BEIS Consultation: Corporate Transparency and Register Reform

Joint response of the Company Law and Financial Law Committees of the City of London Law Society

This response is submitted jointly by the Company Law and Financial Law Committees of the City of London Law Society (**CLLS**).

The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. The CLLS Company Law and Financial Law Committees respectively comprise leading solicitors specialising in respectively corporate law and financial transactions. These solicitors and their law firms operating in the City of London act for UK and international businesses, financial institutions and regulatory and governmental bodies in relation to major corporate and financial transactions, both domestic and international. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

Introductory remarks

We are supportive of the government's aims of ensuring that the UK remains at the forefront of countries minimising the risk of money laundering. We are also supportive of the UK being an open and transparent place to do business, which will help give the UK a competitive advantage. Therefore, we can see some merit in many of the proposals set out in the consultation such as verifying the identity of certain individuals on the register at Companies House (**CH Register**), linking the identities of these individuals on the CH Register and requiring more information on companies that are exempt from the requirement to keep a register of persons with significant control (**PSCs**) and on listed relevant legal entities (**RLEs**). However, any such reforms need to result in procedures which are practical and easy to use if the twin aims outlined above are to be achieved without reducing the UK's attractiveness as a place for legitimate companies to do business.

Whilst we welcome the government's aims of reducing criminal activities and fraud and increasing the accuracy of, and confidence in, the CH Register, we do have a number of reservations and when considering which proposals to bring forward the government should have the following overarching principles in mind:

- Whether there is sufficient evidence that verification of identity would reduce the incidence of money laundering or other criminal behaviour to justify the proposed additional regulatory and administrative burden and cost.

- The UK needs to maintain a competitive and user-friendly business environment so that the UK's attractiveness as a place to carry on business is maintained.

- Corporate actions and commercial transactions should not be held up or delayed, especially when other jurisdictions are moving in the opposite direction.

- The protection of individuals' personal data and maintaining its confidentiality is paramount.

- Great care should be taken to avoid the unintended effect of creating greater risk of exploitation and misuse of publicly available information or of fraudulent activity.

- New systems need to be robust and secure, ideally based on simple and proven existing technology, otherwise there is potential to cause more harm than good.

We therefore welcome the government's commitment to only take forward reforms that are clearly in the public interest and are proportionate. The proposals should do no more than is necessary to achieve the aims and avoid unnecessary duplication of obligations. Existing identity verification methods should be used where possible and identity verification methods should be used that would avoid the need for repeat identity verifications for no good reason.

The consultation paper notes that the introduction three years ago of the PSC regime has made the UK a recognised world leader in beneficial ownership transparency. However, the PSC regime has also increased the bureaucratic and administrative burden on companies and many of the more complex issues with the PSC regime remain unclear to many. There is arguably a case for allowing more time to address this before any more major changes are introduced. Otherwise there is a risk that more and more regulation is imposed in the UK without fully understanding whether existing regimes are (or are capable of) achieving the same end or not. We also note that the draft Registration of Overseas Entities Bill (which is based on the PSC regime) has yet to be enacted.

The overwhelming majority of companies are established and operated for entirely legitimate purposes and are small companies. It is important that any reform programme does not lose sight of this and that any changes are proportionate and do not impose overly onerous requirements, particularly for small businesses as acknowledged in paragraph 3 of the Ministerial Foreword in the consultation paper. It is also important to consider whether certain of the proposals will have any meaningful effect in reducing criminal activities such as money laundering or whether they will simply increase the regulatory burden on legitimate businesses with little impact on organised crimes. In this respect, we would recommend that the government considers further the scope of present abuse because, if there is currently minimal abuse and the proposals are to safeguard against potential future abuse, this materially changes any cost benefit analysis given that the proposals are likely to be extremely costly and would potentially deter people from forming companies in the UK.

The concerns regarding money laundering relate to a very small minority of companies. Whilst we are not at all complacent about the risk and impact of money laundering, the proposals for those forming companies and seeking to become directors to provide yet more information (often personal information) needs to be evaluated against the concerns and complaints lodged with Companies House about misuse of personal information. It is essential that robust safeguards can be established as any breach of confidentiality or security in relation to this information could have significant adverse consequences for the individuals concerned and result in a widespread loss of confidence in the system.

We welcome any effective proposals to better protect personal information and further transparency regarding the safeguards to be put in place. Evidence of a systematic review of the data protection implications for (and risks to) individuals of the proposed uses and data sharing with third parties would go towards achieving these objectives (for example, by way of a public data protection impact assessment).

Further, it is important to recognise that people looking to use information which is available as part of their due diligence at Companies House also carry out their own independent checks that are appropriate for their needs and do not simply rely on the information at Companies House as such information can only provide a snapshot in time.

Lastly, we would encourage BEIS to consult further before any legislation is brought forward. We understand that this is BEIS' intention. In particular, we would welcome the opportunity to comment on the drafting of any legislation (as was the case with the PSC regime).

Part A: Knowing who is setting up, managing and controlling corporate entities

Chapter 1: 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.

Subject to our comments below about the ease and proportionality of any relevant process that is put in place and our responses to Questions 2 to 5, we agree with the general premise that Companies House should have the ability to check the identity of certain individuals on the CH Register.

Currently, companies can be incorporated directly through Companies House without any anti-money laundering (**AML**) checks. In addition, a UK company can change hands without any AML checks where the transfer occurs without any assistance from solicitors (or any other AML regulated entity) – where solicitors are instructed, the seller/buyer clients will be subject to client due diligence checks. Therefore, we agree with the proposals to verify the identities of directors and PSCs to help mitigate these money laundering risks, provided this can be done in a quick (real time or near real time) and reliable manner so as not to delay valid appointments (see our comments in our response to Question 10).

The UK is currently an easy place to set up a new company in terms of cost and speed (£12 and within 24 hours), which is beneficial for the UK's attractiveness as a place to carry on business. The explanatory memorandum of the new EU Directive on the use of digital tools and processes in company law, the aim of which is to make the setting up of companies in the EU simpler and cheaper, cites the UK as a jurisdiction with fast and cheap online registration of companies. This is especially the case when compared with other EU member states that currently do not have the option to register online, for example because the registration process requires the physical presence of individuals in front of a competent authority – a number of EU member states require the use of notaries as part of the incorporation process. Therefore, any identity verification process should be proportionate, quick, reliable and not create any significant additional burdens or delays for people who are legitimately setting up and maintaining companies in the UK.

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

As stated above, the government needs to ensure that any identity verification process that is put in place is proportionate and is not overly burdensome or time-consuming so as not to discourage people from setting up companies and doing business in the UK in comparison to other jurisdictions (see our comments on the ability to incorporate companies in other EU member states in our responses to Questions 1 and 3). In addition, the government should not collect more personal information than is necessary for the purposes for which it is required (e.g. prevention of crime, identity verification). Adequate technical and organisational safeguards must be put in place and information regarding the same made publicly available to increase trust in the process.

The government should bear in mind that no identity verification process will entirely prevent money laundering or eliminate this risk. For example, if the identity verification process includes directors/PSCs providing their passport details to Companies House, how will Companies House know that the passport details provided are not being used fraudulently or that fake passports are being used if all checks are being carried out electronically? Depending on the means of identification used, digital verification may only confirm that the individual being registered as the director/PSC of a company can be matched against evidence of identity and not that the director/PSC of that company is actually that individual whose identity has been checked. Nor will it necessarily establish whether the individual being registered is the same as another person who may appear to be different (e.g. using a slightly different form of his/her name, or a different address) but is in fact the same person. A risk of fraud and money laundering will still exist even with identity verification checks, although these additional steps should help mitigate at least some of this risk. Paragraph 54 of the consultation paper states that where false filings occur, Companies House would have much more information on the company directors and those who put the information on the CH Register to pass on to law enforcement for their investigations. This is not strictly true in cases where the information provided is false and individuals are hiding their true identities behind false ones.

