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Dear Sirs

Corporate Transparency and Register Reform: Powers of the Registrar

We welcome the opportunity to comment on the department's consultation on the powers of the registrar.

As you know, the Chartered Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. The Institute is the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, which includes company secretaries. Company secretaries have a key role in companies' governance arrangements including corporate reporting. Our members are therefore well placed to understand the issues around Companies House filings and the practicalities of dealing with issues that arise.

In preparing our response we have consulted, amongst others, with members of the Chartered Governance Institute's Company Secretaries Forum, a group of company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. However, the views expressed in this response are not necessarily those of any individual members of any of this group, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

General comments

As we said in our response to the earlier consultation on corporate transparency and register reform, back in August 2019, "We very much support the overall proposals for reforms to increase the accuracy and transparency of information available from Companies House, thereby increasing public confidence in UK companies. We believe this is important for the future of UK business and for providing assurance to people engaging with UK companies."



We went on to say that “We agree that it is important for Companies House information to be transparent and accurate, and that the misuse of UK registered entities should be prevented. However, this should not be done in a way that is detrimental to UK business and the proposals should not go further than is necessary to deliver these aims.”

In general we believe that the proposals contained in this latest consultation document meet these criteria.

Chapter 1: Introducing a new power to query information

A risk-based approach

Q.1. Do you agree that the querying power should be exercised on a risk-based approach? If you disagree, please explain your rationale.

Yes. As the consultation document notes, it is more proportionate for the Registrar to adopt a risk-based approach rather than to review every piece of data lodged provided, of course, that queries referred to the Registrar can be dealt with expeditiously. Our only caveat would be that we believe that the Registrar should act on all issues brought to her attention, albeit less urgently where fraud is not suspected. This may well be the Government’s intention, but paragraph 16 of the consultation document suggests a ‘significance’ test.

Querying power: potential scenarios

Q. 2. Are there specific circumstances under which you consider the querying power should be exercised? Please give reasons for your answer.

Those mentioned in the consultation document seem very reasonable. Another example might be where a company becomes aware that an unauthorised filing has been made in its name and requests correction.

Application of the new querying power to company names

Q. 3. In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.

The circumstances mentioned in the consultation document seem very reasonable examples.

Q. 4. Do you agree that this is an appropriate use of the querying power? Please explain the reason for your view.

Yes. This seems a proportionate approach.

Q. 5. Is it appropriate to place the onus on the company and / or the applicant to demonstrate that a name is being registered or was registered in good faith?

Yes. They can be expected to have the information readily to hand, but Companies House should retain discretion in the event of malicious or vexatious complaints.

Q. 6. Do you agree that the “sensitive words and expressions” regulations should be amended to capture circumstances such as those described above?

Yes.



Other company name loopholes

Q. 7. Do you agree that we should close this gap in the way we propose? Are there any other gaps that we should consider?

Yes. One loophole that might usefully be closed is where a company uses, or trades under, a name in the UK, which it has legally been able to register in another country, but which it would not have been permitted to register in the UK. This seems to be a relatively simple means of evading the intention of UK company names legislation.

The querying process and annotation of the register

Q: 8. What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?

We believe that the sanctions proposed, including making non-compliance an offence, are appropriate. The possibility of criminal sanctions is a very strong incentive to compliance.

Legal effect documents

Q. 9. Do you agree that the removal of most documents which have legal effect by virtue of registration at Companies House should be a matter for the courts?

Yes.

Q. 10. We propose that the Registrar should be able to remove certain filings which in future, will give legal effect such as director appointments. Do you have any views on whether the Registrar should have any other role in respect of legal effect filings?

We agree that filings such as director and company secretary appointments, details of people with significant control, and change of registered office address should be able to be removed administratively by the Registrar.

What information will be published?

Q. 11. Do you agree that the evidence provided as a result of the Registrar's queries should not be published unless it comprises information that would normally be published? Please give reasons for your answer.

Yes, although it might be helpful in such circumstances were Companies House to mark the information on the public register in such a way to indicate that it has been checked. This will prevent others referring it to Companies House for review.

Transparency on the use of the querying power

Q. 12. The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?

None. We believe it is sufficient that the Registrar is querying the information.



Q. 13. What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?

This will depend on the query but would typically be evidence of the accuracy of the information filed.

