will not lose their limited status in these circumstances, we recommend amending section 6A(A1) as follows**:

> (A1) A limited partner in a limited partnership is not to be regarded as taking part in the management of the partnership business for the purposes of section 6(1) merely because the limited partner—
>
> (a) notifies the registrar of the dissolution of the partnership pursuant to section 6(3B)(a),
>
> (b) appoints a person to wind up the limited partnership pursuant to section 6(3B)(b), or
>
> (c) applies to the court for an order pursuant to section 6(3BA).

Offences by limited partners

157. The Bill would amend the LPA 1907 in various places to create new criminal offences by limited partners. This includes:

- new section 6ZA(2) (to be inserted by clause 119(3));
- new section 10D(5) (to be inserted by clause 124(2)); and
- new sections 28 and 29 (to be inserted by clause 129(1)).

158. In most cases, limited partners, as passive economic investors, would not expect to be exposed to potential criminal liability. Whilst we accept that new section 29 involves an element of dishonesty, the other new offences described above are either administrative offences or could be committed inadvertently by a limited partner.

159. Although the circumstances in which these offences might arise may be limited, **we believe that imposing criminal liability on limited partners for these kinds of contravention is likely to cause investors to reconsider using a UK limited partnership as an investment vehicle**, in turn detracting from the attractiveness of the UK as a place to raise investment.

160. Whilst we recognise the need for a "stick" to ensure that limited partners comply with the few obligations on them under the LPA 1907, we feel that criminal sanctions are likely to be a counterproductive means of achieving this. **We would therefore recommend that the Government consider alternative approaches to enforcing compliance by limited partners with their obligations under the LPA 1907**.

Registration following dissolution

161. It is not clear to us what would happen after the dissolution of a limited partnership is notified to the Registrar. It is imperative that the Registrar not "deregister" a limited partnership until its winding-up is complete. The partnership should continue following dissolution, and the partners remain partners, albeit solely to wind up the partnership's affairs. During this winding-up phase, limited partners must continue to enjoy their limited status, and so the partnership must remain a "limited partnership".

162. This is particularly relevant for a fund structured as a limited partnership, where winding-up often takes several years. To this end, it is important that, during the winding-up phase, the limited partnership remain on the register.

163. In this regard, we note that the effect of new section 25(4) (introduced by clause 128) seems to be that deregistration would end a partnership's status as a limited partnership.

164. In view of this, **we strongly recommend clarifying that a limited partnership that is being wound up will not be deregistered upon the Registrar receiving notice under section 6(3A) or 6(3B), but only once the Registrar receives notice that winding-up is complete**.

165. This could be a notice under new section 25(2) and could, if considered necessary, be backed up by an obligation to deliver that notice under section 25(2) once the winding-up is complete.

166. On a related point, clause 123 would insert a new section 16B allowing the Registrar to move any records it holds to the relevant Public Records Office once two years have elapsed from the limited partnership's dissolution. However, as noted above, it is imperative that information on the limited partnership and its limited partners be publicly available while the partnership is in its winding-up phase. We see two potential ways to address this:

- The period in sections 16B(3) and (4) could begin with completion of the winding-up of the partnership's affairs, rather than dissolution.
- Section 16B as a whole could apply where a limited partnership is *deregistered*, rather than where it is dissolved.

Requirement to produce accounts for HMRC

167. Clause 118 would insert a new section 10H giving HMRC the power to require the general partners in a limited partnership to prepare accounts in accordance with regulations.

168. Currently, a limited partnership need prepare and publish accounts (under the Partnerships (Accounts) Regulations 2008 (SI 2008/569) (the **PAR 2008**)) only if it is a "qualifying partnership". This is a limited partnership in which every general partner is:

- a limited company; or
- an unlimited company all of whose members are limited companies.

As a result, some limited partnerships already prepare statutory accounts under the PAR 2008.

169. Some limited partnerships already qualify as a UK AIF. In this case, if the manager of the UK AIF is a "full-scope UK AIF manager", the manager must prepare audited accounts under FUND 3.3 of the FCA Handbook and make them available to the FCA.

170. Finally, some limited partnerships are not required to prepare or publish accounts under the PAR 2008 or FUND 3.3 but will nonetheless prepare and keep accounts for internal purposes, for tax purposes and/or as a matter of good practice.

171. In all cases, it is important that the new requirement in section 10H not create unnecessary additional administrative burdens for limited partnerships. In this respect, **we recommend that**:

- where a limited partnership has prepared accounts under the PAR 2008, the general partners be able to satisfy their obligation under section 10H by delivering those accounts to HMRC;
- where the manager of a limited partnership has prepared accounts under FUND 3.3, general partners be able to satisfy their obligation under section 10H by delivering those accounts to HMRC; and
- in all other cases, the format and accounting standards to be used for any accounts required under section 10H be the same as those permitted under the PAR 2008 or, at the very least, be those in prevalent use in the UK for partnership accounting.

