



**Corporate Transparency and Register Reform
R3 response
August 2019**

ABOUT R3

1. R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent licensed insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession.
2. Our members work across the spectrum of the profession, from global legal and accountancy firms through to smaller, local practices. Our members have direct experience of insolvencies and their impact on individuals and businesses across the UK.
3. The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession promotes economic regeneration, resolves financial distress for businesses and individuals, saves jobs, and creates the confidence and public trust which underpin trading, lending and investment.
4. We have focused this response on those questions and themes in this consultation where we can provide answers based on our members' expertise. This response is based on feedback on the proposals received from members of our policy committees.
5. R3 welcomed the opportunity to discuss this consultation with BEIS officials in July 2019, and we would be delighted to attend further meetings with officials to discuss any points raised below in greater detail. If you would like to meet us or if you have any other queries, please contact R3's Public Affairs Manager, James Jeffreys, at james.jeffreys@r3.org.uk or on 020 7566 4220.

Overview

6. R3 welcomes the opportunity to respond to this consultation, having called for the introduction of director ID verification and reforms to strengthen the role and powers of Companies House for some time. These reforms, which are long overdue, will help to improve corporate governance, prevent and deter fraud, enable existing frauds to be identified and disrupted, and increase confidence in UK plc.
7. Our members – the insolvency and restructuring profession – have a unique and important perspective on the issues and questions raised in this consultation.
8. The profession plays a key role in tackling fraud and ensuring that the UK remains a safe place to do business. Insolvency practitioners (IPs) have significant expertise and wide-ranging powers to investigate fraudulent activities and are highly qualified and regulated professionals, who operate under a comprehensive framework of statutory duties.

9. Indeed, under this framework, when appointed over corporate entities, IPs are required to investigate the company's affairs and director conduct, in part by referring to the entity's books and records, in order to discharge their duties. Specifically, under the Company Director Disqualification Act 1986, IPs are required to prepare a report about the conduct of each person who was a director of the company. There are also occasions where IPs, conducting investigative work, need to access information about companies over which they are not appointed.
10. Being able to access corporate records and information about directors, or quickly identifying where this information is missing or inaccurate, is therefore an important component of our members' ability to carry out their statutory duties.
11. As such, our members are regular users of information held at Companies House and therefore have a good understanding of where the current corporate register, and the framework around it, can be improved. By improving the range and accuracy of the information held at Companies House, alongside the introduction of the proposed ID verification requirements, these reforms will by themselves improve the efficacy of, and trust in, the UK's company register – but crucially, the reforms could also help the insolvency and restructuring profession's own anti-fraud work. This could see more effective investigations, more fraud disrupted and prevented, and more money returned to creditors.
12. However, one aspect missing from the consultation is recognition of the insolvency and restructuring profession's unique role as a user of information held by Companies House, and the wider role it plays in supporting the efficacy of, and trust in, the UK's corporate governance framework.
13. To this end, there is one particularly important part of the consultation which will require further thought from Government. Under 'public and non-public information', the consultation sets out how the register will effectively comprise two parts: a 'front-end' that is accessible publicly, and a larger 'back-end' holding more 'behind-the-scenes' information, including the additional information the Government intends Companies House to capture. Under the Government's current plans, this 'back-end' information would *"only be accessible internally to Companies House and to public authorities. It would only be available to the latter where appropriate information sharing gateways are in place and in line with data protection obligations."*¹
14. We would urge the Government to ensure IPs are included in this category of those able to access the new range of additional information collected by Companies House. By recognising the profession's important role in the overarching corporate governance framework in this way, the Government will be able to fully maximise the benefit of this important package of reforms.

The case for verifying identities

Q1. Do you agree with the general premise that Companies House should have the ability to check the identity of individuals on the register? Please explain your reasons.

Q2. Are you aware of any other pros or cons government will need to consider in introducing identity verification?