Q. 14. What guidance on the Registrar's use of the querying power would you expect Companies House to publish?

Guidance on acceptable forms of evidence would be helpful, as would examples of common errors.

Complaints

Q. 15. Do you agree that complaints should be handled using the same process as the current Companies House complaints process? If not, please include reasons for your answer.

Yes.

Chapter 2: Reforming the Registrar's existing powers

Removal of information

Q. 16. Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?

Yes. This is an important development and the powers of the Registrar in this regard should be widened as far as practicable.

Rectification of registered office address

Q. 17. Do you agree that the Registrar should close this loophole or are there circumstances where remaining at the default address, or moving to the default address more than once, is warranted?

Yes. We can think of no such circumstances.

Q. 18. Do you agree that the amount of time a company (or other entity) can be defaulted to the Companies House address be limited to a specified period, e.g. 12 months?

Yes.

Q. 19. What action do you consider should be taken if a company remains at the default address for longer than 12 months?

The proposal of criminal sanctions seems reasonable. The company should also be struck off, but it will be necessary to build in some protection for creditors.



Speeding up processes

Q. 20. Do you agree that it is appropriate to reduce the 28-day period to 14 days? If not, what period do you consider is appropriate and why?

Yes. It might also be helpful to introduce a timeframe within which information subsequently found to be correct will be reinstated.

Q. 21. Do you agree that the Registrar should have the ability to remove the name or address of the affected individual while a response is awaited from the company?

Yes. It might also be helpful to introduce a timeframe within which information subsequently found to be correct will be reinstated following receipt of a response from the company?

Q. 22. Do you agree that the power to require (or mandate) delivery by electronic means should be conferred from the Secretary of State to the Registrar?

Yes, with two provisos. Firstly that Companies House systems are able to receive all filings by electronic means, which is not currently the case. For example, there are some documents which, we are told, cannot currently be filed electronically, although we are confident that Companies House are working towards that end. These include:

- Many companies have to prepare a special copy of their annual report for filing at Companies House which has had all photographs and graphics removed; this must be sent in hard-copy for Companies House to scan. It would be much more efficient all-round were companies able to file the electronic copy of the full annual report (with photographs) that they already have.
- Companies with complex capital structures are unable to file their SH01 Return of Allotments form electronically and have to revert to paper filing.
- Subsidiary companies claiming audit exemption by virtue of a parent company guarantee pursuant to s479A-479C of the Companies Act 2006 are required to submit a number of documents with their accounts when they file them at Companies House, namely a copy of the company accounts of the guaranteeing parent, consent to the audit exemption from all members of the company and a copy of the guarantee (Form AA06). Therefore such companies have no choice at present but to file their accounts in paper form.
- The requirement to file a separate paper copy of the accounts of the guaranteeing parent with each subsidiary company covered by the audit exemption is administratively burdensome (and a complete waste of paper, particularly as they will already have been filed against the guaranteeing company's own record.). Even when filing several subsidiary company accounts together, each one claiming the exemption must be accompanied by a separate copy of the parent company accounts.

Our second proviso is that electronic means should be the default, rather than the only means of filing. there should be a fallback to paper delivery. There is no age limit to being involved in a company and no requirement to have reliable IT. Some very small companies e.g. a small businesses or trade, or one simply holding the freehold of a house split into flats, may not always be able to fulfil this requirement, so there needs to be a 'fall back' option of delivering in paper form.



Chapter 3: Rules governing company registers

Q. 23. We intend to remove the requirement for companies to keep and maintain their own Register of Directors. Do you have any concerns about this approach?

No. That said, it would be helpful if Companies House can introduce a facility to download a certified copy of such information as lists of directors are frequently requested by third parties.

Q. 24. What impact would changes to the requirement to keep any of the registers in the list above have?

Very little in most cases and the Government's proposed approach to the Register of Directors might usefully be extended to the Register of Secretaries and the Register of People with Significant Control and possibly to these other registers. The Register of Members should, however, remain with the company as it is much more likely to be subject to change, especially in the case of listed companies.

Q. 25. We may also consider further changes to the election regime for private limited companies which was introduced in 2016. How useful is the election regime for private limited companies?

Very useful for some private companies, but not for all.

If you would like to discuss any of the above comments in further detail, please contact me.

Yours faithfully

Peter Swabey

Policy & Research Director

ICSA: The Chartered Governance Institute