172. We recognise that section 10H(2) would give HMRC the power to request accounts for a period different from that for which accounts have been prepared under the PAR 2008 or FUND 3.3. However, we nonetheless believe that the general partners should be entitled to use those accounts (including the accounting policies and practices employed when preparing them) as the basis for accounts to be delivered to HMRC.

173. Separately, section 10H(1)(b)(i) would give the Secretary of State power to require the accounts provided to HMRC to be audited. However, some limited partnerships will be exempt from auditing their accounts. In our view, it is inappropriate to impose a requirement for audit through this mechanism where no requirement otherwise exists. **We recommend that the Secretary of State not be empowered to require audited accounts where the limited partnership is not otherwise required to have its accounts audited**.

174. We have included suggested drafting to this effect in Schedule 7.

The Gazette

175. Currently, certain matters relating to a limited partnership must be advertised in the Gazette. These are:

- a general partner becoming a limited partner (unless the partnership is a PFLP) (section 10(1));
- a limited partner assigning their share to any person (again, unless the partnership is a PFLP) (section 10(1)); and
- a person ceasing to be a general partner in a PFLP (section 10(1A)).

176. The matters in section 10(1) are not effective until advertised in the Gazette. The matter in section 10(1A) is not effective until persons dealing with the general partner have notice that the general partner has ceased to be a general partner (section 10(1B)), for which purpose, publication in the Gazette serves as notice (section 10(1C)).

177. This has the potential to cause confusion where a matter is notified to the Registrar and reflected in the register, but no corresponding advertisement is placed in the Gazette. This might occur, for example, where:

- a general partner of a limited partnership that is not a PFLP becomes a limited partner,

which would need to be notified under (arguably) both section 8Q(1)(a) and 8Q(1)(b) and advertised in the Gazette under section 10(1);

- a general partner of a PFLP ceases to be a general partner, which would need to be notified under section 8Q(1)(b) and advertised in the Gazette under section 10(1A); or

- a limited partner assigns their entire interest to a new (incoming) limited partner, which would need to be notified under both section 8Q(1)(a) and 8Q(1)(b) and advertised in the Gazette under section 10(1).

178. Where the general partners neglect to arrange the advertisement in the Gazette, there will be a mismatch between the register and the Gazette and the register will be misleading.

179. Beyond this, from a practical perspective, arranging publication in the Gazette can be a time-consuming and unwieldy process. In particular, it is often not possible to arrange for an advertisement to be placed and published in the Gazette on less than two or three working days' notice. This can and does cause timing issues for changes in limited partnerships.

180. As a general comment, we query the utility and relevance of the Gazette in today's United Kingdom, where most information is available quickly, easily, electronically and free of charge in centralised repositories, such as Companies House. However, we recognise that the Gazette is used for a variety of purposes beyond limited partnership and company law, and that a review of the continued purpose of the Gazette is a far-reaching exercise for another occasion. In recognition of that, we do not propose removing any existing requirements to publish an advertisement in the Gazette.

181. However, in line with other proposed changes to the LPA 1907, which bring the regime for administering limited partnerships more in line with that for companies, we wonder whether there is value in introducing a regime for publication in the Gazette similar to that in the CA 2006.

182. Under section 1077 of the CA 2006, the Registrar must cause notice of the receipt of certain documents to be published in the Gazette. These documents are listed in section 1078 of the CA 2006 and include (among other things) an *amendment of a company's articles of association*, notice of a change of a company's name, notice of any *change in a company's directors* or their particulars, a company's annual accounts and reports, a company's confirmation statement, notice of a *change of a company's registered office*, and *certain documents in connection with a company's winding-up*. (Section 1078 specifies further documents for a public company.)

183. (Section 1116 of the CA 2006 gives the Secretary of State power, by regulations, to provide for publication through a medium other than the Gazette. However, as far as we are aware, the Secretary of State has not made regulations under section 1116.)

184. In respect of certain of the matters listed above (those set out in italics), a company may not rely against third parties on the happening of the event unless notice has been given in the Gazette (section 1079(1) of the CA 2006). We note that this is ultimately similar, in effect, to section 10(1A) of the LPA 1907, in that it concerns only relations between the entity in question and third parties but would preserve any changes as between the entity and its members. However, it is less restrictive than section 10(1) of the LPA 1907, under which the relevant matter is not effective even between the partners until advertised in the Gazette.