¹ Paragraph 171

Q3. Are there other options the government should consider to provide greater certainty over who is setting up, managing and controlling corporate entities?

15. As noted in the overview, R3 has called for the introduction of director ID verification and reforms to strengthen the role and powers of Companies House for some time. The desirability of these reforms is a given – the issue for the Government is to ensure that they work on a practical basis. Again, we welcome the opportunity to contribute to this consultation to this end.
16. At present, Companies House is a relatively passive registry and does not require officers to provide formal proof of their identities before registering their company and status. However, from our members' experience, it is often the case that corporate entities can be used as vehicles to mask fraudulent activity and it is easy for fraudsters to create multiple registrations by using slightly different dates of birth, or slightly different spellings of names (either of officers or companies), or inconsistently using middle names.
17. While it has been argued by some that requiring officers to provide identification stifles trade, R3 believes that this argument is specious in view of the fact that officers already need to provide such proof of identity if, for example, they wish to open a bank account. R3 believes that it would be a significant deterrent to fraud and would make a significant difference when investigating fraud if officers were required to verify their identity with Companies House.
18. R3 is also aware of the increase in administration, and the related increase in operating costs, that will be required of Companies House as a result of this package of reforms. To this end, R3 has previously suggested that a fee should apply to the submission of every Companies House form for the notification of appointment, termination, or change of the directors of a company. All or part of this fee could then help to fund Companies House's new operational requirements.
19. There is also a risk that those directors who have been disqualified may continue to operate behind the scenes as de facto directors, shadow directors or 'advisors' to a company. IPs frequently see disqualified directors contributing to successive business failures or fraudulent activity or breaching the terms of their disqualification by acting as shadow directors and 'advisors'. While R3 recognises that directors should not be discouraged from 'trying again' in the spirit of the UK's entrepreneurial culture, it is important that safeguards are put in place to protect against directors who are repeatedly acting improperly. R3 therefore believes that companies should be required to state on their confirmation statement (CS01) to Companies House the names of all directors 'howsoever described' rather than just the appointed directors.
20. The CS01 form should also contain a 'health warning' of what may happen to directors who break the terms of their disqualification order and to other directors who are complicit in allowing disqualified directors to be involved with the management of a company.
21. Looking more broadly at the role of directors, the insolvency and restructuring profession has long had concerns about directors' awareness of their statutory duties particularly in the context of insolvency. The Government should use the opportunity of this package of reforms to also address this issue. In our response to the Government's 2018 'insolvency and corporate governance' consultation, we set out some thoughts and recommendations as to

how the Government could seek to improve director awareness of their duties and responsibilities, which we repeat below:

- a. R3 believes that directors' knowledge of their duties can be poor, and that while directors are expected to be aware of limitations in their knowledge and to seek professional advice where appropriate, many do not. This is particularly true where a company enters the 'zone of insolvency'.
- b. The insolvency and restructuring profession recognises that there needs to be a trade-off between promoting entrepreneurialism and imposing controls on directors and how they run a company. In the profession's experience, however, the balance struck is not always the right one.
- c. Limited liability affords individuals significant protections from the financial risks and other liabilities a company may incur. This protection comes at a very low cost: a limited company can be created for as little as £12, with no requirement for new directors to provide identification, and little requirement for new directors to show their responsibilities are understood – until it is too late and those responsibilities are breached. The protection on offer to entrepreneurs is welcome, but there is a question about whether this protection is too easy to obtain – and therefore too easy to abuse.
- d. Where a company's financial problems have been long in the making, R3's members often report that company directors seek advice from an insolvency professional too late, or that advice isn't sought at all. A number of factors explain why this might be so, including (but not limited to):
 - i. Directors may simply be unaware of their options or the true state of a company's finances;
 - ii. Directors are overly optimistic and believe that they can resolve a company's problems themselves; and
 - iii. Directors may be worried that speaking to an IP or restructuring expert may see them lose control of a company; they may be worried about the personal consequences of corporate insolvency (disqualification or potentially personal financial troubles); and they may also be worried about how a company's entry into an insolvency procedure might be perceived by colleagues, contacts, or friends and family.
- e. In the profession's experience, the earlier advice is sought, the more options a company has and the more likely it is that it can avoid insolvency and the consequent creditor losses and negative impact on the company's supply chain, employees, and other stakeholders.
- f. The existing provisions against wrongful trading may act as a trigger for directors to seek advice, although this advice may only be sought at the last moment. To improve the chances of early advice being sought, the Government may wish to look at the impact of some of the new approaches to corporate governance being taken overseas and consider whether they might be appropriate in the UK. Among overseas reforms, for example, legislative changes in South Africa have seen

