

Mercator Focus

Insights from across the Entity Portfolio Management Industry

Q1 2024



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A warm welcome to the first edition of the 2024 Mercator Focus newsletter. I find this time of year greatly motivating – reflecting on the previous year, setting goals, and strategizing together on how we'll achieve them. But Q1 was anything but quiet for the Mercator® by Citco (Mercator) team and we're off to a flying start with new clients, new locations, and new partnerships!

Just months after we strengthened our local support infrastructure in the United States, I am delighted to announce we have now expanded to yet another major economy – with Mercator legal officers now on-the ground in Mumbai, India.

The establishment of a physical foothold in these key jurisdictions is the next step in the continual development of our service delivery model, enabling us to increase workflow efficiencies and bolstering our offering to better meet the needs of our clients. Our India experts contribute an article to this newsletter looking at recent regulatory changes and guiding principles to achieve entity management excellence.

The 2024 events calendar has begun with our team attending the Global Legal ConfEx in Singapore, ALB Thailand Corporate Counsel Forum in Bangkok and Chris Butler, Head of Operations, hosting a panel session exploring the 'Myths and Misconceptions of Subsidiary Governance' at The Chartered Governance Institute (CGI) UK & Ireland's Subsidiary Governance Summit in London.

In Q1 we also partnered with Governance Intelligence magazine for their 'Entity Management: Keeping the corporate structure efficient and safe' report, presenting exclusive research conducted among in-house legal and co-sec professionals to give insights into how their work is changing and how companies are supporting their needs.

It was a personal pleasure to join the Governance Matters podcast and delve into what's behind these trends and share real-life examples of effective entity portfolio management in action. You can read more about some of the report's key findings in this issue.

Also in this issue, we dedicate an article to the big changes to the United Kingdom's Company Law and our subject matter expert's walk through the key steps for Ultimate Beneficial Owner (UBO) compliance around the world. Keep an eye out for our upcoming UBO report in Q2 – this will be the latest in our Entity Portfolio Management report series, combining data drawn directly from Entica® - Mercator's proprietary entity management system - with insights and analysis from our entity management experts.

Looking ahead, we have an exciting pipeline of events right across the world including the ACC Conference in Edinburgh, LACCA Live in Sao Paolo, CGI Governance Ireland in Dublin, CLOC Global Institute Las Vegas, the ACC APAC Conference and the ALB South East Asia In-house Legal Summit in Singapore.

We hope to see familiar faces as well as new ones at these events so please don't hesitate to reach out and connect with the team.

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Entity Management: Taking control in the era of uncertainty



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Historically, Entity Management was the forgotten child of the company secretarial world – a myriad of complex local rules and bureaucracy, relegated to the unglamorous back office.

Today – in the era of uncertainty, against a backdrop of evolving geopolitical, economic, legal and regulatory issues and where corporate responsibility and accountability is paramount – Entity Management is moving up the board room agenda and fast being considered as a discipline in its own right.

29% of respondents have seen an increase in the frequency of entity management discussion at a board level over the past 3 years*

There is a greater expectation to keep the board abreast of activity and ensure they are presented with standard KPIs – to give them peace of mind that each entity is properly managed and compliant. At the same time, providing the board with this deeper level of visibility has the benefit of allowing in-house legal teams to demonstrate how effective entity management is a key growth driver to support business priorities.

72% of respondents have outside help for entity management

As the profile of Entity Management increases, so does the importance of getting it right. However, Entity Management today goes beyond mere administrative tasks and handling a few filings in far flung locations around the world. It is a modern day logistical nightmare.

How many parties are involved across the entity portfolio? Who is responsible for what countries, in which countries and divisions? Is there a uniform input convention that ensures consistency across functions, countries and entities or does it differ across departments? How is information maintained, what systems are used and who has access? When you add in language barriers, the local regulatory quirks and nuances, changing deadlines and formats, the potential for damaging mishaps becomes apparent.

At the same time, the risks of non-compliance have never been higher. What might seem like a small misstep or human error, such as delays in filings or incorrect information being submitted to third parties, can have far reaching reputational and financial consequences and pose significant risk.

In-house and co-sec teams need oversight and assurance at each level. A complete understanding of the requirements, demands and expectations, and importantly they must have the tools and information at their disposal to meet their objectives.

It is little surprise then that more and more in-house teams are not only outsourcing and seeking help from specialist teams but pairing this with tech-based solutions to streamline workflows and keep control of their entities around the world.





44% say their company has increased its use of technology for entity management over the past 12 months.

Mercator® by Citco (Mercator) covers over 180 jurisdictions via a single-point-of-contact model, with services delivered by our highly-experienced client-dedicated teams, supported by local operations that cover all time zones. At the centre of our offering is Entica® - Mercator's proprietary Entity Management solution - providing accuracy, transparency and total control over entity workflows, no matter the jurisdiction.

Entica® has been custom-designed for the modern day multinational – with legal updates to keep abreast of the latest regulatory changes, automated Compliance Calendars for forward planning and alignment, Interactive Structure Charts to visualise potential change scenarios along with the tracking of tasks and spend as well as a document repository. Increasingly, we are also enabling the full automation of company secretarial workflows for faster document creation and filings with authorities.