185. **We recommend that the Government consider introducing a similar framework for matters relating to limited partnerships that need to be advertised in the Gazette**. This would include aligning the position for the matters described in section 10(1) of the LPA 1907 with the position set out in section 1079(1) of the CA 2006. Any such framework could use the wording of sections 1077, 1078, 1079 and 1116 of the CA 2006 as a starting point. Importantly, the onus of placing advertisements in the Gazette would lie with the Registrar, rather than the partners of a limited partnership.

186. This would serve the multiple purposes of alleviating the administrative burden on limited partnerships and removing obstacles to transactions, ensuring consistency between the register and the Gazette, creating a single harmonious regime for filings by limited partnerships, and

aligning the limited partnerships regime with that for companies.

187. We know that, in some cases, the partners in a limited partnership like to advertise a change in the Gazette even where not strictly required by the LPA 1907, particularly where a general partner ceases to be a partner. The purpose of this is to put third parties "on notice" of the change and so remove any residual risk that the outgoing general partner might continue to bind the limited partnership after their departure.

188. Limited partnerships may wish to preserve this protection. As a result, as part of any remodelling of the framework for effecting these kinds of change, it would be sensible to include provision at an appropriate place in the LPA 1907 to the effect that a matter that has been published by the Registrar on the register is deemed to constitute notice to third parties of that matter.

Power to apply company law

189. Finally, clause 131 would insert a new section 7A giving the Secretary of State power by regulations to apply company law to limited partnerships. In fact, despite its title, section 7A would enable the Secretary of State to create provision similar to that relating to *any corporation*.

190. We assume this power would most likely be used to ensure limited partnership law is kept aligned as closely as possible with company law and LLP law. However, in our view, this power is very broad and creates uncertainty for persons wishing to establish a limited partnership, who will not be able to predict what provisions might be applied to their partnership in the future. Again, this may detract from the use of UK limited partnerships as a preferred investment vehicle.

191. Regulations under section 7A would be subject to a mix of the negative and affirmative resolution procedures, depending on their purpose and effect, with more "functional" regulations requiring only negative resolution and more "substantive" regulations requiring affirmative resolution. Notwithstanding this, there is the risk that secondary legislation receives less attention and scrutiny than primary legislation.

192. Therefore, whilst we do not oppose new section 7A, **we recommend that the parameters of any regulations be clarified and set out clearly in section 7A, and that, in any event, all regulations under that section be subject to affirmative resolution procedure**.

193. We would suggest, however, that the Government consider using this power to align the register of limited partnerships, and the procedures for registering and making filings in connection with a limited partnership, with the regime for companies. In particular, regulations should (or should allow the Registrar to):

- provide for same-day registrations of limited partnerships;
- allow the registrar to display information on limited partnerships, including details of general partners, clearly in the same way as for companies;
- update the current forms relating to limited partnerships; and
- allow forms relating to limited partnerships to be filed electronically.

Register of Overseas Entities

Suspension of treatment as a "registered overseas entity"

194. Clause 139 would amend paragraph 8 of Schedule 4A to the Land Registration Act 2002 to the effect that an overseas entity (an **OE**) is not to be treated as a "registered overseas entity" for the purposes of that Schedule if (among other things) it fails to respond to a notice from the Registrar under new section 1092A of the CA 2006.

195. One consequence of this is that an OE would not be treated as "registered" for the purpose of a

restriction on title entered pursuant to paragraph 3 of that Schedule. That restriction prohibits the registration of certain dispositions[8] (**relevant dispositions**) if the OE is not "registered".

196. The further consequence is that OE proprietor will be unable to make a relevant disposition of the estate if it fails to respond to a notice under section 1092A.

197. We agree that the power under new section 1092A should apply to OEs registered under the ECTEA 2022. However, invoking the restriction on title where an OE fails to respond to a section 1092A notice creates consequences for transactions involving land which, in our view, are disproportionate to the aim of incentivising compliance with section 1092A.

198. In our experience, a third party dealing with an OE will require evidence that the OE is registered before exchanging contracts.

199. Currently, an OE satisfies paragraph 8 (and the restriction is not invoked) if the OE registers on the Register of Overseas Entities and performs each annual update. In effect, this gives a third party dealing with the OE a period of up to 12 months from the OE's initial registration, and from each subsequent update during, which it can be comfortable that the OE has complied with its obligations and the restriction will not impede the relevant disposition.

