



22 November 2013

Our ref: ICAEW Rep 166/13

Company Law Simplifications Team
The Department for Business, Innovation and Skills
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By email: CompanyFilingReqs@bis.gsi.gov.uk

Dear Sir/Madam

Company Filing Requirements

ICAEW is pleased to respond to your request for comments on *Company Filing Requirements*.

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

COMPANY FILING REQUIREMENTS

Memorandum of comment submitted in November 2013 by ICAEW, in response to Department for Business Innovation and Skills consultation paper Company Filing Requirements published in October 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Company Filing Requirements* published by Department for Business Innovation and Skills on 7 October 2013, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.
5. This response also reflects consultation with the ICAEW Practice Committee which is the representative voice for ICAEW practice members. The Committee raises issues of concern and works with senior staff to resolve them. It guides ICAEW on the development of services, communications and the impact of regulations for practice members.

MAJOR POINTS

Support for the initiative

6. We generally support the initiatives to reduce unnecessary red tape. However, in some cases regulation may serve a useful purpose even if it does not seem strictly necessary. Also, any deregulatory benefit needs to be weighed against the potential additional work required of those involved to consider and make relevant changes and potentially more complex legislation that might result.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1. Do you agree that the requirement to file an annual return is removed and that the system relies on event driven filing?

7. We believe that an annual check is helpful to ensure accuracy. As noted in the consultation, a large number of updates/corrections are made when annual returns are filed. We do not believe that this is generally because filings are being deliberately delayed (in breach of law) to be timed with the annual return, but rather that the discipline of having the annual return results in inadvertent omissions being rectified. We note that a high proportion of companies involve third parties to assist them in making annual returns. This in itself may account for some of the volume of corrections being made at this time. While third party involvement may have a cost, it also has benefits in terms of accuracy of information and compliance by companies with the filing requirements.

Q2. Do you agree that companies should be allowed to simply check and confirm that their information is up to date once a year?

8. Yes. The associated filing fee should also be eliminated or reduced. As regards timing, it would be helpful if the confirmation process could be aligned with the account filing process, so that a

company would be permitted to make the confirmation at any time during the time permitted to file the accounts (but not mandated to file both at the same time).

Q3. Do you wish to retain the annual return?

9. See Q1 and Q2 above. We think that an annual check (rather than an annual return) should be required.

Q4. Do you agree that the SIC code should be required at incorporation and maintained as part of an annual check?

10. We query whether including this information on incorporation will be helpful as it may not be known what the main activity will be at that time.

Q5. We would welcome views on the impact on companies and on the transparency of the register of aligning filing dates for accounts at both HMRC and CH.

11. We note that it is open for all companies to make their HMRC tax filings early (at the same time as CH filings) so that no legislative change is required to enable this. We also note that some companies use the different filing dates and wish to continue to be able to do so. We do not support a move to harmonise the filing dates on a mandatory basis; we do not see a case for delayed CH filings and to bring forward HMRC filings would impose a burden (and, in practice, the accounts will need to be finalised before the HMRC filing can be made). Any mandatory change in this respect would, therefore, increase the red-tape burden rather than reduce it. We do, however, advocate a regime with sufficient flexibility to enable those who choose to align filing dates to do so. It seems that the issue of substance relates to different systems used by HMRC and CH, rather than timing deadlines, and we would welcome moves which would facilitate use of a single set of data and single system for both filings in a way which would reduce the amount or complexity of data required.
12. We do not understand the question regarding transparency of the register – information provided to HMRC is private and not included on the CH register.

Q6. Do you agree that for those companies whose directors and shareholders are the same people, the requirement to make their registers available at their Registered Office or SAIL should be removed?

13. We are concerned that having a separate regime for companies whose directors and shareholders are the same would add a layer complexity to company law not merited by the limited potential benefits. It is doubtful that those small companies referred to which do not currently comply with requirements to keep registers of shareholders and directors could be relied upon to keep records updated at CH (or maintain evidence that their directors and shareholders are the same).
14. Persons entitled to inspect the registers will typically need to know that they are inspecting the definitive records. Even if the records held at CH are to be regarded as the definitive records, disputes may still arise on related matters such as whether a person should have been registered as a member but was not. It is not clear from the consultation paper whether disputes regarding inspection are usually linked to underlying disputes of this nature or, therefore, whether the proposal would necessarily reduce the volume of disputes.

Q7. Should private companies have the option of holding their registers at CH, in the same way that they are able to nominate a SAIL?

15. While this could reduce administrative work for some companies, we have a number of reservations. In particular: (i) there is a risk that the arrangements would dilute the sense of responsibility for record keeping that should, ultimately, be a responsibility of directors; (ii) it is not difficult for a small company to keep a record of its directors, members and secretary; (iii) it seems unlikely that the proposal will increase accuracy of underlying information; and (iv) the

proposal could result in different registers being held at different places. We comment on these issues, among others, more fully below.