At Mercator the philosophy that the Entity Management is a discipline in its own right guides our business and providing value to clients and their stakeholders is a key driver to the development of our services and technology.

Our unrivalled knowledge and focus on Entity Management, combined with our proprietary technology solution, is evolving the way companies view and manage their

portfolio of entities, helping them navigate the era of uncertainty and take back control.

**Source: Governance Intelligence's 'Entity Management Report 2024'. This report features findings from a survey conducted of 200 in-house and corporate secretarial teams.*

Download Governance Intelligence's Entity Management report [here](#).



GOVERNANCE MATTERS PODCAST

Kariem Abdellatif joins the Governance Matters podcast to discuss how effective entity management can keep your corporate structure efficient and safe.

Listen via [Apple podcasts](#), [Spotify](#) or [Acast](#).

Navigating Entity Management in India



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As one of the world's fastest growing economies, India offers a wealth of opportunities for international businesses. Historically, India's regulatory environment was considered as one of the most complex and challenging jurisdictions to operate in.

Whilst India is still a large and complex market that requires careful navigation, the Government's commitment to digitalization and transparency is steadily transforming it into an attractive and business-friendly market for foreign companies.

DIGITALIZATION DRIVE

The Indian Government's 'Ease of Doing Business' initiative aims to simplify and digitize various business processes, reducing paperwork and administrative hurdles. As part of this initiative, the Ministry of Corporate Affairs has launched MCA 21 Version 3.0 - a portal for online registration and e-filing. This has significantly expedited company registrations and compliance procedures such as filing of financial statements, and annual returns.

Board meetings can also be held virtually, provided the audio-visual methods are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of meetings, with the data and time.

The Ministry has also recently issued a dematerialization mandate for all private companies (other than a small company). This new requirement alters securities from a physical to digital form, allowing

smooth, cost-effective, and fool-proof disposal of shares. Starting from the 30th of September 2024, every private company (other than a small company) shall ensure that all its shares are in dematerialized form and any new issuance of private company securities shall solely be undertaken in dematerialized form.

While dematerialization of shares is not an entirely new phenomenon in Indian law, it marks a new era in the governance of private companies. Holding shares in dematerialized form enables private companies with the ability to carry out transactions electronically. Meaning a simple, convenient, secure and paperless environment for company operations.

REGULATORY UPDATES

There have been recent regulatory developments which significantly impact the risk landscape for business in India. The Ministry of Finance's amendments to the Foreign Exchange Management Non-Debt Rules in January 2024 allows Indian public companies to list equity shares on international exchanges, unlocking global fundraising opportunities. Simultaneously, the MCA introduced Companies Overseas Listing Rules, specifying provisions for overseas listing eligibility.

Additionally, Limited Liability Partnerships (LLPs) face regulatory changes with new requirements to maintain a Register of Partners and file Declarations of Beneficial Interest. A circular dated the 7th of February 2024, provides relief, allowing LLPs to file required forms. These updates emphasize the need for proactive compliance.

RISK OF NON-COMPLIANCE

In India, non-compliance poses significant risks with substantial penalties and legal repercussions. Failure to adhere to key regulations can result in hefty fines and even imprisonment. The government's stringent enforcement underscores the critical importance for business to remain well-informed and compliant, mitigating potential risks and ensuring legal adherence.

3 Key Considerations for Entity Management in India

1. Differing local compliance requirements

There are 28 states and eight federally administered union territories in India. It is important to be aware that each state may have differing specific compliance requirements and local nuances to navigate.

2. Documentation precision

In sectors like pharmaceuticals, shipping, banking and financial services, precise documentation is paramount for compliance and product approvals. Non-fulfilment of these requirements may lead to delays or regulatory issues.

3. Proactive Compliance

India's regulatory landscape is constantly evolving, with new requirements and deadlines to keep on top of. Regularly updating internal processes ensures proactive compliance and alignment with evolving corporate laws, reduces the risk of penalties associated with non-compliance.

The new UK Company Law Requirements – What you need to know



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Important changes to UK Company Law came into effect on the 4th of March 2024, as part of the UK's Economic Crime and Corporate Transparency Act 2023 (ECTA).

The EECTA represent an overhaul of the UK government's framework for tackling economic and financial crime and gives greater power to Companies House to query, challenge or remove company information which appears to be incorrect or inconsistent.

It is therefore crucial corporate governance professionals, corporate secretaries and in-house legal teams are aware of these new requirements, ensure all past and present information submitted to Companies House is accurate and any inaccuracies are addressed immediately.

WHAT'S CHANGED?

1. Registered office address

Companies must ensure their registered office address is at all times an 'appropriate address'. An appropriate address is somewhere where (i) if a document is delivered, it would be expected to come to the attention of a person acting on behalf of the company and (ii) delivery is capable of being recorded by obtaining an acknowledgement of delivery.

Companies will no longer be able to use a PO Box as their registered office address but will be able to use a third-party agent's address, provided it is an 'appropriate address'.