200. Following the proposed amendment to paragraph 8, a third party would need, as a condition to completion, to request evidence that the OE making the relevant disposition qualifies as a "registered overseas entity" at the time of the disposition. This would unnecessarily reduce the certainty of a transaction, the need for which the Government has previously recognised.[9]

201. Although clause 139 would not introduce event-based filing, it would undermine the current framework of annual updates (and, therefore, run contrary to the Government's previous statements). This must also be seen in the context that section 1092A would give the Registrar wide discretion when deciding what to request and how long to give an OE to respond.

202. The result of this is to create a risk that an OE could cease to be considered "registered" on little notice during the course of a transaction, introducing significant deal uncertainty.

203. This uncertainty would be exacerbated by the fact that the making of a request, the period for a response and whether or not the OE has complied with the notice would not be publicly available information. A third party would be unable to verify that the OE with which it is dealing is, in fact, a "registered overseas entity". Indeed, HM Land Registry too would be unable to verify this without specifically seeking the information on each occasion from Companies House.

204. The level of deal certainty afforded by the current framework is central to the smooth functioning of, and confidence in, the real estate and real estate finance markets. In our view, the criminal offences in section 1092B provide sufficient incentive to comply with a section 1092A notice.

205. **We therefore strongly recommend deleting clause 139 from the Bill**.

206. If, however, the Government still feels further incentives for compliance are required, we recommend instead amending the ECTEA 2022 to prohibit an OE from completing its annual update while there is an outstanding section 1092A notice in relation to it. This would at least ensure that a third party dealing with the OE could, on checking the Register of Overseas Entities, discover that updating had not been completed and that the OE is no longer a "registered overseas entity". We have not provided specific drafting for this mechanism. We

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[8] These are the transfer of the estate, the grant out of the estate of a lease with a term of more than seven years from the date of grant, or the grant of a charge by way of legal mortgage over the estate.

[9] See Government paper: "A register of beneficial owners of overseas companies and other legal entities: The Government response to the call for evidence" (March 2018), paragraph 41: "Several respondents suggested that event-driven updates would be the best approach. The Government is not seeking to adopt this approach as it is important that there is an element of predictability in the update process due to the interaction of the overseas registration number with the conveyancing process. By having a regular update requirement, it will be clear to the overseas entity and any third party doing business with the overseas entity when the next update is due."

would welcome the opportunity to engage with the Government to discuss this or alternative mechanisms to address the issues we have described above.

Conclusion

207. We hope our comments are helpful and provide useful material for further discussion. We support the Government's objective in providing a clearer and more accurate public register and in enhancing the Registrar's powers to uphold the integrity of the register. We look forward to continuing to engage with the Government on these reforms.

SCHEDULE 1

Section 76C, Companies Act 2006

76C Registrar's power to change name containing computer code

(1) Where, in the opinion of the registrar, a company's registered name consists of or includes computer code, the registrar may—

(a) determine a new name for the company, and

(b) remove from the register any reference to the company's old name.

(2) If the registrar determines a new name for a company under this section, the registrar must—

(a) give the company notice of the determination, and

(b) place a note of the determination in the register.

(3) Where a company is given a direction under section 76B to change its name—

(a) that does not affect the registrar's power to act under subsection (1), but

(b) if the registrar does so, the direction lapses.

(4) A company may apply to court to set aside a determination under subsection (1).

(5) Any application under subsection (4) must be made within the period of [*time period*][10] beginning with the date of the determination.

(6) On an application under subsection (4), the court may set the determination aside or confirm it.

(7) If the court sets the determination aside:

(a) the company is deemed to have continued to be registered under the company's old name, and

(b) the company must deliver a copy of the order of the court to the registrar.

(8) On delivery of a copy of the order described in subsection (7)(b) to the registrar, the registrar must:

(a) re-register the company under the company's old name,

(b) reinstate any references to the company's old name which the registrar removed from the register pursuant to subsection (1)(b), and

(c) remove from the register the note of determination placed in it pursuant to subsection (2)(b).

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10 We have not recommended a specific period of time for making the application. We recognise that, given the purpose of section 76C, this may need to shorter than the period of three weeks that applies to a direction under section 76B. We would be happy to engage with the Government on this point.

SCHEDULE 2

Section 57C, Companies Act 2006

57C Name that another company has been directed to change

(1) Where a company has at any time been directed under section 67, 75, 76, 76A or 76B, or ordered under section 73, to change its name, no other company may be registered under this Act by that name or a name that is similar if—

(a) that company is an existing company and there is a person who has, or has had, a relevant relationship with ~~both companies~~ each company, or

(b) an application has been made for the registration of that company and, if it is registered, there will on its incorporation be a person who has, or has had, a relevant relationship with ~~both companies~~ each company.

(2) But subsection (1) does not prevent the registration of the company by any name approved by the Secretary of State.