16. We believe that any option of this nature should apply to all private companies to avoid increasing the complexity of company law (ie, categories of company) generally.
17. If CH is to provide the register, it would need to organise information as appropriate for a register (including, for example, complying with indexing requirements for companies with more than 50 members).
18. A company has more extensive requirements to maintain records open for inspection at its registered office (or SAIL) under s1136(2) of the Act, in particular, records of directors' service contracts and indemnities, resolutions and a register of debentures. Paragraph 3 of The Companies (Company Records) Regulations 2008 (SI 2008/3006) provides that a single location must be specified for everything listed in section 1136(2).
19. It is unclear why this proposal extends only to the limited registers mentioned. If pursued in this way, information which may be required for inspection would be located in different places, which seems counter to the aims to reduce complexity.
20. The proposals will not necessarily result in better record keeping as CH will be reliant upon the company providing the underlying information to it. While companies may not always maintain registers properly, in some cases they do have the relevant information but fail to send it to CH as they should.
21. In practice, where a company nominates a SAIL, the SAIL address will typically be provided by a professional company secretarial firm. As noted above (and by implication, from the consultation), the involvement of professional providers is likely to result in higher levels of compliance by companies than might otherwise be the case. It does not appear to be intended that CH will itself seek to correct records held by it or act in any way as an advisor to the company. Were it to do so, we wonder if concerns regarding competition with the private sector would arise. If it does not do so, then the limited deregulatory effect of the proposal might have a cost in terms of accuracy of records.
22. As noted in the consultation document, the register of members determines who is a member and when. This is the case whether the company maintains its register at its registered office or at a SAIL. It is unclear why the use of CH as, in effect, a SAIL should be treated differently and we query whether general principles of company law should be fragmented depending upon matters such as where registers are held.

Q8. Should dates of birth be suppressed in part, or in full?

23. Yes. We share the concerns noted regarding data security and identity theft. The more information that is given, the greater the risk of abuse. The information is most likely to be of use to law enforcement agencies (who would have access to this information) and should therefore be kept on a non-public part of the register. If additional information is to be made public, we think that it should be limited to year of birth, but this would not assist where individuals have the same name and year of birth (and could increase risk of identity theft).

Q9. Should the Statement of Capital requirements be changed, as set out above?

24. Yes, the proposal is consistent with our response to the earlier consultation ([ICAEW Rep 10/10](#)). We suggest that, in addition and as stated in that earlier response, it would be useful for the Statement of Capital to include the aggregate amounts, if any, (across all share classes, not broken down by class) standing to the share premium account and to the capital redemption reserve. The relevant figures should be readily obtainable from the company's books and are useful in showing the overall capital position of the company.

Q10. Should the statement of capital on formation requirements be the same as the other statement of capital requirements throughout the Act?

25. Yes.

Q11. Do you think companies should only have to supply a statement of capital on a specified date if they have not updated their information within the year?

26. Given that the information needs to be updated annually under EU regulations, removing the requirement for the update to be at the time of the annual check seems to be of marginal benefit and runs the risk of resulting in a more complex regime for a company where the last update is not synchronised with the annual check. If the company has updated its capital statement within the year, the relevant information will be readily available to the company and minimal work will be involved in including the information in the annual check along with other relevant information.

Q12. Should we amend S. 555 to rely on Articles of Association to provide information on allotment of shares?

27. We would support requiring information on rights attached to share classes to be contained in the articles rather than in statements of capital and that they need not be reported on the return of allotment.

Q13. Do you agree that companies with subsidiaries must include a total number of subsidiaries? If not, why?

28. No. We do not see that this would be useful information in itself, it is not currently required and would therefore represent an additional burden for no obvious benefit.

Q14. Do you agree that the information must always be included in the accounts?

29. No. The current provisions of s409 are as they are for good reason, in particular so that accounts are not cluttered by extraneous information. If companies are not currently complying sufficiently, then we suggest that the remedy lies in enforcement of the current law.

Q15. Are there any notices that should not be sent electronically?

30. We agree that electronic communication should be facilitated but not mandated. We think that enforcement action (including final notices in relation to strike-off) should be communicated through hard copy, whether in addition to, or instead of, electronic communications, at least in the absence of acknowledgement of receipt of an electronic notice. We assume that the proposal relates solely to e mail addresses for use in communications between the company and CH. On that basis we see no reason why the e mail address should be made public.

Q16. Do you agree that the email address should be made available to other public authorities, specified in law?

31. If access is to be granted to relevant authorities, the legislation should contain appropriate safeguards regarding access and use.

Q17. Are there any other means of electronic communication that CH should explore?

32. Yes, CH should explore other means of electronic communication, such as increased use of secure web-sites. However, security of information and reliability of record keeping should be priorities in this context.

Q18. Do you think companies should be able to supply the Registrar with additional information, such as a website, to display on the public record?

33. No. The register should be used solely to fulfil designated statutory requirements imposed on companies. We do not think that it is the role of a public body such as CH to help companies

promote themselves (eg, through links to web-sites). There are already private sector resources available to researchers on companies.

