Register of People with Significant Control

ICAEW welcomes the opportunity to comment on the consultation on *Register of People with Significant Control* published by BIS on 19 June 2015, a copy of which is available from this link.

This ICAEW response of 17 July 2015 reflects limited consultation with the Company Law Sub-Committee of the 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.

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MAJOR POINTS

1. We are making this response on the basis of very limited consultation with our members reflecting the short time allowed for responses during the summer period. While the government signalled its intention to proceed with this new regime in 2013 and has consulted with participants on some aspects in the meantime, it is unclear to us why legislation which introduces completely new disclosure requirements for so many businesses should be implemented in such a short timeframe. As noted in the consultation document, the new Money Laundering Directive has now been adopted and it appears that the new regime will need to be revisited within the next two years to ensure that it complies with the Directive requirements, which will cause more disruption to business at that time. If the government is serious about cutting red tape, it might consider postponing some, or all, of the PSC register proposals so that they are introduced concurrently with Directive implementation. This would also enable the UK to assess further to what extent others are following the UK's approach.

2. As proposals for implementation of the register have developed, the additional regulatory burden for business is becoming increasingly apparent, but it remains unclear whether, or to what extent, the proposed regime will meet government's stated aims. We commented on the potential shortcomings of the proposed regime in our response to the June 2013 consultation and many of these comments remain relevant. The foreword to this latest consultation appears to suggest that the new regime will provide information on what motivates PSCs and on what they are seeking to achieve, but we do not believe that this is (or should be) the case, as the information required to be disclosed is intended to be of an objective nature.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you have any comments on the impact assessments covering the protection regime and the costs of making registers publicly available?

3. Please see 'Major Points' above.

Q2: Do you agree with the proposed exemptions?

4. Yes.

Q3: Should other companies be exempted, and why?

5. Not so far as we are aware.

Q4: Should an exemption be applied to issuers on any of the regulated markets outside the EEA? If so, which markets and why?

6. We do not comment on specific markets but agree that markets which have equivalent disclosure requirements and enforcement record should be included in the exemption.

Q5: Are there other entities not included in this list which you believe to be subject to very similar disclosure and transparency rules as DTR5 issuers? If so, please explain with reference to relevant legislation.

7. We have no comment to make on this question.

Q6: Do you agree with the proposed dual approach for recording the relationship between the PSC and the company, showing which condition or conditions are met and to what extent? If not, what alternative would you propose?

8. We agree with the objective noted in the Forward that the disclosure requirements should be kept simple. We understand that the approach on recording the five conditions was intended to be light touch, but the new regime as a whole has resulted in complex regulation with a considerable bureaucratic burden for business. The proposed banding ranges are an added complication. We are opposed to the idea that even more detail on shareholdings should be required.

9. We propose that the UK should do what is necessary to implement the new Money Laundering Directive but not to 'gold plate' it, unless it is clear why to do so would be the UK's interests. It is not clear to us that the banding proposal would meet the Directive requirements (or be the minimum required to do so) and we assume that there will be a further consultation on implementation of the Directive in due course. It might be, for instance, that it would be sufficient simply to know whether or not there is a PSC having more than 25% or, if more than one, how many (particularly when considered in the light of information disclosed in the other company registers, such as the register of members).

Q7: Are the proposed 25% bands for share ownership and voting rights too narrow, too broad or and at the right level? Is there merit in a separate category for 100% control?

10. See Q6 above.

Q8: Would it be simpler to require companies to state the exact proportion of shares or voting rights controlled? If so, do you have any views on how the impact might be mitigated for the small percentage of companies whose register would be subject to frequent updating?

11. See Q6 above. For simple and static companies, it should be relatively easy to complete the information as suggested, albeit there will be an administrative burden that does not exist today (and that there will be a degree of inadvertent non-compliance). We do not think that the position of other companies should be further complicated in an effort to simplify the position for the straightforward cases, it will already be complicated enough.

Q9: Do you agree with the proposed approach for requiring companies to note other information on their register? If not, please explain why.

12. It is unclear to us who the 'searchers' will be whose interests are sufficiently compelling to merit the bureaucracy involved in this approach. It is one thing to require companies (and PSCs) to obtain and register information and another to require them to explain how they are doing so on an ongoing basis.

13. The register generally should record outcomes, not ongoing administrative processes. Companies are not required to record how processes for appointment of directors or changes in shareholdings are progressing and the proposed regime is disproportionate in this respect. It should be sufficient for 'searchers' to understand that there are timeframes during which the information may be updated and sanctions for breach.