However, introducing identity verification should help in situations where a criminal sets up a company with the name of a fictitious company director e.g. Mickey Mouse, as Mickey Mouse's identity would need to be verified. This should mitigate against some forms of fraudulent activity including potentially some money laundering and other criminal activities and should as a general rule improve the accuracy and reliability of information on the CH Register.

Therefore, when considering whether to introduce identity verification, the government needs to consider whether it is possible to introduce a new process that does not impose significant additional burdens or delays on trustworthy individuals and businesses, but yet has the potential to mitigate substantially money laundering risks. In addition, the government needs to be careful not to introduce a new process that creates a risk of exploitation and/or misuse of the information provided to verify identities.

In this regard, the government will need to consider:

- data access and protection/privacy issues;
- issues around keeping personal information protected, safe and secure;
- the practical issues concerning identity verification as highlighted in our responses to Questions 4, 5 and 10;
- issues around the burden on Companies House and individuals in "cleaning up" information on individuals at Companies House because the same individual may be registered at Companies House with different names e.g. John Smith, John D Smith and John David Smith could all be the same person (see our response to Question 13);
- the impact of the additional costs for those people setting up and maintaining companies in the UK, potentially making the UK a less competitive or less attractive place to incorporate a company and do business. The government should avoid incurring significant costs if these costs would be passed on to people setting

up/maintaining companies in the UK, for example, by introducing or increasing Companies House filing charges. We note that currently there are no filing costs when registering information about directors and PSCs; and

- the additional resources required by Companies House, both in terms of personnel and technology in order to be able to process quickly and reliably the additional information that would be required to be provided.

Such issues may arise or be more prominent at different stages of a company's life e.g. the practical issues around the speed and certainty of the identity verification are more likely to arise when there is a change in control of a company than at the time of its initial formation (see our response to Question 10).

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

We agree with the government that the other options set out in the consultation paper i.e. requiring the opening of a bank account or requiring entities to be set up through an AML regulated agent would be unduly burdensome on companies/businesses. In our view the potential downsides would outweigh the potential upsides. The UK should seek to balance its desire to maintain robust procedures to address money laundering and fraudulent activities with maintaining its position as being an easy place to set up a new company. This will be critical to ensuring that the UK continues to be an attractive place to do business, especially in a post-Brexit environment.

This is particularly important as other jurisdictions are increasingly making it easier to set up companies, rather than harder. For example, on 13 June 2019, the Council of the European Union adopted a new EU Directive on the use of digital tools and processes in company law that will make the setting up of companies in the EU simpler and cheaper. The Directive requires EU member states to introduce the possibility of registering limited liability companies in EU members states fully online, including the electronic identification of individuals (other than in cases where there is a genuine suspicion of fraud based on reasonable grounds). This Directive also establishes a general maximum time limit of five working days for the completion of the process for the registration of companies online and provides that the fees charged for the online registration should not exceed the overall administrative costs incurred by the EU member state in providing the service to set up companies online.

In order to increase the accuracy of information on the CH Register, the government could consider using, or increasing, the current penalty regime for breaches of company law. This would be preferable to any proposal that might potentially hold up or delay director appointments, corporate actions or commercial transactions or call into question the validity of those appointment, actions and transactions.

Chapter 2: How identity verification might work in practice

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

We agree that identity verification should be done digitally. Our main concerns around the choice of technology are as follows:

- It is important that the technology allows identities to be verified quickly (real time or near real time) and at a low cost. Speed of verification is of particular importance if the government brings forward any proposal that the identity of an individual needs to be verified before that individual can be validly appointed as a director (see our concerns with this proposal and our alternative suggestions in our response to Question 10). It is imperative that identity verification should not hold up or delay director appointments, corporate actions or commercial transactions.

- The technology should allow the identity of an individual to be verified 24 hours a day, seven days a week, 365 days a year, recognising that UK companies are engaged in business activities every hour of the day and not just during business hours and days in the UK and overseas persons may want to set up UK companies outside of business hours and days in the UK.

- It should be technology that is accessible and easy to use from the perspective of the individual whose identity is being verified, for example, not reliant on that individual having a smartphone.

- The technology should allow the identity of as many individuals as possible to be identified given that there are no restrictions on the nationality of directors/PSCs/members/partners of UK-registered entities. Therefore, consideration needs to be given to what would be used to verify identities and whether any information used for verification can be linked to multiple sources of existing information across different jurisdictions. For example, using only UK national insurance numbers would not work as they are UK centric (see our response to Question 5 for further comments on this issue). We note that if the UK withdraws from the EU without a deal, it will no longer have access to the mutual recognition and interoperability framework for electronic identification provided by the Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (**eIDAS Regulation**). The electronic identification aspects of the eIDAS Regulation places obligations on certain public services to accept electronic identification schemes from other EU member states and participating EEA countries. However, the electronic identification sections of the eIDAS Regulation will be repealed in the event of a no deal Brexit as they will be redundant in that event. However, the UK could choose to accept electronic identification schemes adopted by EEA countries as acceptable ways to verify identity.

- The technology needs to be reliable and robust in the sense of minimising the risk of wrong outcomes or erroneous challenges by Companies House and not being susceptible to systems failures that could undermine confidence in the system and/or delay director appointments, corporate actions or commercial transactions. We assume a back-up system would need to be put in place to alleviate the risk of system failures.

- If emerging technologies such as artificial intelligence, facial recognition or data combination are to be used, this should be made very clear to people who are having their identities verified and the wider implications of such technology use, including reliability and data privacy issues, carefully considered.

- The legislation drafting should be technology neutral. The government may need to consider this if the legislation requires particular forms of identity verification that might, in practice, require particular forms of technology to be used. The ways in which a person's identity may be verified will no doubt change as technology evolves. Any legislation should be drafted so that it is future proof.

The government will also need to carefully consider how to address data protection and security issues that are raised by any chosen technology. For instance, we question whether the government should use technology that requires the collection and storage of biometric data, including facial recognition. If biometric data is used the government would need to consider seriously privacy concerns and how the biometric data can be securely stored. If biometric data is stolen/exploited for inappropriate purposes, an individual will not be able to change it (unlike a password). It may also be limiting in that some people will not be comfortable providing their biometric data to a UK governmental body. In addition, how would using biometric data work when most filings are either online or via the post? Is the government considering whether finger print technology could be used?

We would anticipate individuals raising concerns (or, at the very least, questions) regarding what assurances Companies House would be able to give in respect of how the information on individuals would be protected by Companies House. In anticipation, we would welcome the government's publication of further information on how it would address data protection issues (including, for example, implications for use of sensitive personal information as outlined above).

A data protection impact assessment covering the envisaged use of personal information should, in our view, be made publicly available (in full or in part). A systematic approach to analysing privacy risks would also help provide individuals with a clear understanding of the implications of their provision of personal data.

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?

We assume the reference to "potential users" means people whose identity would be required to be verified by Companies House. We would reiterate the point that whatever technology is chosen should not be limiting and should be accessible to as many individuals as possible.