Action point: Check your company's registered address is an 'appropriate address'. If not, you'll need to change it and inform Companies House. Consider putting in place internal processes to periodically review the appropriateness of the registered office address.

2. Statement of lawful purpose.

Upon registering or 'incorporating' a company, the subscribers to the company will have to confirm they're forming the company for a lawful purpose. Existing companies will also be required to confirm their intended activities are lawful, on their annual confirmation statement.

A company will not be able to file an annual confirmation statement without confirming a statement of lawful future activities of the company.

Action point: Ensure a 'statement of lawful purpose' is included in your next confirmation statement filed at Companies House on or after 5 March 2024. This will be available through a check box on the revised confirmation statement form.

3. Registered email address

All companies must provide a registered 'appropriate' email address. Companies House will use this email address to communicate with the company – it will not be available to the public.

An email address is deemed 'appropriate' if emails sent to it by the Registrar come to the attention of a person acting on behalf of the company. This email address does not have to be in the company domain name and companies will be allowed to use the same email address for multiple companies.

Action point: Ensure you have an 'appropriate' registered company email address. This address should be accessible to several company representatives to ensure the inbox is regularly monitored and no communications from Companies House are missed.



WHAT'S COMING UP?

1. Identify Verification

Anyone setting up, running, owning, or controlling a company in the UK will soon need to verify their identity to prove they are who they claim to be. Anyone acting on behalf of a company will also need to verify their identity before they can file information with Companies House.

Individuals and Companies will be able to verify directly with Companies House, or through an authorized agent.

Further guidance on when these changes will come into effect and how the identify verification process will work is expected in 2024.

2. Software Only Filings

As part of the journey to modernize and digitize filing routes, Companies House will transition towards filing accounts by software only. All companies will need to find suitable software before web-based and paper filing options are no longer available. The move to filing accounts by software only will be phased in over the next 2 to 3 years.

3. Fees Increase

From the 1st of May 2024, Companies House will be increasing its fees. The new costs will affect the likes of incorporation, a change of name, confirmation statements, re-registration of a company and other services.

Managing Ultimate Beneficial Ownership Compliance Around the World



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Ultimate Beneficial Ownership (UBO) compliance has been one of the prevailing topics for policymakers and governments over the last decade. While for lawmakers, it is still a field for further discussion, companies in different jurisdictions are required to be compliant with the UBO laws already set out.

Diversity is a key description of UBO regulations worldwide. While driven by the same principle of increasing transparency, the main definitions and applicable rules and procedures vary from jurisdiction to jurisdiction. Furthermore, as with any other legislation, UBO reporting requirements remain "movable" even after being set.

The implications of UBO non-compliance are wide reaching; from significant increases in risks of financial crime to reputational damage, hefty financial penalties, loss of license and even criminal prosecutions. From a company's perspective, it is therefore extremely important to keep an eye on regulatory developments and comply in time.

In our upcoming special report – [part of Mercator's Entity Portfolio Management report series](#) – we delve into the dynamics and nuances of UBO maintenance around the world, ranking jurisdictions on the cost and time it takes to complete tasks based on real life data covering 103 jurisdictions where requirements apply.

Ahead of the report's release, we provide some guiding principles and key steps for UBO compliance around the world.

1. Know the exact UBO definitions

Always know the exact UBO definition in each jurisdiction and which entity type these regulations apply to. In some countries, UBO requirements apply only to companies but branches are excluded.

But what if no one fits the UBO definition? This doesn't mean that the entity can do nothing or is exempt from filing – a 'pseudo' UBO (for example a senior managing officer of the entity) should be registered.

2. Collect all reportable information & supporting documents

Firstly, clarify what personal information is necessary for filing. This can include full name, nationality, residency address, marital status and percentage held in the company.

This information needs to be collected and kept securely along with any supporting documents (e.g. passport copies, internal registers, etc.) and should be easy to find in case of authorities' inspection.

3. Keep an internal UBO register

Not all jurisdictions require to keep an internal register, but there are many that do. Regardless, maintaining an internal UBO register helps to track any changes in UBO information and keeps all details in one secure place.

Where internal UBO register requirements do apply, companies must check whether there are specific format or language requirements. Should the register be kept in pdf or hard copy is needed? Should it be signed or not?



4. File details with local authorities in time

Each jurisdiction has separate filing requirements and deadlines. It is vital to be well prepared in advanced and keep to the deadlines for initial registration/regular check/filing of changes to avoid penalties or other negative consequences.

Some countries, for example Switzerland and Mexico, do not require filings (at least for now) but do require UBO information to be kept internally.

5. Review UBO information regularly

There are jurisdictions where internal annual review of UBO information is mandatory by law. In some, annual UBO filing is always required, regardless of whether there were any changes of UBO details or not. Other jurisdictions, on the other hand, require UBO filing only in case of change.

Even if a jurisdiction does not explicitly indicate in the regulations that regular review is needed, entities should still check their UBO information at least once a year.

This is because all regulations mention that UBO information must be current, accurate and up to date. And the best way to ensure the accuracy of UBO details is by regular checks.



Find Out More

For further information on how we can assist you,
please contact Mercator@citco.com

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