

Transparency and Trust
Corporate Law Reform Team
Department for Business, Innovation and Skills
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28 November 2014

Dear Sirs,

BIS People with Significant Control (PSC) Register Discussion Paper

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. As we had noted in our submission on the Small Business, Enterprise and Employment Bill ("SBEEB") (October 2014), we have had previous very helpful discussions with BIS on the PSC Register. We appreciate that BIS has been advised by ministers that an extension to part 22 Companies Act 2006 would not be sufficient from a policy perspective and that it is necessary to create the new, complex part 21A with supporting subordinate legislation.

We believe that greater disclosure of beneficial ownership of equity securities (and indeed non-equity securities) for all companies (not just public companies) is welcome and could be achieved through minor amendment to the understood and respected part 22 regime together in combination with an expansion of the accounting disclosure of ultimate control as is required under relevant accounting standards.

We continue to argue, as mentioned in our previous response, that we generally believe that creating a new public register for persons with significant control as proposed will increase the administrative burden on companies and deliver little tangible benefit, resulting in added costs for growing companies in relation to introducing new systems to store data and potential consequences for failure to comply (e.g. sanctions). We would urge the government to conduct a thorough cost-assessment analysis prior to the introduction of such a register. Such an assessment must also include the data protection issues arising.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

Responses to specific questions

Chapter 1: Understanding the new requirements

1) We welcome your views on the structure, format and content of the statutory guidance on significant influence and control.

We welcome that the definition of beneficial ownership is one which is applied consistently. However, we note the ongoing negotiations of the 4th Money Laundering Directive, which could have serious implications for small and mid-size companies quoted on growth markets, such as AIM and ISDX, with regard to beneficial ownership. Article 29 of the 4th MLD proposal requires all companies must hold adequate, accurate and current information on their beneficial ownership, but exempts companies on regulated markets from having to hold this information. Therefore, a perverse situation would result where companies on growth markets, such as AIM and ISDX, would find themselves having to disclose and hold more information than their larger counterparts on the Main List. We have highlighted these concerns to MEPs and are awaiting the completion of trilogue negotiations.

We also note the ongoing negotiations on the Shareholder Rights Directive proposal, which will also establish requirements regarding the identification of shareholders. This might require a change the statutory definition of a PSC under the UK legislation.

We welcome guidance about the meaning of 'significant influence or control'. It would be most useful if this could be prepared in draft in parallel with the SBEEB progress through the House of Lords. We would like to emphasise that it could be potentially difficult for small and mid-size companies to work out who needs to be registered as a PSC. We, therefore, believe that the guidance should be as clear and comprehensive as possible, taking into consideration the limited resources of small and mid-size companies. We believe that a combination of general principles with simple practical examples based on companies with different situations would be the most useful option.

We also note that the guidance should address the issue of materiality and how frequently companies have update the PSC register and thus be checking their share registers for a PSC. This is key area that would increase costs and be administratively burdensome for companies.

2) Do you agree that a Working Group would be useful? a) If yes, which organisations and interests ought to be represented on it? b) If not, what would be your preferred alternative?

We believe that setting up a working group is an appropriate approach. It should be composed of members drawn from across the spectrum of stakeholders, including the European Commission, ICSA, the Law Society and a member representing the interests of small and mid-size quoted companies, which could be very affected by this reform and also changes happening at EU level with the proposed 4th Money Laundering Directive, mentioned above. We would be glad to form part of this Working Group.

3) What are the key areas we should cover in non-statutory guidance?

It would be useful to see the draft statutory guidance before responding to this question.

4) How best should it be communicated to companies and others?

General publication through usual channels and Companies House.

5) Who should lead on or be involved in its production?

This depends upon what the statutory guidance says.

Chapter 2: Recording nature of control on the PSC register

6) We welcome your views on whether the [outlined] objectives are appropriate and whether there are any other factors that should be taken into account?

We appreciate that the government believe to have given consideration to the importance of minimising burdens on businesses and avoiding imposing disproportionate requirements on companies. However, its own impact assessment indicates that this will not be the case, imposing a burden on business of around £500m for a non-monetised benefit perceived by politicians. An extension of Part 22 of Companies Act 2006 would deliver material benefits in a more effective and efficient manner.

7) Do you agree with the approach of simplifying and standardising what is recorded under nature of control? a) If yes, which is your preferred model? b) If not, what is your preferred alternative?

We would strongly support that the government takes no action and does not regulate on defining how the nature of control is entered by a company in its PSC register. We would urge the government to consider this option, leaving up to companies to decide with total freedom over all aspects of the information that is recorded under 'nature of control' to reflect the precise circumstances of the company and its shareholders.

While we understand how adopting an approach similar to DTRs would theoretically make sense, adopting these rules would mean that both companies and shareholders will have to disclose the same information. This implies duplication and increased costs, while adding very little benefits. We believe that companies should be able to retain maximum flexibility in terms of providing information under nature of control, and also serving the goal of simplicity.

We would suggest allowing companies a free text option, while including a summary introduction explaining in basic terms what is set in Example 2. The company would then be required to explain, briefly and in its own words, which one or more of the categories are relevant. We believe that this allows simplicity and flexibility and can be potentially more accurate in providing a clear picture of the nature of control than the selection of options, especially in the case multiple options end up being selected.

We disagree with Example 3, as it seems potentially intricate and difficult to navigate, which will not necessarily make it easier to allow comparability of the nature of control of companies.

8) Should there be a different approach for more complex arrangements? Does this need to provide a full explanation of the nature of control?

We believe that all arrangements, complex or simple, should be included in the same approach, as suggested in our response to Q7. We disagree with having different approaches for different arrangements – ultimately there should be an overriding, single set of principles. We believe that simplicity is paramount

to allow small and mid-size companies to be able to fully comply with the requirements with minimum additional costs.