The government would need to consider what would be used to verify identities. Where an individual does not have a passport or driving licence, would another form of photo identification be used e.g. a national ID card or would a utility bill or verification against the electoral roll be sufficient? The government should not collect more personal information than is necessary. If a passport or national identifier is not necessary to achieve the proposed objectives, a less risky form of identity should be requested. It will be important that there is sufficient flexibility to prevent barriers to the formation of companies by those wishing to use them for legitimate purposes and/or changing relevant information, as well as to people doing business in the UK.

In paragraph 67 of the consultation paper, the government proposes that a legal professional could be used to verify identities (where other approaches do not work). We would strongly counsel against this suggestion, as currently the UK can differentiate itself from other jurisdictions as not requiring the involvement of a third party, for example a notary or a court, in order to incorporate a company. If the government were to bring forward this proposal, we

are not clear if it is proposed that the person used to verify identity in such cases would have to be based in the UK. We think it would be preferable to allow people outside the UK to perform that role but for there to be requirements as to the sort of person who can do this and for the sort of evidence they can accept to be prescribed.

It may be instructive for the government to look to how other UK government bodies are using digital technology to verify identity, for example, the Land Registry's digital mortgage service involves borrowers proving their identity using GOV.UK Verify. Verify is also used across government so the borrower can use the same details to access other government services online. Alternatively, it could look to more advanced EU member states that already use e-ID cards for digital identity verification in respect of companies (e.g. Denmark, Estonia and Finland) or to how the banking sector deals with digital identity verification.

We note that identity/age verification has been considered (and will be implemented in a different context) under the Digital Economy Act 2017. The government, to the extent it has not already, should consider the extensive discussions in this area on verification.

Further, there are some difficulties that may be encountered when verifying the identity of an individual, for example women who use one name for professional purposes but another in private life and so whose passport/driving licence and utility bill may not match the name they are using as a director. In addition, where utility bills are used, they may be in the name of another family member. It is also usual to require that the utility bill is no more than three months old, therefore, a utility bill may be in date when handed over by the person whose identity needs to be verified to the person who sends it to Companies House but may be out of date by the time it is reviewed by Companies House.

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.

Yes, we agree that the focus should be on direct incorporations and filings. Third party agents are already required by the Money Laundering Regulations to undertake customer due diligence checks, and, therefore, it should not be necessary for Companies House to duplicate these.

However, although a third party agent will have carried out its required customer due diligence checks for AML purposes, this does not necessarily mean that it will have fully verified the identities of directors/PSCs of newly incorporated companies or of individuals that become directors/PSCs, for example following a change of control of a company, where those individuals are not its customer (e.g. where the individuals are employees or directors of the customer). This may create gaps where certain directors/PSCs would not be verified if Companies House only focuses on direct incorporations and filings.

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.

We see that there might be a benefit to Companies House in having complete records of the identity verification materials for every director and PSC on the CH Register whether or not a third party agent has been used to incorporate a company or file new information. For example, it might benefit law enforcement agencies if those materials are all stored in one

place for easier access. In addition, this obligation could encourage some third party agents to improve their compliance with the Money Laundering Regulations. Further, where Companies House has obtained identity verification materials on an individual through a third party agent this information could be used to speed up any future identity verification of that individual where he/she subsequently needs to be verified by Companies House in connection with a direct incorporation or filing.

However, these potential benefits need to be weighed against the additional administrative burdens which would arise from third party agents being required to provide the relevant materials to Companies House. For example, the burden on: (i) companies in having to collect the information; (ii) third party agents in having to provide the information to Companies House and store and manage the information when retaining copies of the information sent to Companies House; and (iii) Companies House in terms of collection, verification and, to a lesser extent, storage of the information.

It is also likely that there will be inconsistencies between the amount of identity verification materials available for each individual as third party agents will likely have different procedures/standards for identity verification, unless Companies House or the government prescribes what information would need to be provided.

In addition, the government needs to think about what it means by "identity verification materials". If the government is referring to copies of the customer due diligence information collected by the third party agent (for example, the individual's passport and utility bill proving his/her current address), this information could be provided so long as the government considers questions around the maintenance and deletion of the data as well as who should have access to it. If the government is referring to evidence that the individual has been identified (for example, some form of certification or output from a third party provider), then there would need to be clear instructions/protocols on what sort of evidence would be sufficient - a third party agent may have no right under the terms of use of an external database to forward output to Companies House. The government would also need to consider issues around client confidentiality, legal privilege and data protection.

The government could alternatively require third party agents to tick a box on the relevant Companies House forms to confirm that they have carried out their customer due diligence on the relevant director or PSC. This would then assist with our proposals that Companies House should have a system whereby directors and PSCs who have had their identities verified (either by Companies House or a third party agent) are shown as such on the CH Register (see our responses to Questions 10 and 11). Of course, it would always be easy to tick the box, even where the checks have not been carried out by the third party agent.

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

We can see that more information on third party agents filing on behalf of companies could help Companies House to ensure that it can easily contact those third party agents if there is a problem or it needs more information from them. It could also help to reduce the barrier that criminals can put in place between themselves and the government by using a third party agent.

We think that the third party agent should provide its name, address and the name of its AML supervisory body and AML registration number (although it is not entirely clear what this

number is), along with the email address and telephone number of the person responsible for making the filing. However, this information should not become part of the public record (see our response to Question 9).

However, we query what is meant by "filings" in paragraphs 74 to 76 of the consultation paper. It may be the case that the nature of the filing dictates the information which should be required. For example, where a director's notice of appointment is being filed, we think the above information should be provided. However, where a filing is simply for notification purposes, for example, in the case of a form MR01 and a form MR04, it is difficult to see any benefit in gathering more information on the third party agent. The third party agent presenter's name and contact details may already be given on the form and the third party agent must have a lender authentication code and an account with Companies House to be able to file online or use third party software to file online. In addition, the individual submitting the MR01 form must authenticate himself/herself by providing three items of personal information on the MR01 form.

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

We think that it should be sufficient for the information about third party agents to be disclosed privately to Companies House. We do not see the need for this information to be made public.

See also our response to Question 8. In particular, it is difficult to see what practical benefit there would be in providing the third party agent's details on the CH Register in respect of forms that are used simply for notification purposes, for example the MR01 form – in our view the current information is adequate and we are not aware of any concerns in this regard.

Chapter 3: Who identity verification would apply to and when

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.

Subject to our introductory remarks and the issues raised in our responses to Questions 1 to 5, we agree in principle with the proposal that Companies House should verify the identity of directors. However, we strongly believe that any identity verification regime for directors should not call into question the validity of a director's appointment. Any regime that makes an appointment of a director conditional on the director being able to verify his/her identity would create legal uncertainty and complexities in practice and would potentially mean that clarity over who is a director is lost. It could also affect third parties dealing with the director. It may also encourage individuals to become *de facto* or shadow directors (or result in this). Therefore, the government needs to consider carefully the practical effects of these proposals and their implementation as this would be a significant change to the law.