directors' duties broadened so that evidential rescue efforts must begin if insolvency is reasonably likely within the next six months (s.129 Chapter 6 Companies Act No. 71 of 2008). While R3 would not recommend introducing this change in the UK without fully assessing its impact in South Africa, it may be a useful case study.

- g. The Government's own 2016 corporate insolvency framework reform proposals² may also help incentivise directors to seek early advice. As above, directors may delay seeking advice because they worry about losing control of a company; under the Government's proposals for a moratorium, directors would retain control of a company while they seek advice and put a rescue plan together.
- h. As the 2018 insolvency and corporate governance consultation noted, directors are already expected to consider whether they need to use professional advice, but they may not be aware of this expectation or they may not be aware they are at a point where advice is needed. The Government must explore ways to improve director awareness and education, and R3 would be happy to work with the Government to do this. One option could be to use directors' regular statutory interactions with Companies House as an opportunity to provide directors with information and reminders of their duties.

How identity verification might work in practice

How the process might work

Q4. Do you agree that the preferred option should be to verify identities digitally, using a leading technological solution? Please give reasons.

- 22. R3 agrees that the preferred option for Companies House should be to verify identities digitally, which will enable verification to be processed quickly and cost effectively. R3 also agrees that the Government should explore the range of options that are available, working with other leaders in this field across the public and private sectors.

Data security considerations

Q5. Are there any other issues the government should take into account to ensure the verification process can be easily accessed by all potential users?

- 23. R3 has no comment to make on this point, other than to agree that the Government should explore all potential avenues to ensure that those individuals unable to verify their identity using the preferred approach are able to do so by other means. We would assume, however, that the number of individuals without some form of identity documents seeking to become directors is very low.

Duplication: the role of third party agents

Q6. Do you agree that the focus should be on direct incorporations and filings if we can be confident that third party agents are undertaking customer due diligence checks? Please give reasons.

Q7. Do you agree that third party agents should provide evidence to Companies House that they have undertaken customer due diligence checks on individuals? Please give reasons.

² A Review of the Corporate Insolvency Framework, 2016

Requiring more information of third party agents

Q8. Do you agree that more information on third party agents filing on behalf of companies should be collected? What should be collected?

Q9. What information about third party agents should be available on the register?

24. R3 cautions against the use of third party agents to carry out ID verification on behalf of Companies House. The Government is right to refer to concerns expressed by UK law enforcement that “...companies it investigates for possible money laundering almost always use third parties as a barrier between themselves and the State”³. These concerns are echoed by the insolvency and restructuring profession, members of which have questioned whether the existing anti-money laundering (AML) requirements for third party agents are sufficient. Without adequate assurance of an agent’s integrity, this proposal could create a substantial loophole for individuals to circumvent the reforms.
25. We would also point to recent issues arising from the outsourcing of government services to private companies who have either not carried out their services to an adequate standard or who have themselves become insolvent, leading to significant issues for both government and individuals who have been left to seek alternative means to provide and obtain the same services respectively – often at greater financial and administrative cost. We would argue that such an important improvement to the UK’s corporate governance framework should be handled in full by the Government.
26. However, there may still be a role for third party agents in carrying out a service for individuals, whereby they can submit relevant verification documents to Companies House on behalf of a customer but where the verification process itself is handled by Companies House.

