Analysis, Company Law and Corporate Transparency Team
Department for Business, Energy and Industrial Strategy and Companies House

By email: transparencyandtrust@beis.gov.uk

3 February 2021

Dear Sir/Madam,

Re: Corporate Transparency and Register Reform: Powers of the Registrar Consultation

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2015 and 2019, BVCA members invested over £43bn into nearly 3,230 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ 972,000 people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

We are delighted to have had the opportunity to be involved in the Expert Panel in relation to Corporate Transparency and Register Reform and to respond to this Consultation. Our response focuses on those questions which we believe have direct relevance to our member firms.

As we indicated in our response to the previous Corporate Transparency and Register Reform Consultation[1], we understand and support measures to tackle the misuse of UK corporate entities but feel strongly that such measures need to be proportionate, justifiable by reference to the perceived risks and balanced with the need to ensure that the UK remains an attractive place to do business for the vast majority of companies which are pursuing legitimate corporate objectives. We are concerned that certain of the proposals in this Consultation have the potential to go beyond what is required to tackle the misuse of UK corporate entities and, depending on how certain of the proposed powers of the Registrar are exercised, to create uncertainty for companies conducting their businesses legitimately.

Consultation questions

Q1: Do you agree that the querying power should be exercised on a risk-based approach? If you disagree, please explain your rationale.

We agree that the querying power should be exercised on a risk-based approach as it relates to intelligence received from other agencies, monitoring of current affairs etc.

However, we are concerned about the proposal that queries should be capable of being raised generally in the absence of other intelligence. This general discretion to query information seems to us to go too far and to create material uncertainty for companies. The specific example given in the Consultation of a company being set up with what seems to be a large amount of share capital would not be unusual in our industry, as companies are often set up with significant amounts of share capital

[1] We responded to the pervious consultation Corporate Transparency and Register Reform consultation in 2019.

to enable funding of M&A transactions (or indeed their share capital is subsequently increased in such a way). We would have similar concerns in respect of any ability to query significant reductions of capital. In the latter case, such filings being queried or delayed could have material consequences and could expose companies to legal and commercial risk (e.g., a failure to be able to implement an essential reorganisation which is for the benefit or shareholders or creditors).

In our view, it would be more appropriate to limit the querying power (in the absence of other intelligence) to specific areas (e.g., exemption from filing full accounts) in which prescribed, conclusive, easily accessible and well-advertised forms of evidence would be acceptable. This approach would have the benefit of making the decision to accept / reject a filing binary and should be capable of a very significant degree of automation at Companies House.

Q2: Are there specific circumstances under which you consider the querying power should be exercised? Please give reasons for your answer.

We do not have any specific views in this regard.

Q3: In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.

We agree with use of the querying power in the context of company names on a risk-based approach as it relates to intelligence received from other agencies, monitoring of current affairs etc.

We believe, however, that in the absence of other intelligence, a narrower querying power applicable to company names in specific circumstances (such as use of the name of an international organisation or institution) would be more appropriate and would enable companies to predict in advance where a query might be raised and to present appropriate evidence at the outset.

Q4: Do you agree that this is an appropriate use of the querying power? Please explain the reason for your view.

Please see our response to question 3 above.

Q5: 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?

We believe this is appropriate provided it is sufficiently clear to companies in advance where additional evidence is likely to be required.

Q6: Do you agree that the "sensitive words and expressions" regulations should be amended to capture circumstances such as those described above?

Whilst we understand the policy objective of capturing other languages and abbreviations of sensitive words, we are concerned that an open-ended discretion for Companies House to consider other languages, abbreviations or the use of other characters or punctuation when considering sensitive words or phrases could lead to increased rejections of names which are being used appropriately (particularly when they are used as part of other words). If the regulations are amended in this way, we would suggest that there is clear guidance on what is and is not considered sensitive to minimise the administrative burden on companies that the rejection of names can cause. We would also suggest that Companies House link in with other regulators (such as the FCA) to ensure that companies do not end up caught between Companies House and those regulators in respect of the requirements to be permitted to use particular names.

Q7: Do you agree that we should close this gap in the way we propose? Are there any other gaps we should consider?

We have no concerns with the gap being closed in this way. We are not aware of other gaps that should be considered.