Our view is that it is important that directors and shareholders should continue to be able to appoint a director from the time they choose as is currently the case. Typically directors are appointed during board meetings or with effect from the end of board meetings. For instance, when a company is being sold, at completion the target company holds a board meeting where the seller directors resign and the buyer directors are appointed with effect from the end of the board meeting. Similarly, where a law firm converts a shelf company for a client, the initial directors of the shelf company (usually partners of the law firm) resign and are

replaced by the client directors in each case with effect from the end of the first board meeting. If it is proposed that these appointments would not take effect until Companies House has verified the identities of incoming directors, then the company would be in a position where it does not have directors. This is not permitted under company law. However, a buyer would not want a target company to still have seller directors on the board post-completion and there may be urgent actions that the company needs to take at once, for example relating to financing. Similarly, law firm partners or other company formation professionals would not want to remain on the board of a shelf company after it has been converted and handed over to the client. (A shelf company is a company that is incorporated (but not used) for the purposes of transferring it to person(s) who wish to start using a company without having to incorporate a company from scratch. Historically shelf companies have been used extensively as it took longer to incorporate a company from scratch and are still used frequently given the speed and ease of conversion.) Another situation where changing directors must be done at speed is when an English law share charge is enforced. English law share charges have the advantage of being relatively quick and easy to enforce. Upon enforcement, new directors may be appointed and the existing directors dismissed. It would seem disadvantageous for the government to enact requirements which could impede the speed of enforcement.

We also have concerns regarding how long the identity verification process would take. Any process should be quick given that one of the current benefits of the UK system is that companies can be set up quickly and there may be situations where directors need to be removed and new directors appointed with speed. Identity verification should not hold up or delay director appointments, corporate actions or commercial transactions.

Given the above concerns, we would suggest that a director should be required to verify his/her identity with Companies House within a particular time frame of being registered at Companies House as a director (for example, one month). The law could provide that an offence would be committed where a director fails to comply and contain appropriate sanctions. This would act as a deterrent and be in line with other provisions in the Companies Act 2006 (**CA 2006**) that contain Companies House filing obligations. However, the sanctions should not call into question the validity of the director's appointment and any acts carried out by the director on behalf of the company before his/her identity has been verified.

In addition, we would suggest that the CH Register indicates where the identity of a director has been verified, either by Companies House or a third party agent, in order to give additional comfort to those searching the CH Register. This would be preferable to the CH Register highlighting where the identity of a director has not been verified. A director's identity may not have been verified because any time period within which he/she is able to verify his/her identity may not have expired (as suggested above). In addition, highlighting where a director has not had his/her identity verified may raise reputational issues for that individual. If the government requires Companies House to highlight directors who have not had their identity verified on the CH Register, the government may wish to put in place processes whereby a director is given time to rectify the situation beforehand, for example, by sending warning letters as Companies House does in respect of the late filing of accounts.

The government could also consider whether it should be possible to have the identity of an individual pre-verified by Companies House. Once an individual has been pre-verified, this should not be open to challenge when the relevant Companies House form is filed. However, this process would not cover all circumstances, for example, if a different individual is

required to be appointed as a director at the last minute who cannot be verified in time under any pre-verification process. In addition, pre-verification may not be practical in the context of enforcement of share security as it would be unlikely that the identity of any new directors would be known in advance.

In addition, where an individual has already been verified by Companies House, because for example he/she is already a director, the identity of that individual should not need to be verified for any subsequent director appointments whether through a post-filing obligation (as suggested) or otherwise. As set out in our response to Question 17, we think Companies House could explore giving verified individuals a unique identifier to use for subsequent filings that require identity verification. Security measures would be needed to protect against issues such as someone attempting fraudulently to use an individual's unique identifier. For example, the individual could be notified by email or text message when his/her number has been used on a Companies House filing, although this would require the individual to provide to Companies House, and Companies House to maintain records of, up to date text and email contact details on a continuing basis. This would be a more robust system than having previously verified individuals simply tick a box to state that they have had their identity verified on the relevant Companies House form.

Where a third party agent has verified the identity of a director as part of its customer due diligence checks as required by the Money Laundering Regulations and confirmed to Companies House that it has done so, then Companies House should not need separately to verify that director's identity (as discussed in the consultation paper and in our responses to Questions 6 and 7).

We also strongly agree with the comment in paragraph 57 of the consultation paper that the information provided by individuals to verify their identity should not be publicly accessible.

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

Subject to our introductory remarks and the issues raised in our responses to Questions 1 to 5, we agree that the identities of PSCs should be verified to assist with ensuring that PSC information relating to UK legal entities is accurate. However, we agree with the government's comments in paragraph 88 of the consultation paper that the government should not interfere in the process or arrangements under which a person became a PSC as this could have far-reaching implications for company acquisitions and disposals. The government should not interfere in such arrangements purely to verify the identity of a PSC – this would be draconian and disproportionate.

We agree that the responsibility for verifying the identity of a PSC should rest with the PSC rather than the UK legal entity. As with directors, we would suggest that a PSC should be required to verify his/her identity with Companies House within a particular time frame of being registered at Companies House as a PSC (for example, one month). The law could provide that an offence would be committed where a PSC fails to comply and contain appropriate sanctions. This would act as a deterrent and be in line with the sanctions that apply to PSCs for failing to comply with section 790D and 790E notices under the CA 2006 or to comply with the duty to supply and update PSC register information (see paragraphs 13 and 14 of Schedule 1B CA 2006).

Where a PSC has not had his/her identity verified by Companies House, the CH Register should still show that the individual is a PSC to ensure consistency between the CH Register and the UK legal entity's PSC register and to maintain transparency. The individual would still be the PSC of the UK legal entity (in the absence of fraud or error), so the CH Register should show this even where the PSC's identity has not yet been verified. Therefore, as with directors, we would suggest that the CH Register indicates where the identity of a PSC has been verified in order to give additional comfort to those searching the CH Register. Once again, this would be preferable to the CH Register highlighting where the identity of a PSC has not been verified for the same reasons as stated for directors in our response to Question 10. If the government requires Companies House to highlight PSCs who have not had their identity verified on the CH Register, the government may wish to put in place processes whereby a PSC is given time to rectify the situation beforehand, for example, by sending warning letters as Companies House does in respect of the late filing of accounts.

Paragraph 91 of the consultation paper also raises the need for the government to consider how these principles apply to companies "owned and controlled" by legal entities, as opposed to individuals. Where this is the case, such companies would either:

- be ultimately "controlled" by a PSC (who would be named on the PSC register where there are no intermediate RLEs – see below for a description of an RLE), whose identity could be verified;

- have no PSCs (and no RLEs - an RLE is either: (i) a UK legal entity that is required to keep a PSC register; or (ii) a legal entity (wherever incorporated) with voting shares admitted to trading on an EEA regulated market or one of the markets specified in Schedule 1 of the Register of People with Significant Control Regulations 2016 (**Specified Regulated Markets**)), so there would be no one to verify; or

- be "controlled" by an RLE, in which case these same principles then apply to that RLE where it is required to keep a PSC register or where that RLE has voting shares admitted to trading on a Specified Regulated Market that RLE would be subject to the regulatory disclosure requirements of the relevant Specified Regulated Market so identity verification in respect of that RLE would not be necessary or appropriate.

Therefore, we do not think that anything further is required in respect of identity verification where a company is "owned and controlled" by legal entities.

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.

We note that paragraph 94 of the consultation paper provides that third party agents would not be required to verify their identity if they are a member of a regulated profession. We agree with this proposal.

We do not think that identity verification of presenters is necessary for filings that contain information on directors and PSCs e.g. incorporation documents, notices of appointment, as the directors/PSCs would already be undergoing a separate identity verification. We would also suggest that where a presenter has a company's authentication code and password and has an email address that is linked to that company then Companies House should not require that presenter to be verified. For instance, company secretaries (or other employees)

typically take care of Companies House filings and should not be required to be separately verified in such circumstances. In our view, such verification is unnecessary and overly complicated/burdensome.