Who identity verification would apply to and when

Directors

Q10. Do you agree that government should (i) mandate ID verification for directors and (ii) require that verification takes place before a person can validly be appointed as a director? Please set out your reasons.

27. R3 agrees with this suggestion, but we note the potential initial administrative difficulties that could arise if the policy were to be implemented as suggested without some form of implementation period. Such an implementation period would allow officers to register before sanction for non-compliance would be put into effect.
28. Such an implementation period would provide: directors with time to obtain ID verification; Companies House with time to process the large number of verifications required; and would allow for a public awareness campaign to promote the need for directors to seek verification. We would suggest that a two year implementation period would be appropriate.

³ Paragraph 70

29. The Government may also wish to consider allowing individuals to have their identity verified even where this is not in direct connection to an appointment as a director. This 'pre-registration' would allow 'first time' directors to assume directorship responsibilities at a company without having to wait for the verification process to be completed from scratch.

People with Significant Control

Q11. How can verification of People with Significant Control be best achieved, and what would be the appropriate sanction for non-compliance?

30. R3 largely agrees with the Government's suggested approach to achieving verification of People with Significant Control (PSC), including placing responsibility for obtaining verification, and the sanction for not doing so, with individual PSCs. This measure may not achieve much in providing additional information or transparency about the corporate governance of companies, but it is better to have this policy in place than not.
31. There are a some issues which may limit the usefulness of this measure: where the PSC is a corporate (or other non-individual registrable person), knowing the identity of the corporate will only reveal one 'layer' of information if it is unknown who owns this corporate, or if the corporate is based overseas.
32. Verification of PSCs should not be voluntary, as R3 considers it likely that few PSCs would undergo voluntary verification and none of those with dishonest intent would do so. However, we note the difficulty of enforcing the requirement, even with the threat of a criminal sanction.

Presenters

Q12. Do you agree that government should require presenters to undergo identity verification and not accept proposed incorporations or filing updates from non-verified persons? Please explain your reasons.

33. R3 agrees with the Government's suggestion that presenters should be required to undergo identity verification and that proposed incorporations or filing updates from non-verified presenters should not be accepted by Companies House. We would point out, however, the need for the Government to ensure that an IP is only required to verify themselves once, rather than each time they are appointed over a corporate entity. This would otherwise represent an unnecessary administrative burden on IPs and would incur significant cumulative costs for creditors and UK plc.

Application to existing directors and PSCs

Q13. Do you agree with the principle that identity checks should be extended to existing directors and People with Significant Control? Please give reasons.

34. R3 agrees that identity checks should be extended to existing directors and PSCs. It simply would not make sense to introduce the reforms without capturing all existing directors and PSCs – although we do note again our suggestion at paragraph 28 for a two year implementation period to provide those affected with sufficient time to complete the verification process.

Requiring better information about shareholders

Collecting more information about shareholders

Q14. Should companies be required to collect and file more detailed information about shareholders?

Q15. Do you agree with the proposed information requirements and what, if any, of this information should appear on the register?

Extending identity verification to certain shareholders

Q16. Do you agree that identity checks should be optional for shareholders, but that the register makes clear whether they have or have not verified their identity? Please give reasons.

35. R3 broadly agrees with the Government's suggestions regarding the requirement for companies to collect and file more detailed information about shareholders, as well as the proposed information requirements.
36. R3 suggests that the proposed identity checks for shareholders should match the specified PSC threshold: it should be compulsory for those shareholders with more than 25% of a company's shares or voting rights. Having a lower threshold could represent an unnecessary administrative burden to companies and would create inconsistencies in the regulatory framework. Shareholders with 25% or less shareholding or voting rights should have the option to undergo the identity checks, which would assist them to be in a position to acquire a larger shareholding in the future.
37. R3 agrees that the register should make clear where shareholders have not verified their identity.