9) If you prefer a less prescriptive system, what safeguards should exist to ensure that entries in the register are comparable and easy to understand?

Simplicity should be encouraged and standard wording could be suggested, as explained in our response to Q7 above. This would allow both flexibility and simplicity.

Chapter 3: Protection regime

10) Should any modifications to this [URA suppression] process be made in the context of PSCs?

No, we agree with the proposals regarding URA suppression.

11) Should applications be allowed to be made by third parties other than the company or subscribers to the memorandum? If so, who?

Yes, we believe that applications should be able to be made by anyone with legitimate representation powers on behalf of the company or subscriber.

12) We welcome views on which of the required particulars should be suppressed from public disclosure [in the context of PSCs at serious risk of harm]?

We agree with the option of indicating on the register that information has been suppressed. This would in our view be the only option to accomplish reducing the risk of harm to PSCs.

13) We welcome views on: a) The factors that should be taken into consideration when deciding whether someone is eligible for protection? b) Where the line should be drawn between actual and possible threat? c) Whether there are sectors or types of company or individual that will be inherently at risk? Which? d) Any evidence you have on the link between public disclosure and the consequences for individuals at risk; and the costs/impacts of those consequences?

We agree that it is essential to the integrity of the PSC Register that there is an effective protection regime protected from misuse.

14) We welcome views on: a) Who should be able to make an application, including whether and when third parties should be able to apply? b) The evidence requirements to support the application?

We believe that applications should be able to be made by anyone with legitimate representation powers on behalf of the company or subscriber. We believe that the standard template should be simplified and the information required should not be more than the information outlined in p.92.

15) Do you think applications should be accompanied by a qualifying statement?

Yes, we believe that applications should be accompanied by a qualifying statement.

16) If yes, who should be able to make such a statement?

The applicant should make the qualifying statement.

17) We welcome views on: a) Retrospective applications; b) Prospective applications; c) Cumulative applications; and d) Whether 'blanket' applications should be able to be made in respect of all companies of which an individual is a PSC.

No response.

18) We welcome views on: a) Whether a PSC's protection should be indefinite? b) If not, how and how often it should be renewed?

Yes, we agree that the information should be protected indefinitely once the application is granted and until revoked. Otherwise, unnecessary administrative burdens are created.

19) We welcome views on an appeals process.

We do not have any comments on the appeals process.

20) We welcome views on a revocation process.

No response.

Chapter 4: Costs and access

21) We welcome views on: a) Whether the current list of public authorities is appropriate in the context of PSCs' URA information? b) Whether the current list of public authorities should be narrowed in the context of information of PSCs at serious risk of harm? c) If yes, who should still have access?

We do not have any comments on the access to the public register of protected information.

Chapter 5: Impact of proposals

22) We welcome your views on the costs and benefits of the policy changes set out in this discussion document for those identified as people with significant control, companies and other third parties. These might include:

Nature of control

a) The costs of gathering and holding data on the nature of control for (i) the simpler approach and (ii) the more detailed approach; and b) The expected benefits for (i) the simpler approach and (ii) the more detailed approach.

Protection regime

a) The costs for companies and individuals of familiarisation with the guidance; b) The costs of gathering data and the type of evidence set out above and applying for the protection regime; c) The possible numbers of applications by (i) companies and (ii) PSCs themselves; d) The size and sectors of companies most likely to apply for protection on behalf of their PSCs; e) Whether the degree of evidence/validation would affect the numbers of applications; f) The expected benefits of protecting information on individuals at risk; and g) The expected benefits of international exchange of PSC information.

As outlined above, we are particularly concerned with the significant increase in costs that the PSC register will bring to small and mid-size quoted companies.

As mentioned in our earlier response to the SBEEB, we generally believe that creating a new public register for persons with significant control as proposed will increase the administrative burden on companies for little tangible benefit and also have unnecessary costs related to introducing new systems to store data and potential consequences for failure to comply (e.g. sanctions). We would urge the government to conduct a thorough cost-assessment analysis prior to the introduction of such a register and reconsider more practical and effective options. Such an assessment must also include the data protection issues arising.

23) Any other costs or benefits or changes in investors' or firms' behaviour associated with the proposals outlined in this document.

We do not have any further comments.

If you would like to discuss any of the responses in more detail, we would be happy to attend a meeting.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Tim Ward', with a stylized flourish at the end.

Tim Ward
Chief Executive

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Colin Jones (Deputy Chairman)	UHY Hacker Young
David Isherwood	BDO LLP
Nick Janmohamed	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Nicholas Stretch	CMS Cameron McKenna LLP
Louis Cooper	Crowe Clark Whitehill LLP
Nick Gibbon	DAC Beachcroft LLP
Andrew Hobbs	EY
Eugenia Unanyants-Jackson	F&C Investments
Melanie Wadsworth	Faegre Baker Daniels LLP
Rob Burdett	FIT Remuneration Consultants
Richie Clark	Fox Williams LLP
Michael Brown	Henderson Global Investors
Victoria Barron	Hermes Equity Ownership Services
Julie Stanbrook	Hogan Lovells International LLP
Claire Noyce	Hybridan LLP
Peter Swabey	ICSA
Andy Howell	KBC Advanced Technologies PLC
Nicola Green	LexisNexis
Eleanor Kelly	
Jane Mayfield	
Anthony Carey	Mazars LLP
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Gabriella Olson-Welsh	
Peter Fitzwilliam	Mission Marketing Group (The) PLC
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Caroline Newsholme	Nabarro LLP
Jo Chattle	Norton Rose Fulbright LLP
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