(3) For the purposes of subsection (1) it is irrelevant whether the person has, or has had, a relevant relationship with ~~both companies~~ each company at the same time.

(4) For the purposes of this section a person has a "relevant relationship" with a company if the person is any of the following—

(a) an officer of the company;~~, or~~

(b) a member ~~or former member~~ of the company;

(c) a person with significant control over the company;

(d) a relevant legal entity in relation to the company.

For this purpose, a shadow director is treated as an officer of the company.

(5) In subsection (1)—

(a) the reference to the name of a company being changed following a direction under a particular section includes a case where a new name is determined for the company under section 76D because of its failure to comply with the direction;

(b) the reference to the name of a company being changed following an order under section 73 includes a case where a new name is determined for the company under section 73(4) because of its failure to comply with an order.

SCHEDULE 3

Section 1110A, Companies Act 2006

1110A Meaning of "identity is verified"

(1) For the purposes of this Act an individual's "identity is verified" if—

(a) the individual's identity has been verified by the registrar in accordance with regulations under section 1110B, or

(b) a verification statement in respect of the individual has been delivered to the registrar,

and the individual has not, since then, ceased to be an individual whose identity is verified by virtue of regulations under ~~subsection (4)~~ section 1110B.

(2) A verification statement is a statement by an authorised corporate service provider confirming that it has verified an individual's identity in accordance with regulations under section 1110B.

(3) Where a person is required or authorised by any other provision to deliver a statement to the registrar that an individual's identity is verified, that statement may be delivered at the same time as the verification statement by virtue of which the individual becomes someone whose identity is verified under subsection (1)(b).

(4) ~~The Secretary of State may provide for circumstances in which someone~~ A person ceases to be an individual whose identity is verified if their identity is not reverified in accordance with regulations under section 1110B.

~~(5) The provision that can be made under subsection (4) includes—~~

~~(a) provision to confer a discretion on the registrar;~~

~~(b) provision that someone ceases to be an individual whose identity is verified unless, within a specified period of time—~~

~~(i) their identity is reverified by the registrar in accordance with regulations under section 1110B, or~~

~~(ii) an authorised corporate service provider delivers to the registrar a statement confirming that it has reverified the individual's identity in accordance with regulations under section 1110B.~~

~~(6) Regulations under this section are subject to affirmative resolution procedure.~~

SCHEDULE 4

Section 1067B, Companies Act 2006

1067B Disqualification from delivering documents

(1) An individual who is a disqualified person may not deliver documents to the registrar ~~on their own behalf or~~ on behalf of another.

(2) An individual may not deliver a document to the registrar on behalf of a disqualified person unless—

(a) the individual is an authorised corporate service provider (see section 1098A), or

(b) the individual is an employee of an authorised corporate service provider and acting in the course of their employment.

(3) A document delivered to the registrar by an individual on behalf of another must be accompanied by the ~~following two~~ statements in subsections (4) and (5) made by the individual delivering it.

(4) The first is a statement that the individual is not a disqualified person.

(5) The second is—

~~(a) a statement that the individual is delivering the document on their own behalf,~~

(b) a statement that the individual is delivering the document on behalf of another person who is not a disqualified person, or

(c) a statement that the individual is delivering the document on behalf of a disqualified person and that the individual—

(i) is an authorised corporate service provider, or

(ii) is an employee of an authorised corporate service provider and is acting in the course of their employment.

(6) A document delivered to the registrar by an individual on their own behalf must be accompanied by the statements in subsections (7) and (8) and, if required, the statement in subsection (9) made by the individual delivering it.

(7) The first is a statement that the person is delivering the document on their own behalf.

(8) The second is—

(a) if the individual is not a disqualified person, a statement that the individual is not a disqualified person, or

(b) if the individual is a disqualified person, a statement—

(i) that the individual is a disqualified person,

(ii) explaining the grounds on which the individual was disqualified, and

(iii) explaining why the document is being delivered by the individual on their own behalf and not by a person described in subsection (5)(c)(i) or (ii).

(9) If a document is delivered to the registrar by an individual who is a disqualified person and is delivered by that individual on their own behalf, the registrar may refuse to accept delivery of that document if, in all the circumstances, it appears appropriate for the registrar not to accept delivery of it.

(10) For the purpose of this section “disqualified person” means a person who is disqualified under the directors disqualification legislation (see section 159A(2)).

SCHEDULE 5

Sections 1110F and 1110G, Companies Act 2006

1110F Disclosure by the registrar

(1) The registrar may disclose information—

~~(a) to any person for purposes connected with the exercise of any of the registrar's functions;~~

(b) to a public authority for purposes connected with the exercise of any of that public authority's functions.

