

Comments/Observation - Companies (Amendment) Bill 2017

Compliance with the notice requirement by the addressee

1. Under the proposed section 653ZA, the addressee of the notice shall commit an offence if the addressee fails to comply with the requirements within 1 month from the date of the notice. It is conceivable that some of these addressees may reside overseas and it takes time for the notice to reach them, and they may need to take legal advice to ascertain whether s/he or the legal entity falls within the definition of “registrable person” or “registrable legal entity” (as the case may be), in particular when a complex structure is involved.
2. Also, once an addressee receives the notice and wishes to make a response, there is also a turnaround time to send out the reply. For all these reasons, by the time when an applicable company receives the reply, it may well be out of the 1-month period. It appears to be an offence of strict liability and there is no express defence built in to avail for “reasonable excuse” in failing to comply in time.
3. In some cases, there could also be controversy as to exactly when the notice reaches an addressee given that there is no express statutory requirement on both the mean /mode of service of the notice (e.g. email, registered post, ordinary post, facsimile and courier etc – the requirement is stated to be made in writing only) and also as to when an addressee shall be deemed to receive the notice. From the literal meaning of section 653ZA, an offence is committed if there is no compliance within 1 month from the “date” of the notice concerned, other than from the “deemed” date of receipt by the addressee or from 1 month after receiving the request.
4. Therefore, the bills committee may wish to consider whether additional provisions should be introduced to tackle any said issue.

Positive duty to notify?

5. The fundamental requirement of Recommendation 24 is that countries should ensure that there is adequate, accurate and timely information available on the beneficial ownership of all legal persons and that their authorities can access the information in a timely manner.
6. The duty of significant controller to notify the applicable company of their beneficial ownership, under the proposed legislation, is rather *passive*, in the sense that they need only to provide information upon receiving a notice. To enhance transparency, should there be a general duty to be imposed upon a natural person who is a beneficial owner or who ought to know that they are one to notify an entity that they are a beneficial owner even if they have not received a notice from the applicable company requesting this information?

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