In addition, requiring identity verification for certain filings would be disproportionately onerous, for example, in the case of filings of MR01s. The government should consider the nature of each filing and whether it requires verification of the presenter's identity, taking into account any benefit as well as the burden of the process. Note also our response to Question 8 regarding authentication in respect of MR01 filings.

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

We agree with the principle that identity checks should be extended to existing directors/PSCs i.e. directors in current roles and individuals that are currently PSCs. Otherwise, it would take decades for Companies House to be in a position where most directors/PSCs have had their identity verified. However, there needs to be transitional arrangements to deal with these directors/PSCs. We would suggest a requirement for directors/PSCs to be verified when the next confirmation statement is submitted after a date which is say six months from the date the law comes into force. The government may want to consider whether there should be any exemption to this to ease the burden on companies and businesses, for example, an exemption for dormant companies.

In addition, if a person becomes a new director or PSC, any process should allow the individual to disclose his/her other positions in order for them to also be treated as verified by Companies House. This would assist with "cleaning up" the CH Register as currently the same individual may be registered at Companies House with different names e.g. John Smith, John D Smith and John David Smith could all be the same person. Companies House could use this as an opportunity to identify where individuals are registered at Companies House with different names and "clean up" the CH Register in this respect. This would also be another benefit to individuals having a unique identifier (see our response to Question 17) so that they are linked by the unique identifier and not just by name and date of birth. The government would need to consider the cost and timing implications of carrying out such an exercise for businesses and Companies House versus its benefits.

For the avoidance of doubt, it should be made clear that exemptions available in respect of the PSC regime, for example, in relation to advisers or insolvency practitioners, should also apply in relation to the identity checks at Companies House, as these clearly fall outside of the intended scope of the proposals.

Chapter 4: Requiring better information about shareholders

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

Our assumption is that this question relates to individuals rather than corporate entities although in many cases shareholders will be corporate entities. Whilst generally supportive of increased transparency, it is our view that this requirement should be limited to those shareholders who exercise significant control and for whom this information should already be captured through the PSC filing requirements under the CA 2006. It would be confusing from a compliance and user perspective if the threshold was set at a different level to that of

the PSC regime and we see little benefit in requiring additional information from minority shareholders who do not exercise significant control over the company. Information on shareholders should be collected through the PSC regime. We do not see the need for shareholders to provide more detailed information under a separate regime.

As noted in our response to Question 15, we think it is unnecessary for a company to record the dates of birth of all shareholders, although we agree that a company should continue to record in its register of members an individual member's name and residential address. We think that a member should have the option to provide a service address as an alternative to their residential address with a separate protected register in the company's records for residential addresses. This approach is consistent with the approach for recording details of directors and PSCs.

We welcome the proposal to make it easier to view all the members of a company and details of their shareholdings in one place. Locating shareholder information has become more difficult since the introduction of the confirmation statement. We support an annual requirement to file a full list of members. However, in our view a requirement to file after every transfer of shares would be unduly onerous and contrary to the CA 2006 approach of reducing the red tape burden for small private companies. This proposal would also lead to a significant additional burden on companies with wide employee ownership as employee shareholders could come and go on a regular basis.

We agree it would be helpful to be able to search against an individual's name and identify both their directorships and any significant shareholdings. We do not think that a search of the CH Register should identify a minority shareholder and all his/her shareholdings. This seems overly burdensome and unnecessary and could lead to an increased use of nominee arrangements to avoid disclosure.

We would also flag that shares could be held in nominee accounts or through special purpose vehicles or other entities that are not incorporated in the UK, so collecting information on the registered shareholder does not appear to serve any useful purpose. Without imposing a further disclosure regime that would apply to corporate shareholders of UK companies, collecting information on those shareholders would appear to be of very limited value. However, we would strongly advise against imposing a regime equivalent to the PSC regime on corporate shareholders, as this would impact the UK's attractiveness as a place to carry on business and would also be duplicative of the PSC regime which already requires UK companies to disclose who controls them.

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

See our response to Question 14. We think that the only information which should appear on the CH Register is a shareholder's name and shareholding.

A company is not currently required by the CA 2006 to record a shareholder's date of birth and we do not think it is necessary for it to record this information, as we cannot see what purpose would be served by this. However, if it is decided to amend the CA 2006 to require a company to include the date of birth of individual shareholders in its registers and filings, we do not think that this information should appear on the CH Register although we acknowledge that it would be available in respect of anyone who is also a director or a PSC.

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.

We agree that identity checks are unnecessary for shareholders holding minority interests and who do not exercise significant control over a company as it would simply increase further the compliance burden without any real benefit. We agree that identity checks should be limited to those shareholders who exercise significant control over a company and who should have verified their identity as part of the PSC regime.

We do not agree that there should be an optional regime of identity verification for minority shareholders as this approach would create confusion as to whether it is necessary or desirable to verify the identity of all shareholders. The adoption of an optional regime runs the risk of unverified minority shareholders being wrongly perceived to have failed to comply with a requirement as if it were mandatory rather than voluntary and there would be a risk of an adverse inference being inappropriately drawn.

A consistent and mandatory regime applicable only to those shareholders exercising significant control through the PSC regime would, in our view, be the most appropriate approach. A separate regime for all shareholders is not, in our view, necessary and we would question the utility of any more extensive regime which also captured minority shareholders.

We suggest that the CH Register flags those individuals who have had their identities verified as part of the director or PSC identity verification requirements (see our responses to Questions 10 and 11).

If the government decides to bring forward this proposal, we would strongly advise that it should be an optional regime without any sanctions for failure to verify the identity of minority shareholders and the CH Register should only flag individual shareholders who have had their identities verified.

Chapter 5: Linking identities on the register

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

We agree that verification of a person's identity should be used to link their appointments on the CH Register. However, we do not believe this is an either/or option and think it would be useful to assign a unique identifier to every individual who has had their identity verified by Companies House. We agree that the unique identifier should be confidential and not published on the CH Register. An individual should then quote their unique identifier for any subsequent appointment as a director or notification of significant control so that they can be linked. If an individual is unable to quote their unique identifier then they should be required to undergo identity verification once again. We believe that this approach would reduce the potential for fraudsters to take advantage of the system by making a fraudulent filing in the name of a previously verified individual. See our further comments in relation to a potential benefit of using unique identifiers in our response to Question 10.

One issue with unique identifiers is whether it would be possible for an individual to use different forms of identity, for example different passports, to create different identities (with different unique identifiers) at Companies House. The government should consider how any

chosen technology deals with this issue. In addition, an individual may create false identities to create different identities at Companies House.

See also our comments on "cleaning up" information on individuals at Companies House in our response to Question 13.

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

We agree that Companies House should be permitted to share limited personal information with third party contractors to the extent that it is necessary to enable it to perform its function. However, this is subject to the government taking steps to ensure that the confidentiality and security of the information is maintained and that the government and third party contractors comply with any applicable data protection laws.

Part B: Improving the accuracy and usability of data on the Companies Register

Chapter 6: Reform of the powers over information filed on 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?

We note that in practice Companies House already queries and, in some instances, rejects certain filings where there are clear errors on the face of the form.

Whilst the ability of Companies House to query certain information before it is placed on the CH Register may increase the accuracy of information on the CH Register, the government needs to consider carefully the extent of the authority to be given to Companies House to raise queries, the filings to which it will apply and the impact of a query being raised as there are a number of issues surrounding this proposal as detailed below.