Linking identities on the register

Why identity verification is superior to unique identifiers in linking information

Q17. Do you agree that verification of a person's identity is a better way to link appointments than unique identifiers?

38. Although some R3 members consider there to be some merit to introducing unique identifiers for directors, given that other countries (India, Australia and New Zealand) have introduced, or are in the course of introducing a similar policy, we agree with the Government's position that verification of a person's identity would be a better way to link appointments, in light of the Government's own concerns regarding the extent of the power available to it under s.1082 of the Companies Act 2006 (although, given the nature of each director's entry on the register being unique, presumably every director will have some form of unique reference number).

Disclosure of usual residential addresses

Q18. Do you agree that government should extend Companies House's ability to disclose residential address information to outside partners to support core services?

39. R3 agrees with the suggestion that the Government should extend Companies House's ability to disclose residential address information to outside partners, as part of the wider set of reforms to ensure that Companies House is able to take a more proactive approach to managing register information.

Reform of the powers over information filed on the register

Checking information before its entry onto the register

Q19. Do you agree that Companies House should have more discretion to query information before it is placed on the register, and to ask for evidence where appropriate?

Removing information from the register

Q20. Do you agree that companies must evidence any objection to an application from a third party to remove information from its filings?

40. R3 agrees with the Government's suggested approach to the points raised in questions 19 and 20. To become more than a passive registry, and to play a more proactive role in safeguarding the UK's corporate governance framework, Companies House must surely be able to have more discretion to query information, ask for evidence to support the veracity of information submitted to it, as well as to require corporates to evidence objections to applications from third parties to remove information from its filings.

Reform of company accounts

Improving digital tagging of accounts

Q21. Do you agree that Companies House should explore the introduction of minimum tagging standards?

41. R3 does not take a view regarding the introduction of minimum tagging standards.

Limiting the number of times that a company can shorten its accounting reference date

Q22. Do you agree that there should be a limit to the number of times a company can shorten its accounting reference period? If so, what should the limit be?

42. We agree that a limit on the number of times a company can shorten its accounting reference period should be introduced. We would recommend that this limit should match the existing limit on the number of times that a company can lengthen its accounting reference period, i.e. once every five years, unless granted special permission from Companies House.

Improving financial information

Q23. How can the financial information available on the register be improved? What would be the benefit?

43. R3 members have noted that there may be little that can be practically done to improve the financial information on the register – in part due to the essential nature of the process: a company’s financial information is out of date by the time the data is filed.
44. In R3’s view, the prime benefit of these reforms arise from the verification of director ID and the wider set of changes to enable Companies House to more proactively query and verify information across the register.

Clarifying People with Significant Control exemptions

Q24. Should some additional basic information be required about companies that are exempt from People with Significant Control requirements, and companies owned and controlled by a relevant legal entity that is exempt?

45. R3 agrees with the Government’s suggestion that Companies House should collect some basic information about the regulated market on which a Relevant Legal Entity is listed.

Dissolved company records

Q25. Do you agree that company records should be kept on the register for 20 years from the company’s dissolution? If not, what period would be appropriate and why?