14. On this basis, it would not be necessary to have 'negative' declarations (regulations 8(1), (3) and (4)) because it can be assumed that there is no PSC or that the company is carrying out its obligations to determine whether or not there is a PSC or to obtain all relevant details. It would, perhaps, still be necessary to declare if the company knows or has reasonable cause to believe that there is a registrable person it has been unable to identify (regulation 8(2)), because that is outcome related, although it raises questions as to what evidence would be required for a company to reach the relevant conclusion.

Q10: Which fee structure, Option 1 or Option 2, do you prefer and why?

15. Option 1 has the merit of simplicity and £12 better reflects the cost of doing any work at all than £1 (being the minimum under the regime for register of members). Therefore we support Option 2 in the interest of simplicity.

Q11: Do you think the level of the fees in the options is correct? If not, please explain why.

16. A company facing a disclosure request may need to evaluate the request, liaise with the individual whose details are being sought and, in some cases seek legal advice regarding possible application to court. £20 would better reflect likely costs involved.

Q12: Do you think the definition of 'an entry' in the draft regulations is correct? If not, please explain why.

17. Yes.

Q13: Is the process for protecting residential addresses from credit reference agencies appropriate and complete?

18. As we have previously commented, we do not see that a PSC should be required to apply to have his or her residential address kept private from a credit reference agency (there should be a presumption of privacy).

19. We have similarly commented on the difficulty of extending the exemption regime to cover, for instance, economic harm, whilst at the same time maintaining an objective and consistent regime of equal application to all citizens. This approach is, however, likely to come at a cost to investment in the UK and the disclosure regime as a whole may increase risks for UK citizens, including the risk of identity theft.

Q14: Is the process set out in draft regulations 25-36 appropriate and complete?

20. We do not believe that any PSC should be required to understand and follow such complex processes merely to retain the right to have information withheld from credit agencies. It is not clear to us on what basis credit agencies should have a presumed right to this information at all, particularly such a strong right that it would require exposure to violence or intimidation to overcome it.

21. We find the terminology used in regulation 27(2) ('characteristic or attribute') unclear. If disclosure of the information on the PSC register (which necessarily relates to a specific company) would result in the threat, we should have thought that this would be

sufficient grounds for exemption in itself. We do not think it appropriate to require an e-mail address to be given as there is no requirement for a person to use e-mail.

Q15: Are the grounds for making an application clearly defined? If not, please explain.

22. See Q14 above.

Q16: Are the transitional arrangements appropriate?

23. See Q17 below.

Q17: Is the 28 day limit for an individual to cease to be a PSC appropriate? If not, please explain why not.

24. Please see our opening comments on the timing of implementation generally. On the specific question, this is a major change in law and those affected may wish to divest their interests in UK companies rather than have to disclose information that has previously been private. Even though this regime has been under discussion for some time, it would be reasonable for those affected to wait until the detail has been finalised and implemented before taking such significant action. We therefore suggest that 6 months would be a more reasonable timescale than 28 days.

Q18 Is the mandated content of the warning and restrictions notices useful? Are the notices too detailed or are there elements that can be omitted?

25. We do not comment on this question.

Question 19 Do you agree that capacity to respond should be the only factor a company must take into account in considering reasons for non-compliance? If not, please indicate what other factors a company should take into consideration and in what circumstances this would be appropriate.

26. We think that this requires careful consideration. Schedule 1B to the Act refers to a notice which has been 'served' on a person. If this means that the person must have received the notice, then it may be that incapacity would be the only legitimate reason not to respond, but questions might still arise as to whether a response was made but not received by the company. If a person could be 'served' without actually having received a notice, it might not be reasonable to expect a response if the notice was not actually received.

27. It is important that the procedures be as straightforward as possible to minimise the risks of companies being unnecessarily involved in disputes, but where there is a risk of a company getting it wrong, the ability to withdraw a restrictions notice if there was a valid reason (which may be broader than capacity) could be useful to avoid expensive court proceedings in cases of dispute on issues of this kind.

28. We believe that this may prove to be a difficult area to strike a good balance between convenience and fairness and recommend that the application of the restrictions provisions and, in particular, the outcome and cost of any relevant court proceedings, be carefully monitored by government so that the provisions can be reviewed again at the appropriate time.

Do you have any other comments on the consultation?

29. Please see ‘major points’ above.