(2) In this section "public authority" ~~includes any person or body having functions of a public nature~~ means a public authority specified for the purposes of this subsection by order made by the Secretary of State.

(3) The Secretary of State may, by further order, amend an order made under subsection (2) to—

(a) remove any public authority specified in that order, or

(b) specify one or more further public authorities for the purposes of subsection (2).

(4) But the Secretary of State must not specify a further public authority that is located outside the United Kingdom, [the Channel Islands and the Isle of Man] unless [*insert any appropriate conditions for specifying an overseas authority*].

(5) An order under subsection (2) or subsection (3) is subject to negative resolution procedure.

1110G Disclosure: supplementary

(1) Except as provided by subsection (2), the disclosure of information under section 1110E or 1110F does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed) (other than any restriction in this section).

(2) Sections 1110E and 1110F do not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but, in determining whether a disclosure would do so, the court must take into account the powers conferred by those sections).

(3) HMRC information may not be disclosed by the registrar under section 1110F without authorisation from HMRC.

(4) If the registrar discloses HMRC information under section 1110F, the information must not be disclosed by the recipient, or by any person obtaining the information directly or indirectly from them, without authorisation from HMRC.

(5) It is an offence for a person to disclose, in contravention of subsection (3) or (4), any revenue and customs information relating to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it.

(6) It is a defence for a person charged with an offence under subsection (5) to prove that the person reasonably believed—

(a) that the disclosure was lawful, or

(b) that the information had already lawfully been made available to the public.

(7) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005 apply to an offence under subsection (5) as they apply to an offence under that section.

(8) In this section—

"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

"HMRC" means the Commissioners for His Majesty's Revenue and Customs;

"HMRC information" means information disclosed to the registrar under section 1110E by HMRC or a person acting on behalf of HMRC;

"revenue and customs information relating to a person" has the meaning given by section 19(2) of the Commissioners for Revenue and Customs Act 2005.

SCHEDULE 6

Part 1

Sections 8A, 8E and 8F, Limited Partnerships 1907

8A Application for registration

(1) An application for registration must—

(a) specify the firm name, complying with section 8B, under which the limited partnership is to be registered,

(aa) either—

(i) specify the intended address of the limited partnership's registered office, which must be an appropriate address within the meaning given by section 8E(2), and

(ii) specify which of the addresses mentioned in section 8E(2)(c) the intended address is,

or be accompanied by an application by the general partners under regulations made under section 8F,

(ab) specify the intended registered email address of the limited partnership, which must be an appropriate email address within the meaning given by section 8H(2),

(b) contain the details listed in subsection (2) or (3),

(c) be authenticated by or on behalf of each proposed partner named in the application, and

[Remainder of section 8A to remain as proposed in the Bill.]

8E Duty to ~~ensure~~ maintain registered office ~~at appropriate address~~

(1) The general partners in a limited partnership must ensure that—

(a) the limited partnership has at all times a registered office, and

(b) that registered office is at all times at an appropriate address.

(2) An address is an "appropriate address" if—

(a) in the ordinary course of events—

(i) a document addressed to the limited partnership, and delivered there by hand or by post, would be expected to come to the attention of a person acting on behalf of the limited partnership, and

(ii) the delivery of documents there is capable of being recorded by the obtaining of an acknowledgement of delivery,

(b) it is in the part of the United Kingdom in which the limited partnership is registered, and

(c) it is at least one of the following—

(i) the address of the principal place of business of the limited partnership;

(ii) the usual residential address of a general partner who is an individual;

(iii) the address of the registered or principal office of a general partner that is a legal entity;

(iv) an address of an authorised corporate service provider that is acting for the limited partnership.

(3) If the general partners fail to comply with this section an offence is committed by each general partner who is in default.

(4) But where the general partner is a legal entity, it does not commit an offence as a general partner in default unless one of its managing officers is in default.

(5) Where any such offence is committed by a general partner that is a legal entity, or any such offence is by virtue of this subsection committed by a managing officer that is a legal entity, any managing officer of the legal entity also commits the offence if—

(a) the managing officer is an individual who is in default, or

(b) the managing officer is a legal entity that is in default and one of its managing officers is in default.

(6) A person guilty of an offence under this section is liable on summary conviction—

(a) in England and Wales, to a fine;

(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

(7) A general partner or managing officer is “in default” for the purposes of this section if they authorise or permit, participate in, or fail to take all reasonable steps to prevent, the contravention.

(8) Subsection (1) does not apply in relation to a limited partnership during any period for which the address of its registered office is an address nominated by the registrar by virtue of regulations made under section 8G.