46. R3 strongly supports the Government’s decision to maintain the current 20 year retention period for the company records of a dissolved corporate. This historic information can play an important role in an IP’s investigations into director conduct and the affairs of a corporate.
47. We hope it would also be helpful to note an important recommendation, relevant to this package of proposed reforms, contained in our response to the Government’s 2018 ‘insolvency and corporate governance’ consultation, where we welcomed the Government’s attention to the use of dissolutions to avoid scrutiny and liabilities.
48. In our response to the consultation, we agreed with the Government’s proposal that director conduct in a dissolved company should be brought within the scope of the Secretary of State’s investigatory powers, but noted our concerns that this may create a resource challenge for the Insolvency Service.
49. We set out a number of alternative ways in which the Government could make it harder to use dissolutions as a means of avoiding scrutiny, including making the restoration of a dissolved company to the Companies House register an administrative process rather than a court-based process.
50. At the moment, there is a significant asymmetry between the cost to a director of avoiding scrutiny and the cost to the insolvency profession and creditors of putting things right. In many instances, restoration of a dissolved corporate requires an application to court. This can be costly in terms of both time and money, and thus all too easily allows directors to create a significant barrier to investigating their conduct. While there is opportunity to object to a dissolution and there are sanctions associated with misuse of the dissolution process or the failure to file accounts, R3 members report that these do not stop directors keen to avoid the spotlight.

51. To resolve this issue, the Government should remove the asymmetry described above and the restoration of a company should, in all instances, be an administrative process. This could be triggered by a company director or creditor once suitable requirements have been met (such as producing evidence of an unpaid debt or a commitment to petition for the winding-up of the restored company) and any fee for doing so should be similar to the cost of dissolving a company. Any restoration process would need to be clear about what would happen to a company once restored.
52. Where work has been carried out by an IP in preparation for the restoration of a dissolved corporate (for example, working with creditors to find evidence of unpaid debts), the IP should be appointed over the corporate in any subsequent insolvency procedure. The prospect of not being appointed in an insolvency procedure can disincentivise IPs from carrying out preparatory investigations. Alternatively, once a company is shown to have been insolvent and is restored, its directors could be required to begin a Creditors Voluntary Liquidation.
53. This recommendation would make it easier and less costly for creditors and the insolvency profession to restore a company so that it can be placed into an insolvency procedure and the company's assets realised for the benefit of creditors.

Public and non-public information

Q26. Are the controls on access to further information collected by Companies House under these proposals appropriate? If not, please give reasons and suggest alternative controls.

54. Rather than repeat in full the points made at paragraphs 13 and 14 above, we simply reiterate the importance of IPs being able to access this information by being included in the special access category.
55. We would, however, add two additional points regarding access. Firstly, we recommend that IPs should be able to access the 'back-end' information pertaining to any other corporates linked to that of the entity to which they have been appointed. In a group context, this would include the parent company, subsidiary companies, other subsidiaries in the group, as well as other companies linked via directorships and shareholdings.
56. Secondly, while IPs, once appointed, require access to corporate information as previously described, other licensed IPs may seek access to the same information, either in a pre-appointment context, or as part of a more general investigation in to potential or suspected company fraud. IPs will also seek information regarding a bankrupt director's personal assets when appointed as a trustee in bankruptcy.
57. As well as ensuring that IPs are included in the special access category, we would urge the Government to consider a mechanism whereby all licensed IPs, appointed over an entity or not, are able to access this information.
58. This could be achieved by simply including licensed IPs in the same special access category, introducing a separate mechanism to handle requests from licensed IPs, or by clarifying existing legislation to ensure that licensed IPs can request the information from Companies House through a Section 236 request (Section 236 of the Insolvency Act 1986 provides that *"the court may, on the application of the office holders, summon to appear before it...any person whom the court thinks capable of giving information concerning the promotion,*

formation, business, dealings, affairs or property of the company,” and to “...require any such person...to submit an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company [in question]”). IPs appointed as a trustee in bankruptcy will similarly submit a request, in line with Section 336 of the Insolvency Act 1986, in order to ascertain information regarding a bankrupt director’s personal assets.

59. Ensuring that licensed IPs can access the additional ‘back-office’ information held at Companies House will mean that a wider body of professionals will more effectively be able to carry out investigations into corporate affairs and director conduct, thereby identifying and disrupting more frauds.

Information on directors

Business occupation

Q27. Is there a value in having information on the register about a director’s occupation? If so, what is this information used for?

60. R3 agrees with the Government’s suggestion that there may be limited value in holding information on the register about a director’s occupation.