Q19. Do you think that CH has the balance between upfront validation and verification and quick and effective remedy right?

34. In our response to the Trust and Transparency consultation, we highlighted that the sort of anti-money laundering checks carried out by the regulated sector require material resource and a high level of skill and experience. Where the regulated sector is already involved (so that relevant money laundering checks are done), it would not be efficient to require duplication of effort. In some cases, however, there are gaps (for instance where a company is established directly through CH and does not use a UK banker). In those cases, we believe that CH should be required to undertake the same level of verification as is done in the regulated sector.

Q20. Do you agree that there should be a requirement for the Registered Office to have a link to the company?

35. Yes, a company should not be able to designate an address as a registered office unless it is entitled to do so and we support the initiative to prevent abuse.

Q21. What criteria do you think should be specified to evidence an 'effective' Registered Office?

36. We suggest that a general criterion be used, to the effect that the company must be entitled to designate and use the address for the purpose and that CH be entitled to invoke the strike off procedure if it is not satisfied that the company is entitled. CH would then need to reach its determination based on such evidence as might be produced at the time. (In exercising any new powers if this kind, CH will need to consider not only the position of 'innocent' third parties, but also those who may seek to disrupt the legitimate activities of the company). While this would require CH to exercise a judgement using a degree of discretion, it should (we suggest) remain open to the company to apply to court if it wishes to dispute the finding.

37. Some of the difficulties in adopting a more prescriptive approach appear from the examples given at paragraph 122. For instance, in (a), a person may be an occupant, but not entitled to occupy. In (b), the company may have permission of the owner (but the owner may not be an occupant). Similarly, requiring the link to be 'demonstrable' begs some questions. The fact that a person may provide a copy of a lease in his name does not necessarily mean that the lease is valid. A person may, in fact, have a right which is not documented (for instance, a person ejected forcibly from a matrimonial home registered in the sole name of the spouse). It is difficult to see how all the possible issues that might arise in practice could be anticipated in the legislation and this leads us to suggest a broader discretionary power as outlined above.

Q22. Do you think replacing an ineffective Registered Office address with a Director's address is a viable approach?

38. Yes, although if it is an invalid address the proposed approach of a CH address pending an accelerated strike-off is a good longstop approach.

Q23. Do you agree that the consent to act should be replaced with a simple confirmation that the company holds the consent?

39. No. The underlying concern is stated to be that directors are registered by companies as directors when, in fact, they are not directors. Removing the requirement for a form evidencing director consent cannot possibly alleviate that concern. If a person has not agreed to be a director, presumably he has not signed the consent form. In that case, a person sending the form (with a completed consent) has acted illegally. The remedy to this issue seems to be to enforce the current law more effectively.

Q24. Should companies be required to provide evidence of a Director's appointment, in the event of a dispute?

40. As noted in answer to Q23, we do not believe that the consent form process should be changed. The suggestions regarding 'evidence' highlight some difficulties that might arise from the proposed alternative approach. We agree that companies and individuals are unlikely to want to provide copies of service contracts to CH. Appointment may be evidenced in other ways (such as minutes of the meeting appointing the directors). The obvious standard template document would be the current consent form. If it is to be signed by the company and director on appointment, the only 'deregulatory' measure envisaged is that it would be filed if and when a dispute arises rather than at the time of appointment. We consider this to be a negligible benefit, with possible substantive disadvantages in the context of tackling the issue of directors being appointed without their consent.

Q25. Do you agree that there should be an accelerated strike off process particularly in the event of a company hi-jacking an address?

41. Yes, although the proposed timeframe may be too short. In particular, the initial two week period for response is short (eg, the responsible person may be ill).

Q26. Are there any potential consequences of an accelerated strike off process that we should bear in mind?

42. In view of the serious nature of the remedy (eg, company property becomes *bona vacantia*), we suggest that all reasonable steps be taken to ensure that key stakeholders are contacted, including writing to the directors at their residential address (if different from the registered office address) and to the shareholders (or through a mechanism to be determined, at least one of them).

Q27. Are there any other circumstances in which an accelerated strike off process would be appropriate?

43. We are not aware of any.

Q28. We would welcome views on the assumptions and estimates used in the costs benefits analyses, particularly where we have not been able to quantify some of the costs and benefits.

44. We have no comments on the assumptions and estimates.

Q29. Are there any other costs or benefits that should be included in the analyses?

45. Care needs to be taken to ensure that the deregulatory process does not result in over complicated legislation. If legislation on a matter such as a filing for a new director is so complicated that an average company will need professional advisers to advise it whether or not a filing is required (or what evidence it needs to keep), then it may have been cheaper for the company to carry on making the filings.

Q30. We would welcome views on likely take-up of proposals, particularly in relation to company registers and electronic communications.

46. We think that proposals to further facilitate use of e-mail communication would be widely adopted by company secretarial and other professionals acting on behalf of companies.

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