8F Exemption from duty to maintain registered office

(1) The Secretary of State may, by regulations made under this subsection, provide that—

(a) the general partners of a limited partnership with characteristics specified in those regulations are exempt from the requirement in section 8E(1);

(b) the requirement in section 8E(1)(a) or (b) (or both) applies in modified form to the general partners of a limited partnership with characteristics specified in those regulations.

(2) Regulations under subsection (1) may provide that the exemption is conditional on—

(a) the limited partnership or any of its partners satisfying conditions specified in those regulations, or

(b) the registrar being satisfied that, on registration of the limited partnership, the limited partnership or any of its partners will satisfy certain conditions specified in those regulations.

(3) The conditions described in subsection (2) may include conditions that—

(a) the general partners in the limited partnership ensure that the limited partnership has at all times an address in the UK that is an appropriate address to which the registrar may send communications to the limited partnership (a 'designated UK address');

(b) the limited partnership's designated UK address is the address of an authorised corporate service provider that is acting for the limited partnership.

(4) Regulations under subsection (1) may confer a discretion on the registrar.

(5) Regulations under subsection (1) must—

(a) provide that the general partners of a limited partnership are exempt from any requirement in section 8E(1) only if they make an application to the registrar in a form specified by the registrar and the registrar accepts that application;

(b) set out the procedure under which the general partners of a limited partnership may apply for the exemption and any evidence those general partners must provide to the registrar in connection with that application;

(c) provide that the general partners of a limited partnership who have made such an application to the registrar do not commit the offence in section 8E(3) during the period ending on the date on which the registrar determines that application and, if the registrar rejects that application, for a period of [*time period*] beginning with the date of the registrar's application.

(6) Regulations under subsection (1) are subject to negative resolution procedure.

[Re-number proposed section 8F and following proposed new sections.]

Part 2

Clause 104, Economic Crime and Corporate Transparency Bill 2022

104 A limited partnership's registered office: transitional provision

(1) This section applies in relation to a limited partnership registered under the Limited Partnerships Act 1907 in pursuance of an application for registration delivered to the registrar before section 103(3) came fully into force.

(2) The general partners must, within the transitional period~~,~~—

(a) deliver to the registrar a statement specifying—

(i) the address of ~~its~~ the limited partnership's registered office (which must be an appropriate address within the meaning given by section 8E(2) of that Act (inserted by section 103(4) of this Act)), and

(ii) which of the addresses in section 8E(2)(c) of that Act the address is, or

(b) make an application to the registrar under regulations made under section 8F of the Limited Partnerships Act 1907 (exemption from duty to maintain registered office) (as inserted by section 103(4) of this Act).

(3) If the statement under subsection (2)(b) specifies that the address is an address mentioned in section 8E(2)(c)(iv) of the Limited Partnerships Act 1907, the notice must be accompanied by a statement by the authorised corporate service provider confirming that

the address is the authorised corporate service provider's address.

(4) The provisions mentioned in subsection (~~5~~6) do not apply in respect of the limited partnership until—

(a) the end of the transitional period, or

(b) if earlier, the delivery of the statement mentioned in subsection (2).

(5) Those provisions are—

(a) section 8E of the Limited Partnerships Act 1907 (inserted by section 103(4) of this Act);

(b) section 10E(2)(b) of that Act (inserted by section 116 of this Act).

(6) In this section—

"the registrar" has the same meaning as in the Limited Partnerships Act 1907 (see section 15 of that Act);

"transitional period" means the period of ~~6~~12 months beginning when section 103(3) came fully into force.

(7) Failure by the general partners in the limited partnership to comply with subsection (2) (if they are required to do so) is, in the absence of any evidence to the contrary, to be treated by the registrar as reasonable cause to believe that the limited partnership has been dissolved for the purposes of section 18 of the Limited Partnerships Act 1907 (registrar's power to confirm dissolution of limited partnership) (inserted by section 125 of this Act).

(8) Where the registrar proposes to rely on a failure by the general partners in the limited partnership to comply with subsection (2) as grounds for exercising the power in section 18 of the Limited Partnerships Act 1907, subsections (2) to (4) of that section (publication of warning notice) do not apply.

SCHEDULE 7

Section 10H, Limited Partnerships 1907

10H Power for HMRC to obtain accounts

(1) HMRC may by notice in writing require the general partners in a limited partnership to—

(a) prepare accounts in accordance with regulations made by the Secretary of State for the purposes of this paragraph;

(b) deliver those accounts to HMRC, together with—

(i) an auditor's report prepared in accordance with regulations made by the Secretary of State for the purposes of this sub-paragraph;

(ii) such supporting evidence as may be required by regulations made by the Secretary of the State for the purposes of this sub-paragraph.