Date of birth

Q28. Should directors be able to apply to Companies House to have the “day” element of their date of birth suppressed on the register where this information was filed before October 2015?

61. R3 agrees with the Government’s recommendation in this regard.

Change in gender

Q29. Should a person who has changed their name following a change in gender be able to apply to have their previous name hidden on the public register and replaced with their new name?

62. R3 agrees with this suggestion and notes that the person’s previous name would be accessible on the ‘back-end’ part of the register and therefore viewable only by those organisations or individuals granted special access. This information may be of benefit to an IP’s investigations into a corporate’s affairs and the conduct of its directors.

63. For example, ‘Joan Smith’ may have changed their name to ‘John Smith’ in 2018. It would be useful for an IP to know that the John Smith appearing on, or signing, company documents in 2018 and 2019 is the same person as the Joan Smith appearing on, or signing, company documents created before 2018.

Director’s residential address as the company’s registered office

Q30. Should people be able to apply to have information about a historic registered office address suppressed where this is their residential address? If not, what use is this information to third parties?

64. While residential addresses may rightly be suppressed in the public domain, access to a record of previous addresses in the ‘back-end’ part of register should still be possible. Being able to show the historic location of a corporate is a necessary part of proving that historic legal documents were properly served. It is worth noting that many insolvency cases deal with issues dating back years, if not decades. Otherwise, R3 agrees with the Government’s proposed approach of not allowing “*applications for suppression where the residential address is a live company’s current registered office address*”⁴. R3 members agree with the Government that “*the current registered office of a live company is an important piece of information as it is the address for legal service of documents.*”⁵

Signatures

Q31. Should people be able to apply to have their signatures suppressed on the register? If not, what use is this information to third parties?

65. R3 agrees that people should be able to apply to have their signatures suppressed on the public-facing part of the register, but R3 members have stressed the need for the original signatures to be maintained on the ‘back-end’ part of the register and accessible to IPs.

66. R3 members have also noted that many documents are now being signed electronically in any case (‘docu-signed’), which may lead to a reduction over time in the number of documents signed physically.

67. We would also note the need, from an anti-money laundering perspective, of specific third parties (including credit insurers) being able to view the original signatures.

Compliance, intelligence and data sharing

Cross-referencing with data sets

Q32. Do you agree that there is value in Companies House comparing its data against other data sets held by public and private sector bodies? If so, which data sets are appropriate?

68. R3 agrees that there is value in Companies House comparing its data against other data sets held by public and private sector bodies. We are aware that some work in this vein is ongoing with HMRC and the Cabinet Office, and are happy that this work should continue in future under the improved framework as set out by this consultation. The Land Registry may be another appropriate data set for cross-referencing.

Feedback loops

Q33. Do you agree that AML regulated entities should be required to report anomalies to Companies House? How should this work and what information should it cover?

69. While recognising the rationale for this recommendation, we would urge the Government to consider further how this requirement would affect IPs appointed over a corporate entity. From an IP’s perspective, they already have a number of statutory duties to flag with relevant authorities any fraudulent activity or breaches of the law by directors, including under the anti-money laundering regulations themselves.

⁴ Paragraph 194

⁵ Paragraph 194

70. Further, for terminal insolvency procedures, this requirement would be unnecessary and creates a compliance risk to IPs should they make an incorrect report. In addition, the proposed measure would create a double standard as court-based liquidations may only be handled by an Official Receiver, not by a licensed IP appointed as liquidator; Official Receivers are not AML regulated entities and therefore would not be required to report any anomalies that they encounter.

71. We are not convinced that a strong enough case has been made, from an IP's perspective, for the introduction of this additional requirement. If this requirement is to be introduced, it should apply to solvent, or 'live', companies only.

Risk-based intelligence sharing

Q34. Do you agree that information collected by Companies House should be proactively made available to law enforcement agencies, when certain conditions are met?

