



THE INSTITUTE  
OF CHARTERED  
ACCOUNTANTS  
IN ENGLAND AND WALES

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Our ref: ICAEW Rep 11/10

Your ref:

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Dear Julie

**Companies Act 2006: Objecting to a Registered Office Address**

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on *Companies Act 2006: Objecting to a Registered Office Address*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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## ICAEW REPRESENTATION

### ICAEW REP 11/10

#### **COMPANIES ACT 2006: OBJECTING TO A REGISTERED OFFICE ADDRESS**

Memorandum of comment submitted in January 2010 by The Institute of Chartered Accountants in England and Wales, in response to the Department for Business, Innovation and Skills (BIS) consultation paper *Companies Act 2006: Objecting to a Registered Office Address* published in November 2009

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## INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales welcomes the opportunity to comment on the consultation paper *Companies Act 2006: Objecting to a Registered Office Address* published by the Department for Business, Innovation and Skills.

## WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.

## MAJOR POINTS

### Support for the initiative

4. We support BIS's proposals to introduce a procedure for objecting to a registered office, and we believe the procedure should be replicated for directors' services addresses, allowing legal occupiers the ability to object where directors provide incorrect service addresses.

## RESPONSES TO SPECIFIC QUESTIONS

### Q1. Do you agree that there is a problem that needs a solution?

5. Yes. We agree there is a problem that needs to be sorted out, not only in fraudulent cases, but problems can also arise for those providing the company secretarial service of hosting registered offices. Currently, where clients cease to pay fees, the service provider/occupier is unable to cause the former client's registered office to change.

### Q2. If you do agree, does the proposal set out above address the problem or is there another process we should consider?

6. We are supportive of the proposed procedure in principle, but we consider some aspects may need further careful thought, including how it would apply to UK establishments of overseas companies.

### Q3. We have referred as shorthand to the 'legal occupier' of the premises. Who should be allowed seek a change of a company's registered office address?

7. Anyone who has a lawful right of occupation at a premises should be able to seek redress in this way, including a landlord, tenant and/or licensee (but not a squatter).

**Q4. Should the legal occupier of an address (or any other person) have the right to object at any time to the use of the address by a company as its registered office?**

8. Yes, the right to utilise this procedure should arise at any time (ie without time limits) because, in the case of clients who cease to pay fees, it should be exercisable on the occurrence of such breakdown in client relationship and (in the case of fraud) it would need to be exercised when the fraud is uncovered and that could be much later. The legal representative of the legal occupier (to be defined, see Q3) should also be entitled to utilise this procedure.

**Q5. When such a person writes to the registrar to seek a change in the registered office details, how should this be done? For example, would a simple statement, letter or Companies House form be sufficient or should something more formal be required such as an affidavit or confirmation by a trusted source (e.g. the police)? Why?**

9. We consider that a form or statement/letter should suffice, rather than anything more formal such as an affidavit or police confirmation.

**Q6. Who should Companies House inform about an objection (e.g. the directors and/or secretary of the company) and what should they tell them? (For example just that there had been an objection, or the details of the person who had lodged the objection?)**

10. We consider that Companies House should inform the directors and secretary of the company about an objection at their residential addresses in addition to their service addresses, and this should include the details of the person who had lodged the objection and the grounds for the objection. The registrar should also be required to inform the relevant company, even though such letter would be sent to the (potentially incorrect) registered office, because it is possible that the objection itself is fraudulent, and an important check would be to notify the registered office of the company. We also consider that Companies House should send a copy to the objector, so the objector is aware of the action being taken, and such letter could be phrased in such a way as to explain why the objection has precipitated a high volume of registrar's correspondence being sent to the company at the (potentially incorrect) registered office.

**Q7. How long should the registrar give the company to provide a new address or apply to court before annotating the register to confirm that the address is no longer the address of the company's registered office?**

11. Fourteen days. When annotating the register, the registrar should also mention that the company will be struck off in the absence of the company providing a correct address, and the date by which this would occur (or by which a notice will appear in the Gazette).

**Q8. Is advertising in the Gazette an appropriate means to serve documents on the company in the absence of any other address?**

12. We could not think of a suitable alternative to the Gazette.

**Q9. Do you agree that, in the event of a successful objection, the address should cease to be the company's registered office but should remain on the register as part of the historical record? Will this cause any difficulties? Is anything else required?**

13. We believe the default position should be that the address remains on the historical record, except possibly in the instance of fraud although we question the practicality of removing all prior fraudulent addresses (this is something to be considered by Companies House).

**Q10. Is strike –off an appropriate sanction in these circumstances? If so how rapidly? And what protections, if any, should there be for third parties?**

14. Yes, we consider strike–off an appropriate sanction in these circumstances. The timescale should be similar to that for failing to file annual returns (6-7 months) and regarding protections, creditors should have the right to object.

**Q11. Are there any other comments you wish to make relating to this issue?**

15. We suggest that the courts are given the power to award costs against persons who are in default (including the directors), to encourage them promptly either to seek the agreement of the legal occupier to continue at the existing address or provide an alternative address.
16. We also suggest that, to deter vexatious objections eg by activists, the courts should have the power to apply sanctions against objectors who falsely claim to be the legal occupier.
17. To encourage company directors to provide a new registered office promptly, the cost of Gazette entries could also be charged to the company, and persons who are in default (eg the directors).
18. Also, we believe the procedure should be replicated for directors' services addresses, allowing legal occupiers the ability to object where directors provide incorrect service addresses.

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