(2) A requirement under this section may specify—

(a) the period to which the accounts must relate;

(b) the form and manner in which the documents are to be delivered;

(c) the period within which they are to be delivered.

(3) HMRC may by notice in writing extend a period specified in a requirement under this section.

(4) Regulations under subsection (1)(a) must state that—

(a) if accounts have been prepared for the limited partnership pursuant to the Partnerships (Accounts) Regulations 2008 (S.I. 2008/569) ("PAR accounts"), the requirement under this section is satisfied by the general partners delivering to HMRC—

(i) a copy of the PAR accounts, if the period to which the PAR accounts relate is the same as the period specified under subsection (2)(a), or

(ii) accounts prepared on the same basis as, and drawn from the same information as that used for, the PAR accounts, if the period to which the PAR accounts relate is different from the period specified under subsection (2)(a);

(b) if the limited partnership is an alternative investment fund and accounts have been prepared for it pursuant to rules made by the Financial Conduct Authority implementing the AIFM Directive ("AIF accounts"), the requirement under this section is satisfied by the general partners delivering to HMRC—

(iii) a copy of the AIF accounts, if the period to which the AIF accounts relate is the same as the period specified under subsection (2)(a), or

(iv) accounts prepared on the same basis as, and drawn from the same information as that used for, the AIF accounts, if the period to which the AIF accounts relate is different from the period specified under subsection (2)(a).

(5) In making regulations under subsection (1), the Secretary of State must have regard to—

(a) generally accepted accounting standards in use in the UK for the preparation of accounts relating to limited partnerships,

(b) international financial reporting standards adopted in the UK for the preparation of accounts relating to limited partnerships, and

(c) generally accepted audit standards in use in the UK for the audit of accounts relating to limited partnerships.

(6) Regulations under subsection (1)(b)(i) must not require the general partners of a limited partnership to deliver an auditor's report to HMRC if no requirement for the audit of any accounts prepared in relation to the limited partnership would have arisen but for any requirement of this Act.

(7) In making a requirement under subsection (1), HMRC must have regard to—

(a) whether PAR accounts or AIF accounts have already been prepared in relation to the limited partnership and, if they have—

(i) the period to which those accounts relate,

(ii) whether requiring the preparation of accounts for a period different from that to which the PAR accounts or AIF accounts relate would involve significant time or expense for the limited partnership,

(iii) the form and manner in which those accounts were prepared, and

(iv) whether requiring the preparation of accounts in a form and manner different from that in which the PAR accounts or AIF accounts were prepared would involve significant time or expense for the limited partnership;

(b) whether or not the limited partnership is a qualifying partnership;

(c) if PAR accounts are required to be prepared in relation to the limited partnership, any period within which those accounts are required to be prepared and delivered to the registrar;

(d) if PAR accounts are not required to be prepared in relation to the limited partnership—

(i) the most recent period to which PAR accounts would have been required in relation to the partnership,

(ii) the form and manner in which PAR accounts would have been required in relation to the partnership, and

(iii) any period within which PAR accounts would have been required to be prepared in relation to the partnership and delivered to the registrar,

if the limited partnership had been a qualifying partnership.

[Re-number existing proposed subsections (4) to (10) (inclusive) accordingly.]

(11) In this section—

(a) "AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

(b) "HMRC" means the Commissioners for His Majesty's Revenue and Customs;

(c) "qualifying partnership" has the meaning given in regulation 3 of the Partnerships (Accounts) Regulations 2008 (S.I. 2008/569).

(12) Regulations under this section are subject to the affirmative resolution procedure.

APPENDIX

THE JOINT WORKING PARTY

From the Law Society Company Law Committee

Lucy Reeve (chair)	Linklaters LLP
Dominic Sedghi	Macfarlanes LLP
Edward Craft	Wedlake Bell LLP
Nick Denys	The Law Society
Prof. Brenda Hannigan	University of Southampton
Simon Currie	Morgan Lewis & Bockius LLP

From the City of London Law Society Company Law Committee and supporting it

Alfred King	Slaughter and May
Amanda May-Hill	Clifford Chance LLP
Gareth Camp	Clifford Chance LLP
Harriet Redwood	Slaughter and May
Jo Chattle	Norton Rose Fulbright LLP
Jon Perry	Norton Rose Fulbright LLP
Juliet McKean	Clifford Chance LLP
Kathy MacDonald	Norton Rose Fulbright LLP
Robert Adam	Baker & McKenzie LLP
Sarah Hawes	Herbert Smith Freehills LLP
Stephen Matthews	Allen & Overy LLP