The City of London Law Society

The Law Society

Corporate Transparency and Register Reform

Consultation on Powers of the Registrar

Joint Response of the Company Law Committees of the City of London Law Society and the Law Society

2 February 2021

BEIS CONSULTATION: CORPORATE TRANSPARENCY AND REGISTER REFORM: POWERS OF THE REGISTRAR

JOINT RESPONSE OF THE COMPANY LAW COMMITTEE OF THE CITY OF LONDON LAW SOCIETY AND THE LAW SOCIETY COMPANY LAW COMMITTEE

The views set out in this paper, in relation to the proposed corporate transparency and register reform set out in the December 2020 consultation paper on Powers of the Registrar (the ***Consultation***), have been prepared by a Joint Working Party (the ***Committee***) of the Company Law Committees of the City of London Law Society (***CLLS***) and the Law Society of England and Wales (the ***Law Society***). See the Annex to this paper for further information relating to the CLLS and the Law Society.

1. INTRODUCTORY COMMENTS

1.1 We welcome the government's aims of reducing criminal activities and fraud and increasing the accuracy of, and confidence in, the Companies House Register. We also welcome this opportunity for a more flexible regime for correcting information on the public register, which has been an area of frustration, with the only permissible route being through the courts.

1.2 We draw your attention to our response to the 2019 consultation on Corporate Transparency and Register reform (the ***2019 Response***), including our concerns with regard to the querying power set out in that response. Our reservations remain and, when considering which proposals to bring forward, we feel the Government should keep the following overarching principles in mind:

- the certainty and effective processing of corporate actions and commercial transactions should not be compromised, nor the legal effect of documents be invalidated, as a result of the new powers;
- the UK needs to maintain a competitive and user-friendly business environment, so that the UK's attractiveness as a place to carry on legitimate business is maintained; and
- the protection of individuals' personal data and maintaining the confidentiality of that data is paramount.

2. CHAPTER 1: INTRODUCING A NEW POWER TO QUERY INFORMATION[1]

2.1 **Q1. Do you agree that the querying power should be exercised on a risk-based approach? If you disagree, please explain your rationale.**

We agree with a risk-based approach to the querying power: given the number of filing applications, it would not be feasible for every application to be pre-checked or validated post-filing. We agree that, where issues are highlighted to the Registrar, they should be reviewed on a case-by-case basis and the new querying powers duly applied.

The proposed departure from the "proper delivery" principle for filing is nevertheless significant. We share the desire that the Registrar should be able to protect the integrity of the register by querying entries; however, we do not see, even on a risk-based approach, a basis for delaying the process of registering filings (particularly filings whose registration has legal effect), given the overwhelming need on legitimate transactions for certainty as to when a filing registration will take effect. See our response to Q2. Without detracting from the

[1] See also the 2019 Response.

principle that any querying powers should only be applied post-registration, we would make two overarching comments:

- it would be helpful if the concept of "risk" could be more clearly defined. The concept of a risk to the integrity of the register is fairly easy to grasp, but it would be useful to have more clarity around the concept of a risk to the UK's "business environment". Ultimately, it will be helpful if the Registrar could issue guidance to businesses and the general public on circumstances in which it is likely to consider that there is a risk to the UK's business environment; and

- it would also be useful to have more information on the approach the Registrar will take when raising queries on a filing, so that companies can submit information to Companies House with confidence in the timeframe and process for dealing with queries.

2.2 **Q2: Are there specific circumstances under which you consider the querying power should be exercised? Please give reasons for your answer.**

We agree with the use of the querying power in the scenarios put forward in paragraphs 26 to 28 of the consultation paper. However, except where the Registrar, taking a risk-based approach as outlined above, determines that there is a clear indication of fraud, the relevant legislation should provide for the power to be exercisable only post-registration.

With regard to paragraph 23 of the consultation paper, we do not agree the fact that a company is set up with an unusually high amount of share capital should be a reason for the Registrar to raise a query under the new power. Companies may be set up with different amounts of share capital for any number of legitimate reasons. It is unclear what would constitute an "unusually" high amount of share capital.

As noted above, due the need for the efficient processing of legitimate corporate actions, pre-registration queries on properly delivered filings should be raised only in cases of suspected fraud. This is particularly important in instances where registration of the filing has legal effect (for example, the filing of a court order sanctioning a scheme of arrangement or registration of a reduction of capital by solvency statement, the issue of a certificate of incorporation on change of name or on re-registration, a change to a company's registered office address or accounting reference date, or the registration of a charge created by the company). In these cases, it would be detrimental to the timetable and efficient transaction of corporate transactions if certainty over the timetable for registration were to be questioned. In any event, given the tiny minority of cases in which there will be suspected fraud, processing of filings should not be delayed because the Registrar is running any lengthy filtering processes with other agencies. We agree that the Registrar should be able to seek other sources of evidence from such agencies post-registration, but the exercise of the power pre-registration for suspected fraud should be limited to where systems are in place for automatic, same day, flagging and processing.

