



The Association of
Company Registration Agents

ACRA's concerns over the Companies House web incorporation service and the application of the Money Laundering Regulations

Commercial Competition from Government

Since the introduction of the Companies House web incorporation service in April 2011, the private company registration sector has seen its market substantially eroded, resulting in lost revenue, lost jobs and notably more difficult trading conditions as Companies House have rapidly increased their share of the market. There has been virtually no growth in the private sector in over seven years and Companies House own statistics show them to have maintained over 40% of the UK company formation market since July 2017. Latest figures indicate the Companies House market share is now over 48%.

The Government is intruding in and competing directly in a well-established, efficient and competitive private business sector. This seems to be contrary to the Government's own objective of assisting economic growth and supporting small business enterprise, and contradicts stated principles of creating a level playing field upon which small businesses can grow and prosper.

Many businesses operating in this private sector have done so for many decades providing a valuable resource to new business start-ups in advising on company incorporations, and providing services to complete statutory obligations, but agents are under continuous and increasing pressure commercially due to market pressure from Companies House. Not only has the private sector seen its market share diminished but also the price of company registrations services has been driven downwards by unfair commercial competition from a Government Agency able to charge artificially low prices to the general public.

Companies House and the Governmental Departments under which it operates maintain the view that it is not 'in business' and therefore not a commercial operation as its function is statutory. This is difficult for the private sector to accept when the Government's own web incorporation service is no different in method or practice than any of those operating in the private sector. Furthermore, Government chooses to provide the service directly to the public, and we would argue that there is no statutory duty for it to provide the service in the ways that it does. Government argues that the private sector adds value by providing additional services and advice but that is not necessarily true of all those in the market and nevertheless, the actual incorporation process is exactly the same as most companies operating in this sector. It is also true that for many in the private sector, the actual process of the company registration itself is their primary core business, and it is this business that we have seen stripped away.

It is difficult to identify any other business sector where Government has directly and deliberately encroached in an established private business sector to such effect and with such an aggressive pricing policy. Ministers seem to be focussed solely on the concept that company registration in the UK must be provided as quickly, cheaply and easily as possible, but their approach has done little more than to commoditise what should be seen as a very important legal process. ACRA asks why that stated

policy is held by Ministers, and no satisfactory explanation has been received. ACRA also argues that the private sector has for many years provided a low cost, fast and efficient service to facilitate company incorporation, long before the Companies House service came to being.

The private sector simply cannot compete commercially with the low price point established by Companies House in what is seen by all in the sector as unfair and unethical competition.

Concerns over Anti Money Laundering Regulations

Since 2007, the private company registration sector has been subject to the provisions of the Money Laundering Regulations. These provisions were extended in respect of company registration agents in 2017 following the introduction of the 4th EU Money Laundering Directive in order to require agents to carry out due diligence on all 'one-off' company registrations where previously the Regulations only required checks to be carried out where a business relationship ensued. This extension carefully and deliberately avoided the prospect of the Regulations catching incorporations carried out directly with Companies House by introducing wording to the effect that the process of a one-off company formation is deemed to constitute a business relationship, despite the fact that most company registration transactions for customers are completed well within 24 hours. This overrides the previously accepted principle that a business relationship must entail an 'element of duration'.

ACRA has no objection to this position and agrees that the point of incorporation is a practical moment at which to carry out due diligence to help prevent the use of companies for fraud, money laundering and terrorist financing.

ACRA does, however, object strongly that the Government, whilst keen to impose the Money Laundering Regulations for clearly valid and important purposes, chooses not to apply the regulations to its own operation via Companies House, and chooses to apply that exemption based purely on a legal interpretation of its operating position. Government maintains that the majority of risk where fraud and money laundering takes place through UK companies is done so through structures set up by UK TCSPs (Trust and Company Service Providers). ACRA maintains that UK agents who are properly regulated and supervised are not the primary source of these problems, but there are agents operating 'under the radar' of the regulators who act unscrupulously. In addition, many agents based overseas present thousands of incorporation to Companies House, and those agents are very rarely regulated in any way.

Furthermore, ACRA maintains that most complex structures used in fraud and money laundering are perpetuated not by UK company registration agents but by rogue lawyers and accountants who are better placed to avoid the law.