More specifically, in relation to the examples given in paragraph 133 of the consultation paper:

- We think that it is reasonable for a company to have to provide evidence of any entitlement to an exemption from filing full accounts.

- If there is a concern regarding the use of a registered office address, then it would be appropriate for this to be challenged.

In addition, Companies House should have the ability to query and reject PSC filings which are clearly wrong, for example, where it is clear that the purported RLE listed in the filing is an unlisted overseas legal entity (although see our response to Question 24 for a proposal that deals with this specific example).

However, paragraph 133 of the consultation paper also gives an example of Companies House being able to query information filed that represents significant changes to a company's previous status, such as a significant increase in share capital. Companies often undergo significant changes to their status, for example, an increase in share capital is a common step in a corporate transaction to capitalise a recently established company as part of the financing of the transaction; a company may be re-registered before listing or after

delisting; a company's share capital may significantly change as part of an internal reorganisation and so on. We question whether it is right that Companies House should be able to query such transactions as a pre-condition to effecting a filing. What further evidence would Companies House propose to request in these circumstances and what would it do with the information? Would Companies House, for example, require sight of board minutes authorising the allotment? How would Companies House verify what the company tells it? What would the effect be (if any) if Companies House is not satisfied with the information provided? What would be the basis for any such decision? One potential and more practical approach might be the inclusion of a box on relevant forms which could be completed with details of the relevant event to assist Companies House in this regard and that information should not be made publicly available. Does the government believe that questioning this information would help with the accuracy of information on the CH Register?

In general, it is difficult to see, apart from manifest (or clear administrative) errors in the filings, and given the myriad of perfectly legitimate transactions which would require companies to make filings, how Companies House could come up with a clear and consistent policy as to which information to query.

Further consideration also needs to be given to which filings are to be in scope.

For example, in the case of Form MR01, a period of 21 days is allowed for delivery of the form and related security document. The consequences for failing to deliver the form and security document within this timeframe are significant - the security is void against a liquidator, an administrator and a creditor of the company. If Companies House could query a Form MR01 and/or the related security document such that the filing is not effective until the query has been resolved satisfactorily then this could jeopardise a company's compliance with the delivery period and lead to the security being void.

A reduction of capital using the solvency statement procedure only takes effect when the Form SH19, special resolution and solvency statement appear on the CH Register and the ability of Companies House to delay this because of a query could impact on a group reorganisation or other transaction. Sometimes the timing of this is particularly important, for example where other steps must happen on the pre-determined date.

Accordingly, a more nuanced approach is required, which would also provide greater certainty as to the scope of the discretion and what it could be applied to. In the case of certain filings (e.g. Form MR04), which are not compulsory and are a notification that security has been released, it is difficult to see what would need to be checked by Companies House – unless Companies House proposes to check that the security has not been fraudulently released?

In addition, we think it is important that any proposed legislation should make it clear that where Companies House has received a filing, this should mean that a company has complied with its statutory filing obligation, notwithstanding any subsequent query raised by Companies House.

A company could also appear to be non-compliant if information is missing from the CH Register e.g. if a board of directors has been replaced at completion of a transaction and the resignations appear on the CH Register but the new appointments are delayed then the company would appear not to have any directors.

Further, the government needs to consider how it is going to resource this proposed function given the potentially high volumes of potentially reviewable transactions and events. It would be critical to the confidence of users in any new system that it is robust and appropriately staffed so as to be able to deal with any issues in a timely and efficient way. We query whether there should be a pre-clearance process if the government requires verification as a pre-condition to effective filings. Again, what criteria would be applied to determine what information to query?

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

We agree that a company should provide evidence to support any objection by it to a third party application to remove information from its filings. The government should consider how Companies House would deal with a spurious or vexatious claim from a third party.

Chapter 7: Reform of company accounts

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

We agree that Companies House should explore the introduction of minimum digital tagging standards. We agree that minimum tagging standards in iXBRL would make key financial information more easily identifiable both to Companies House, when checking minimum reporting requirements, and to users of the CH Register. As all companies will be required to submit their accounts using iXBRL by January 2020, we consider that the introduction of minimum tagging standards, to help identify key financial information, would be a natural extension of this. It would be sensible that the introduction of any minimum tagging standards is considered and introduced in conjunction with HMRC.

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?

We think that it should be possible to prevent this type of abuse by simply prohibiting a company from shortening an accounting reference period when it has previously shortened its accounting reference period and has not yet filed accounts for that shortened period. However, there may be legitimate reasons why a company may need to shorten its accounting reference period in these circumstances. Therefore, we think this restriction should be subject to exemptions. The government could use the equivalent of the ones set out in section 392(3) CA 2006 as the basis for the applicable exemptions.

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

We expect that the use of iXBRL should go some way to improving the quality of financial information available on the CH Register. The introduction of minimum tagging would also help ensure that a minimum level of information is filed and easily identified within the submitted information. The use of iXBRL should enable other government bodies to easily compare the accounts they receive with those filed at Companies House. We would expect it to be less likely that accidental discrepancies would occur between accounts submitted to different government bodies if the same format were required to be used in all cases.

We can imagine a scenario where a company may, acting fraudulently, wish to present a different financial picture to the public via Companies House than it would to HMRC. The benefit of a consistent format for submission of accounts across government bodies would make it easier for the relevant bodies to check for any such discrepancies and to take appropriate action.

Chapter 08: 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?

In relation to companies that are exempt from keeping a PSC register, it would be helpful if such listed companies were required to specify in the confirmation statement on which Specified Regulated Market(s) their shares are admitted to trading given the exemption only applies to listings on a limited number of exchanges. However, even where this information is provided, it still may not be easy for people that are reviewing PSC information to work out how to find "major shareholder" information on the relevant listed company as each Specified Regulated Market has its own rules on what "major shareholder" information should be disclosed and where. Therefore, we would suggest that Companies House should provide guidance that explains how to find "major shareholder" information on companies with voting shares admitted to trading on the Specified Regulated Markets.

In relation to information on RLEs, it would be helpful if UK legal entities were required to state on the relevant PSC Companies House forms how the RLE is "subject to its own disclosure requirements" by completing a tick box option. Where the RLE is "subject to its own disclosure requirements" because it has voting shares admitted to trading on one (or more) of the Specified Regulated Markets, the UK legal entity should also be required to specify the relevant Specified Regulated Market(s) on which the RLE's shares are admitted to trading.

As well as giving searchers of the CH Register a clearer picture as to why the RLE has been recorded and, where applicable, on which Specified Regulated Market(s) the RLE has voting shares admitted to trading, the benefits of this approach are that it would help explain why an overseas legal entity (where applicable) has been recorded as an RLE and it should eliminate the issue of UK legal entities recording unlisted overseas legal entities as RLEs i.e. because the options on the form should not allow this to happen (which would also assist with the accuracy of information disclosed under the PSC regime). Once again, publishing guidance on how to find "major shareholder" information on companies with voting shares admitted to trading on the Specified Regulated Markets will increase the transparency around who "owns" a listed RLE.

Chapter 9: 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?

We agree that company records should be kept on the CH Register for 20 years from the company's dissolution.

Part C: Protecting personal information

Chapter 10: 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?

