



**The Quoted
Companies Alliance**

Internal Market and Services
Directorate F, Capital and Companies
European Commission,
SPA2 2/85,
1000 Brussels,
Belgium

markt-complaw@ec.europa.eu

14 May 2012

Dear Sirs,

European Commission – Consultation on the future of European Company Law

INTRODUCTION

The Quoted Companies Alliance is a not-for-profit membership organisation working for small and mid-cap 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.

Our ID number for the European Commission's register of interest representatives is 45766611524-47.

RESPONSE

We welcome the opportunity to respond to this consultation. As an organisation that represents small and mid-cap quoted companies, we have only responded to the questions that we feel are relevant for these companies.

I BACKGROUND INFORMATION

1. Please indicate your role for the purpose of this consultation: (Single choice)

- Business federation

2. Please indicate the country where you are located: (Single choice)

- United Kingdom

3. Please provide your contact information (name, address and email-address)

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4. Is your organisation registered in the Interest Representative Register? (Single choice)

- Yes.

II OBJECTIVES OF EUROPEAN COMPANY LAW

5. *What should be the objective(s) of EU company law? (Multiple choice)*

- Improve the environment in which European companies operate, and their mobility in the EU.

Additional comments:

At the most basic level company law exists to regulate the existence of commercial vehicles which have the benefit of limited liability and through which business can be conducted, providing the participants in commerce with a degree of protection against any negative consequences of their commercial decision-making.

Accordingly, company law must set the boundaries in which society is prepared to tolerate the protection of participants in commerce at the expensive of other creditors. It is not clear that there is strong justification for those tolerances to be reviewed and harmonised at an EU wide level.

It is also not within the ambit of company law to provide detailed employee rights and protections as there is substantial jurisprudence in this area deriving from the contractual nexus between the company, as employer, and employee.

As such, the only function for harmonised company law at an EU level is to improve the environment for companies involved in cross border intra EU trading and operations.

III SCOPE OF EUROPEAN COMPANY LAW

6. *Would you support that the EU's priority should be to improve the existing harmonised legal framework or, rather, to explore new areas for harmonisation? (Single choice)*

- Yes, the following pieces of existing legislation harmonising company law could be modernised further:
 - The Directive on maintenance and alteration of the capital of public limited-liability companies.

7. *Should the focus of EU company law move away from the distinction between public/private towards listed/unlisted in order to ensure adequate protection to shareholders? (Single choice)*

- Yes, but only for legal instruments related to:
 - Maintenance and alteration of the capital.

IV USER-FRIENDLY REGULATORY FRAMEWORK FOR EUROPEAN COMPANY LAW

8. *Do you think that codifying existing EU company law Directives, thus reducing potential inconsistencies, overlaps or gaps, is an idea worth pursuing? (Single choice)*

- No opinion

V EU COMPANY LEGAL FORMS

9. *What, if any, is the added value that EU company legal forms bring for European business? (Multiple choice)*

- No opinion

10. What, if any, are the main shortcomings of EU legislation introducing EU company legal forms? (Multiple choice)

- No opinion

11. Should existing EU company legal forms be reviewed? (Single choice)

- No opinion

12. Could optional models such as the EMCA – or similar projects – be a suitable alternative to traditional harmonisation? (Single choice)

- Yes. Please explain (max 500 characters):

Yes. Models which add to the variety of vehicles available to participants in commerce are clearly a good thing, provided their use is voluntary. However, we do not believe that there is a strong base of empirical evidence that such additional models are either required or necessary as part of any effort to stimulate the EU economy or focus investment on high growth SMEs.

VI THE PARTICULAR CASE OF THE SOCIETAS PRIVATA EUROPAEA (SPE) STATUTE

13. Should the Commission explore alternative means to support European SMEs engaged in cross-border activities? (Single choice)

- Other possibilities to explore?

Additional comments:

We welcome the Commission's 'Think Small First' approach and its focus on supporting European SMEs as the engines of growth in the EU economy.

We believe that, in order to maximise the ability of SMEs to access market driven cross-border networks of equity listing venues and to increase the liquidity pool for SMEs, the Commission should not stop short of taking a complete and holistic review of the burdens on small and mid-cap quoted companies. It should examine overall what is appropriate and beneficial in terms of a regulatory approach for primary markets, rather than examining measures in a piecemeal approach in order simply to echo the current structure of the Financial Services Action Plan Directives and other Directives affecting SMEs.

An EU-wide definition of an SME is badly needed so that various EU initiatives in this area can be harmonised and streamlined. A common definition would facilitate the creation of a holistic regulatory regime for SMEs and the ability to identify and measure the effectiveness of actions taken. We strongly support the European Commission's proposal for 'specialised SME growth market' in MiFID II as a step towards defining a market for these companies.

In addition, we believe that the European Commission should create an SME asset class (ie companies of a certain size would be a member of this 'asset class') – we are proposing that this includes SMEs both on the regulated and MTF markets. This would bring attention to and raise awareness about small and mid-cap quoted companies to attract investment and facilitate funds to invest in these companies.

We would like to see pension funds, insurance companies etc. mandated to state publicly what their investment policy is towards this asset class. This would enable consumers to decide whether to buy the products/invest in pension funds, insurance companies etc. based on a consideration of whether these entities are actively investing in the engines of European economic growth.

VII CROSS-BORDER TRANSFER OF A COMPANY'S REGISTERED OFFICE

14. Should the EU act to facilitate the cross-border transfer of a company's registered office? (Single choice)

- No, as the existing EU framework (European Company Statute, cross-border mergers Directive) provides for sufficient tools for a cross-border transfer of registered office.

15. What should be the conditions for a cross-border transfer of registered office? (Multiple choice)

- No opinion

16. What should be the consequences of a cross-border transfer of registered office? (Multiple choice)

- No opinion

VIII CROSS-BORDER MERGERS

17. Do you support further harmonized rules in the Directive?

- No opinion

IX CROSS-BORDER DIVISIONS

18. Do you support introducing regulation regarding cross-border divisions at EU level? (Single choice)

- No opinion

X GROUPS OF COMPANIES

19. Do you see a need for EU intervention in this field? (Single choice)

- No, there is no need for EU intervention.

XI CAPITAL REGIME

20. In your opinion, should the Second Company Law Directive be reviewed? (Single choice)

- Yes: Please indicate what should be the aim of the review:
 - Alternative use of the balance sheet test and of the solvency test.

XII ADDITIONAL COMMENTS

21. Do you wish to upload a document with additional comments?

- Yes

If you would like to discuss this in more detail, we would be pleased to attend a meeting.

Yours sincerely,



Tim Ward
Chief Executive

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the Quoted Companies Alliance represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The Quoted Companies Alliance is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

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

Quoted Companies Alliance's Aims and Objectives

The Quoted Companies Alliance works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:
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