Q8: 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 annotation of a company's record (in an increasingly prominent manner as time passes) is an adequate measure to incentivise compliance. If non-compliance is to be made an offence, we would expect there to be a longer period than 14 days for a company to respond to a query.

Q9: Do you agree that the removal of most documents which have a legal effect by virtue of registration at Companies House should be a matter for the courts?

Yes.

Q10: 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 strongly disagree that the Registrar should be able to remove filings which have legal effect given the legal uncertainty this could give rise to.

In particular, once identity verification and registration become pre-requisites to valid appointment as a director, there should be no need to remove filings which effect director appointments. If a director appointment filing could be removed from the register, presumably this would have the effect of an individual becoming a de facto director who relies on common law ostensible authority rather than being registered at Companies House. This would have the opposite effect to that which is intended and actually increase uncertainty and create risk for third parties dealing with companies. It could also leave a grey area in respect of acts undertaken prior to and post-removal from the register – for example, it seems to us that it would leave open whether or not a company is legally bound by the actions of director whose appointment has been terminated through being removed from the register.

Q11: 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, we believe that if satisfactory evidence is provided, there should be no evidence of the query on a company's record.

Q12: The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?

We would expect the query to contain an explanation as to why the information is being queried (by reference to the Companies Act) and, if applicable, a non-exhaustive list of examples of the types of evidence that the company might provide in response.

Q13: What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?

We believe that this will depend on the nature of the query. We also believe that the Registrar should calibrate her request based on the nature of the intelligence received which has led to use of the querying power. For example, we do not believe it would generally be appropriate to request the submission of original documents.

As this will inevitably involve a degree of judgment being exercised by Companies House employees, it will be vital that the business community has confidence in the level of experience and training given to Companies House employees who are making decisions in relation to exercise of the querying power.

Q14: What guidance on the Registrar's use of the querying power would you expect Companies House to publish?

We believe it would be helpful for guidance to be produced (and updated regularly) that would enable companies to anticipate the circumstances in which the querying power might be exercised. This would avoid unnecessary disruption to those conducting their businesses legitimately and reduce the pressure on Companies House.

Q15: 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.

We have no particular views in this regard.

Q16: Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?

We agree that the Registrar should have greater power to remove non-legal effect filings (such as errors in directors' particulars or incorrect PSC filings). We do not agree that the Registrar should have power to remove legal effect filings given the legal uncertainty this could cause.

Q17: 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?

We agree that this loophole should be closed.

Q18: 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.

Q19: What action do you consider should be taken if a company remains at the default address for longer than 12 months?

We have no particular views in this regard.

Q20: Do you agree that it is appropriate to reduce the 28-day period? If not, what period do you consider is appropriate and why?

We agree that it is appropriate to reduce the 28-day period. Whilst we do not feel strongly, it seems to us that 14 days is potentially a relatively short period even if interactions are increasingly digital and we wonder whether 21 days might be a sensible middle ground.

Q21: Do you agree that Companies House should have the ability to remove the name or address of the affected individual while a response is awaited from the company?

No, we do not agree, as this would create the legal uncertainty we describe at question 10 above.

Q22: 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?

We have no particular views in this regard.

Q23: 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, we believe this is consistent with the proposed changes to the way in which directors are appointed. In fact, if this change to how directors are appointed is made, we believe it could create risk for companies to keep and maintain their own Register of Directors.

Q24: What impact would changes to the requirement to keep any of the registers in the list above have?

Other than the Register of Members, which we believe needs to be maintained by companies rather than Companies House (since there is no obligation to keep an up-to-date list of members at Companies House), we believe that the requirement for companies to keep all of the other registers in the list could be removed.

In addition to the Register of Members, it is important for up-to-date registers of charges, directors and PSCs to be available in due diligence on corporate transactions, so it would be helpful if this information could be electronically extracted from filings and collated at Companies House in a format that replicates a register. This information also needs to be accessible 24 hours a day and 365 days a year.

Q25: 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?

We believe that the election regime is relatively widely used by private companies, particularly smaller ones which do not have full time company secretarial staff.

We would be very keen to discuss the contents of this letter with you and look forward to hearing from you in order to establish whether a meeting of this sort is possible.

Yours faithfully,

Amy Mahon
Chair, BVCA Legal & Accounting Committee