In order that the UK remains a competitive and attractive place to do business and to ensure that identity theft is not assisted by the provision of additional public information, we do not think that any type of information that is not already publicly available should be made available to the public. Similarly, the reach of credit reference agencies should be subject to existing limitations. We agree that, for AML purposes and the prevention of criminal activities and fraud, additional non-public information could be shared with public authorities, subject to appropriate processes being in place to protect the confidentiality and security of that information and to comply with data protection laws.

Chapter 11: Information on directors

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

The current value of disclosure of a director's occupation is that, where provided, it can potentially assist with confirming and linking identities of multiple entrants on the CH Register. The introduction of identity verification may make this information less useful, in which event we would have no objection to the removal of this requirement.

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?

Yes, we agree that directors who filed their information before October 2015 should be able to apply to suppress their "day" of birth to limit the potential for identity theft and fraud, except where a company has chosen to hold its register of directors solely at Companies House as proposed in paragraphs 187 and 188 of the consultation paper.

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?

We appreciate that this is a sensitive issue but are struggling to see how this could work in practice, and consequently we do not think that a person who has changed their name following a change in gender should be able to apply to have their previous name hidden on the CH Register and replaced with their new name.

The disappearance of a director's name will leave inconsistencies on the CH Register and the company's records since decisions will have been taken and documents executed by the director under his/her former name. For example, a company's accounts may have been approved by the director under his/her previous name. Is the government suggesting that historic accounts would be amended retrospectively to replace the director's previous name in those accounts with their new name?

In our view, a director's previous name should remain visible on the CH Register as part of the evidential trail for anyone examining the history of a company.

If a director's new name were to be linked to their previous name on the CH Register this would require a unique identifier to be made public and, as set out in our response to Question 17, we think that an individual's unique identifier should be confidential.

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?

Yes, subject to a right to apply for "private" disclosure of the address if legitimate grounds can be shown.

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?

Yes, we agree that people should be able to apply to suppress their signatures on the CH Register to limit the potential for identity theft and fraud. It is sometimes helpful to know which director approved a specific filing and so, if the government decides to suppress signatures on filings, it would be helpful to introduce a box on Companies House forms which would be completed with the name of the director who signed the form. There is currently no means of establishing from the CH Register which officer approved a form which has been electronically filed and so it would, in our view, also be helpful to include similar information for electronic filings.

Additionally, we agree with the government's proposal that, if a person is able to apply to have their signature suppressed, the CH Register should be annotated to show that the relevant document was signed and by whom. Otherwise this will lead to questions of whether certain documents have been appropriately signed, for example, shareholder resolutions.

Part D: Ensuring compliance, sharing intelligence, other measures to deter abuse of corporate entities

Chapter 12: Compliance, intelligence and data sharing

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?

We agree that in the prevention of fraud and other criminal activities there would likely be some benefit from comparing Companies House held information against other data sets. Any data sharing with public and private sector bodies should comply with applicable data protection laws. The practice should be transparent. Individuals should be informed that their personal information may be combined with other data sets (for example, through privacy notices).

For example, as previously mentioned in our response to Question 23, being able to compare accounts submitted to HMRC to those submitted to Companies House would be of particular benefit to HMRC in identifying where companies have omitted important taxable information from their HMRC accounts submission.

Similarly, in support of the prevention of fraud, and assisting in identity checks and establishing proof of address it may well be beneficial to be able to compare data on the CH Register against the Passport Office, DVLA and the register of births and deaths. These comparisons may help identify instances of identity fraud and address fraud and cases of where an individual has changed his/her name or where information has not been updated on the CH Register following the death of an individual.

Cross-checking the legitimacy of third party agents would be simpler and more efficient if it could be done against the data already held by OPBAS. As discussed in our response to Question 8, Companies House should be able to collect details of third party agents that file information at Companies House on behalf of companies, which should mean that, where necessary, Companies House could then check such details against data held by OPBAS.

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?

We note that the EU Fifth Anti-Money Laundering Directive will require regulated entities to report discrepancies found in information relating to the beneficial ownership of a company. However, we are concerned by the consultation paper's proposal that AML regulated entities would have an obligation to report anomalies or discrepancies in any area of the CH Register and in cases other than where AML checks are being performed.

We do not agree that AML regulated entities should be under a reporting obligation in respect of any discrepancies or anomalies in the information on the CH Register. This has the potential to be onerous and far reaching not only in respect of the obliged AML regulated entity, but also in relation to the level of resources that would be required at Companies House to investigate and address reports made. It is difficult to see how such reporting requirement would be proportional to the very limited benefit it may achieve in improving transparency and detection of fraud on the CH Register or how it could be appropriately enforced or sanctioned.

The majority of discrepancies found when carrying out customer due diligence for AML purposes are likely to be minor administrative errors that do not affect the substance of the information about a company that is available on the CH Register. A better approach would be for a voluntary reporting regime (perhaps simply to continue to rely on notifications through the "Report it Now" feature) which clearly defines a materiality threshold at which AML regulated entities are encouraged to report discrepancies when performing AML checks. Such threshold should be carefully crafted to address the issue of anomalies or discrepancies in information on the CH Register that result in the information being materially misleading (as opposed to minor administrative errors). Obliged entities should not be under an obligation to investigate or try to verify the material discrepancies identified, this should be the obligation of Companies House.

Any reporting requirements should only apply to anomalies found on the CH Register by an AML regulated entity when completing its AML due diligence on a customer and not for any other purposes. This is because some AML regulated entities, such as law firms, review information at Companies House for a variety of reasons (e.g. to carry out due diligence on a target company or in order to verify information when required to issue a legal opinion on a financing transaction). To include such activities would considerably expand the obligation on AML regulated entities.

Furthermore, any reporting of discrepancies by a law firm must be subject to client confidentiality and privilege considerations. Where a client seeks help or advice from its solicitor in respect of resolving an issue on the CH Register or in respect of a transaction that would affect the information on the CH Register, the law firm cannot be under an obligation to report this first to Companies House, in breach of client confidentiality and legal privilege.

It is also worth noting that the test for when a person is a beneficial owner under the EU Fifth Anti-Money Laundering Directive is different to the test for when a person is a PSC in respect of a UK legal entity under the CA 2006. This means that the person who is the beneficial owner may not always be the PSC and vice versa. Therefore, there may be discrepancies between information received during customer due diligence for AML purposes and the PSC information recorded at Companies House, but this might be because of the differences between the two regimes that contain distinct tests. It does not necessarily mean that the PSC information at Companies House is wrong.

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

We agree that Companies House should have the capabilities to raise proactively suspicious activities with law enforcement agencies for the purposes of preventing, identifying or prosecuting a crime. We note, however, that such information sharing should not be routine and should be subject to an appropriate threshold, for example, where Companies House has reasonable grounds to believe that sharing such information is necessary and appropriate in the prevention, identification or prosecution of a crime. The data sharing must comply with applicable data protection laws and "proactive" should not be interpreted to disapply these rules, exemptions and requirements. International data sharing across borders should also consider the application of non-EU and EU laws to the movement of personal and non-personal data across borders. In addition, if these powers are introduced, resources and staff training should be made available.

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?

We cannot see any legitimate reason why a company should be required to file its bank account details with Companies House. In practice, a company could have multiple bank accounts in multiple jurisdictions, or no bank account at all. The bank account information may also change frequently. Unscrupulous companies that wish to keep such information out of the reach of the authorities would simply not file their bank account details or file bank account details for one account and not the details of others and then utilise the "undisclosed" account(s). There would be no way of verifying this information. The government should also balance the benefit of obtaining this information with the security risk around keeping a database of every UK companies' bank account details. In our view, the government should rely on the central register/database to be introduced by the EU Fifth Money Laundering Directive.