72. R3 agrees with this suggestion.

Disclosure and sharing of bank account information

Q35. Should companies be required to file details of their bank account(s) with Companies House? If so, is there any information about the account which should be publicly available?

73. While such information would be helpful to IPs, such a requirement on businesses may be burdensome and difficult to enforce. Banking flexibility is useful in business. The suggestion that a corporate would also be required to notify Companies House within 14 days of a non-UK bank account being opened would be so difficult to enforce, and be of such little value from a practical perspective, as to not be worthwhile pursuing. On balance, we are not convinced that a strong enough case for the increased disclosure and sharing of companies' bank account information has been made. At most, the Government may alternatively wish to consider requiring companies to list the names of banks with which they hold accounts. This may at least provide IPs and enforcement agencies with a starting point for investigations.

Other measures to deter abuse of corporate entities

Q36. Are there examples which may be evidence of suspicious or fraudulent activity, not set out in this consultation, and where action is warranted?

74. It is often difficult to tell from the companies register alone whether there is evidence or suspicions of fraudulent activity. We believe that the introduction of director ID verification, as well as the proposed new powers to enable Companies House to take a more proactive role in ensuring the integrity of the register, will by themselves enable the identifying and tackling of a substantial amount of fraud across the UK.

75. However, we strongly suggest that the Government considers improvements to the process for dissolving corporates. At present, there is little to prevent the abuse of the dissolution process. For example, not enough is done to verify claims made when filing a DS01 form that there are no outstanding creditors, or that creditors have been informed of the planned strike-off.

Powers to end the business activities of limited partnerships that are being misused

Q37. Do you agree that the courts should be able to order a limited partnership to no longer carry on its business activities if it is in the public interest to do so?

Q38. If so, what should be the grounds for an application to the court and who should be able to apply to court?

76. R3 agrees with the Government's suggestion on this point, which would effectively extend the existing law to limited partnerships. We would recommend that the grounds for striking off limited partnerships in the public interest should be equivalent to provisions for the winding up of companies in the public interest (ss. 124A and 124B Insolvency Act 1986).

Deterring misuse of company addresses

Q39. Do you agree that companies should provide evidence that they are entitled to use an address as their registered office?

77. R3 agrees that corporates should provide evidence that they are entitled to use an address as their registered office. This could take the form of a tenancy agreement as suggested in the consultation, or a consent form.

78. Where an IP, appointed over a corporate, seeks to transfer a registered office address to that of their own practice, they should simply be required to submit a cover letter to Companies House to this end, which would be cross-checked against the IP's own verified entry on the Companies House register.

Limiting concurrent directorships

Q40. Is it sufficient to identify and report the number of directorships held by an individual, or should a cap be introduced? If you support the introduction of a cap, what should the maximum be?

Q41. Should exemptions be available, based on company activity or other criteria?

79. R3 does not believe that a high number of registered directorships held by an individual is necessarily a problem and we note that any proposed limit could be problematic from the Government's perspective. R3 believes that the verification of officers' identities, along with the wider package of reforms, will be make a significant contribution to helping to ensure that any registered directorships are legitimate.

Deterring misuse of company names

Q42. Should Companies House have more discretion to query and possibly reject applications to use a company name, rather than relying on its post-registration powers?

80. As noted earlier in our response (paragraph 16 above), R3 members often report seeing instances where fraudsters use the simplicity of the company register to create multiple registrations using slightly different dates of birth, or slightly different spellings of names (either of directors or companies). As such, R3 agrees that Companies House should have more discretion to query and reject company name applications in this regard.

Certificates of good standing

Q43. What would be the impact if Companies House changed the way it certifies information available on the register?

Q44. Do you have any evidence of inappropriate use of Good Standing statements?

81. R3 agrees with the proposal to ensure that it is made clear that certificates of good standing reflect only statements of fact derived from information filed.