Nevertheless, Government opinion on the source of these problems takes no notice of cases where its own facility has been used to accommodate criminals setting up companies, for example as highlighted recently by a £4.5bn bitcoin fraud that centred around a UK Limited Liability Partnership in the name of Always Efficient LLP. This organisation was set up by named individuals located in the Seychelles Islands and then apparently transferred to corporate ownership in the Marshall Islands. It is highly likely that were due diligence to have been carried out the LLP may not have been incorporated and at very least would have provided intelligence on those establishing the business. As it was, this LLP was incorporated directly with Companies House for £12 and no questions asked about the legitimacy, identity or purposes of those involved.

Government has repeatedly maintained a steadfast response that Companies House does not 'carry on business' but instead operates under statute, and by this argument alone, the Government chooses not apply the MLR in its own operations. If the UK Government is serious over its intent to combat fraud and terrorist financing this argument is illogical at best and reckless at worst.

In 2017 the total number of incorporations in the UK was over 580000. Of this total, Companies House own web incorporation service accounted for more than 41% of the total, some 240000 companies. 2018 saw the upwards trend increase with just short of 620000 incorporations in the calendar year and the Companies House share of those increasing to 46% for the year.

- Not one of the companies passing through the Government's own service has been incorporated with any risk assessment having been carried out under the Money Laundering Regulations.
- Companies House does not make active checks to ensure it is incorporating companies for politically exposed persons forming which would require an enhanced level of due diligence (ACRA is aware of numerous occasions where UK Members of Parliament have been erroneously listed as directors of new companies and Companies House has done nothing to intervene).
- Companies House makes no attempt to question applications from individuals based in FATF listed high risk jurisdictions in the way the private sector is obliged to operate.
- Companies House provides exactly the same service as company registration agents in the private sector, and these practises would be deemed illegal for any private commercial company acting thus, and render their directors liable to criminal prosecution.

Solutions

The Companies House web service is accessible by consumers and individuals resident and located anywhere in the world, as well as company registration agents and businesses from unregulated jurisdictions whether setting up legitimate businesses or for illegal purposes. No checks are made and no questions asked of these bodies. The Government chooses to allow all and sundry to use their own service, incorporating companies for only £12 without taking any steps to ensure whether or not those businesses are either legitimate or regulated for MLR.

ACRA has long since argued for better regulation in our sector and the introduction of formal 'Registered Agent' status, such as that imposed by many offshore jurisdictions in order to prevent the operation of poorly managed businesses who avoid the MLR requirements.

A requirement for all applications to be presented via a recognised or regulated company registration agent or another similarly regulated body (such as accountancy or law firm) would prevent misuse of the system by unregulated bodies both in the UK and overseas and would ensure proper attention is paid to the application of AML procedures upon incorporation. In this way, proper attention is then placed on the Money Laundering Regulations across all incorporations, which is surely the intent of having company registration agents covered by the Regulations.

The simple inclusion of a recognised AML registration number on all new applications for incorporation would be a very simple solution to these issues. The Government has already introduced this approach to be applied to the incorporation of Scottish Limited Liability Partnerships, and we see no reason why this approach cannot be reflected across all incorporation types. This particular idea has been put to

Government by ACRA on a number of occasions and we have yet to encourage any reasonable debate on the matter.

The present process is inequitable at best and presents a significant risk that UK corporate structures will soon be seen across the world to be high risk and the UK itself could well become, if not already, a haven for money launderers. Prior to April 2011, the application of MLR in the company registration sector gave an effective added 'front line' protection against the use of UK companies for fraudulent purposes, but since the introduction of the Companies House web service, the benefit of this process has been destroyed by the lack of a similar process for Companies House. Registration agents report many instances where potential clients choose to use the Companies House service after being asked for identification under MLR, simply because Companies House does not require the same.

It seems absurd that the Government chooses to exempt itself from its own rules, continually stating that MLR does not apply to its operation simply because Companies House provides a statutory function and does not 'carry on business', and therefore the regulations do not technically apply. This is surely in complete contradiction of the intention behind the Regulations.

ACRA, and the whole UK company registration sector believes that Government should consider one of the following courses of action:

- a) the Companies House web incorporation service should be restricted to individuals or businesses that can demonstrate that proper due diligence has been carried out under the Money Laundering Regulations thereby minimising risk. This is simply achieved by requiring all applications to be accompanied by an active MLR registration number and checked with the active database before an application is processed; or
- b) hand back full control of the process of applying for new company incorporations to the private sector where it belongs, stop the Government competing directly with its own customers and close the Companies House web incorporation service.

The Association of Company Registration Agents Ltd
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