Chapter 13: 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?

We are not aware of any other examples.

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?

We agree that the courts should be able to order a limited partnership to cease carrying on its business activities if it is in the public interest to do so. The limited partnership vehicle should be no more open to misuse than any other form of corporate vehicle. Giving the courts the power to order cessation of business would give the general public more confidence in the accuracy and integrity of the CH Register for limited partnerships.

However, given that English limited partnerships do not have separate legal personality and that it is the general partner that is responsible for the day-to-day management of the relevant limited partnership, we would suggest that it is the general partner entity that the courts should be able to order to cease carrying on business activities in relation to the specific limited partnership. Usually, the general partner is structured as a limited company or limited liability partnership and so the companies/LLP regime would apply. Appropriate safeguards would need to be put in place to protect limited partners in these circumstances. For general partners that are structured as overseas entities, or general partners with overseas directors, the same challenges arise in relation to prosecution as with any other corporate entity, as highlighted in paragraph 224 of the consultation paper.

It is also important to highlight that limited partnerships are used predominantly by the investment funds industry, which has already been significantly impacted by Brexit. We would therefore urge that any changes made as a result of this consultation are consistent with the changes proposed to be made by BEIS in its response to the consultation on the reform of limited partnership law, which was published on 10 December 2018, in order to ensure that the competitiveness of the UK private fund management industry is maintained.

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

As reflected in our response to Question 37, given that it is the general partner that is responsible for managing the limited partnership, we would suggest that this is the entity over which the courts should have the power to order a cessation of business concerning the relevant limited partnership. General partners that are structured as private companies or limited liability partnerships would therefore already be subject to the procedure in section 124A of the Insolvency Act 1986. If the court were to determine that it is in the public interest to ensure a limited partnership no longer carries on business as a result of this procedure, then a third 'court order' strike-off procedure could be introduced in addition to the voluntary and non-operating strike-off procedures already proposed to be implemented by BEIS in its response to the consultation on the reform of limited partnership law – with appropriate safeguards to protect limited partners included.

In addition, given that limited partnerships can be authorised under the Financial Services and Markets Act 2000 (**FSMA**) (e.g. as an authorised contractual scheme), we think it is sensible

to give the Secretary of State the power to present a petition to the court where he/she considers it to be in the public interest as a result of any report made by inspectors under FSMA, or any information/documents obtained pursuant to the Financial Conduct Authority's power to require information.

We do not think that it is necessary for other law enforcement agencies to be able to make the application directly to court - the Secretary of State should do so upon receiving the relevant information and reports from those agencies.

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

Whilst we acknowledge that companies need to be entitled to use an address as their registered office, we do not agree that there should be a requirement to evidence this when incorporating a company or changing a company's registered office as this would increase the administrative burden on companies and Companies House and create potential delays when incorporating companies/changing the registered office of companies.

In our response to Question 31 we have suggested that where a form is submitted to Companies House it would be helpful to introduce a box on Companies House forms which would be completed with the name of the director who signed the form or approved the electronic filing. We would suggest that a declaration that the company is entitled to use the registered office is included on the relevant Companies House forms and the director who has signed the form or approved the electronic filing is responsible for making such declaration and would commit a criminal offence if the declaration is false.

However, this requirement should not apply to changes in the registered office arising as a result of the appointment of an insolvency practitioner, where it is usual for a company's registered office to be changed to the address of the insolvency practitioner.

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?

We strongly disagree with any proposal to cap the number of directorships held by an individual. Multiple directorships are not necessarily indicative of inappropriate behaviour or an inability to discharge directors' duties and are a regular occurrence in common ownership structures (which also have the effect of simplifying issues around compliance with directors' duties under section 172 CA 2006). A cap on directorships will not prevent criminal activity and therefore, in our view, has no utility. It would also be very difficult to work out what the appropriate cap should be – any number would necessarily be arbitrary.

There are already controls in place for listed companies to ensure that directors are mindful of taking on multiple directorships. In this regard, it is worth noting that for premium listed companies which are required to report their compliance against the UK Corporate Governance Code (**Code**), provision 15 of the Code requires the board when making new board appointments to take into account other demands on a director's time and, prior to appointment, directors must disclose all significant commitments with an indication of the time involved. In addition, the director may not take on additional external commitments without the prior approval of the board. Provision 15 also states that full-time executive

directors should not take on more than one non-executive directorship in a FTSE 100 company or other significant appointment.

In addition, the institutional investor bodies issue guidelines which cover director overboarding and, in effect, impose a cap on the number of directorships held. By way of example, Legal & General Investment Management's (**LGIM**) Corporate Governance and Responsible Investment Policy requires executive directors seeking external board appointments to be mindful of the time commitment required to exercise their duties on multiple boards and LGIM does not expect non-executive directors to hold more than five roles in total (a chair role is counted as two directorships). The ISS proxy voting guidelines impose similar limits on director roles.

If a cap on the number of directorships were to be introduced there would need to be so many exceptions for legitimate business purposes that the restriction would be virtually meaningless. If the government does decide to introduce a cap, it would need to carefully consider what this cap should be, and what exemptions should apply to the cap, as there are many legitimate reasons why some individuals hold multiple directorships. See our response to Question 41 for examples that we come across in practice – there may be others.

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

For the reasons outlined in our response to Question 40, we do not agree with there being a cap on the number of directorships. If it is decided to introduce a cap on the number of directorships held by an individual there should be exemptions available for the following:

- corporate groups;
- companies under common ownership;
- companies that carry on business by way of joint ventures;
- dormant companies;
- company formation agents;
- individuals who act as directors of shelf companies;
- individuals who act as directors on investee company boards and private equity / venture capital house related entities in the private equity and venture capital industry; and
- other legitimate business structuring and operational reasons.

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?

We think that the existing powers of Companies House in respect of rejecting a company name prior to registration are adequate. The UK is currently an easy place to establish a company in terms of both cost and speed, and there could be significant timing implications and delays if Companies House were to be required to assess every new name subjectively,

which would impact adversely on the attractiveness of the UK as a place to establish and maintain a legitimate business.

In our view, a better way of addressing the concerns raised in paragraphs 244 and 245 of the consultation paper would be to consider expanding Companies House's discretion to act upon complaints received and direct a company to change its name following registration if such a complaint is found to be justified. To take the example of a company appropriating the name of an individual, where there appears to be little or no obvious justification for doing so, following receipt of a complaint, Companies House should seek an explanation from the company and be given discretionary powers to require a company to change its name if it is not satisfied with the response received.

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

In our experience the use of the certificate of good standing is usually requested as a part of due diligence on a UK company to confirm that it is properly incorporated and up to date with filing obligations. We particularly find that overseas companies are interested to see a certificate of good standing. In our opinion, those requesting the certificate are aware of the purpose of the certificate of good standing and the information it is certifying. However, making it clearer that it is simply a statement of fact in respect of particular information filed may reduce the opportunity for it to be used for misleading purposes. We would not suggest that the content of the certificate is changed, however, it may be appropriate to rename it as a 'Compliance Statement' identifying that it is just that, a statement of fact in relation to certain compliance matters at a given point in time and not any assurance as to the bona fides or financial standing or solvency of the entity in question.

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

We do not have any evidence of inappropriate use of Good Standing statements.

Date: 31 July 2019