Where queries are raised post-filing, the process and timetable for resolving the query should be clearly set out. There may need to be different processes for (on the one hand) queries involving an obvious factual or legal error (e.g. a filing that wrongly identifies an overseas company as a registrable relevant legal entity) and (on the other hand) queries that require more time and information to resolve, such as where criminal activity is suspected.

The legislation should also provide for the power to raise queries post-registration to be exercised at the request of a company where an unauthorised person (i.e. neither the company nor its agent) has filed information purportedly on its behalf.

2.3 **Q3: In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.**

As set out in the 2019 Response, we consider that the existing powers of Companies House in respect of rejecting a company name *prior* to registration are adequate. There could be significant timing implications and delays if Companies House were required to assess every new name subjectively before registering it.

We recognise that companies occasionally fall victim to fraudulent campaigns and that applicants have been known to make repeated and vexatious applications to register a company name that is similar to that of an existing company on the register. We also note that it has been suggested that Companies House should do more to tackle these issues pre-registration. As noted above, to provide certainty for applicants and the consummation of corporate transactions, pre-registration querying of company names should be extended beyond the current regime only in cases of suspected fraud. There may also be a case for the Registrar to be able to reject name applications prior to registration where an objection before the Company Names Adjudicator has previously been upheld.

It would be helpful to understand how it is intended that the role of Companies House in exercising the proposed querying power in respect of company names would interact with the role of the Company Names Adjudicator.

2.4 **Q4: Do you agree that this is an appropriate use of the querying power? Please provide reasons for your answer.**

As noted above, use of the querying power in relation to company names pre-registration should be limited in order to preserve the relative speed and cost benefits of UK company registration. However, pre-registration querying may be appropriate in the limited circumstances set out above.

We agree that the use of the power post-registration would be appropriate, and that Companies House should be able to change a company's name to its company number in the event that a company does not comply with a query raised by the Registrar. However, a power to change a company's name pending its response to a query is not appropriate, especially given the breadth of the querying power. This could cause significant disruption to a company's trading activities. If, despite our concern voiced above, it is decided that the Registrar should be able to change a company's name before the company has responded to a query from the Registrar, legislation should make it clear that the legal effect of any corporate actions carried out in the company's original name is not affected.

It would be helpful to know what is anticipated in terms of the proposed digital process, and there may be benefit in the Registrar issuing guidance to this effect. In order to maximise the effectiveness and efficiency of the digital process and to avoid any delays, persons expected to respond to a query should be provided with direct contact details for a named Companies House case officer who can be contacted personally so that queries can be resolved efficiently.

2.5 **Q5: Is it appropriate to place the onus on the company and/or the applicant to demonstrate that a name is being registered or was registered in good faith?**

We note that, where an objection to a name is raised before the Company Names Adjudicator, it is a defence that the company name was registered in good faith. This is appropriate within the company names adjudication scheme, where it may be proportionate to require a company to defend its use of a name.

However, we do not think that it would be appropriate to require an applicant to provide evidence of good faith as a pre-requisite to registering a new company name or a change of

name. On a technical level, this could lead to significant delays in registering or changing a company name, partly due to the process required to assemble the evidence and partly due to the time that would inevitably be required for the Registrar to assess that evidence. On a more conceptual level, it seems disproportionate and prejudicial to applicants to require evidence to be submitted as part of an application where a name is not in dispute. There is no obvious case for placing this burden on an applicant in the absence of allegations of fraud, criminality or irregularity. Moreover, good faith is one of a number of defences in such circumstances and therefore to make this a requirement upon registration would be inconsistent with the adjudication process.

Where a post-registration query is raised (including, for example, as a result of a third party complaint) that currently would be the subject of a complaint to the Company Names Adjudicator, there is a more forceful argument for placing the onus on the company to establish one of the defences currently available under s69 of the Companies Act 2006. However, as noted above, applicants will require certainty as to the procedure under which the Registrar will raise a query, the timescales within which a company will be required to respond and the types of evidence a company will need to provide. In particular, under such a procedure, the Registrar would be placed in the position of a quasi-adjudicator. The relevant legislation should therefore set out the factors the Registrar will take into account and the relative weight it will give different kinds of evidence when reaching a decision on whether to raise a query. Thought should also be given to whether there should be a procedure for appealing a decision by the Registrar to raise a query or change a company's name, as well as whether such a decision should (as we assume it would be) susceptible to judicial review.

Where there is fraudulent or criminal activity, the time that has elapsed should not be a bar to action being taken. However, in other cases, we would suggest a limitation period for the Registrar to raise a query. Not only would this minimise the cost, administrative burden and reputational damage to companies of having to change their name after a potentially significant period of having used it (for example, on their website and in all communications with third parties), it would also provide businesses with certainty that they can continue to trade under a particular company name without fear of challenge.

2.6 **Q6: Do you agree that the "sensitive words and expressions" regulations should be amended to capture circumstances such as that described above?**

Yes. However, we would note it is common now for companies to use neologisms and invented or innovative words or phrases in their names. It would be disproportionate for a company to consult every language to check whether a proposed part of its name contains a word that, in another language, translates into a sensitive word or expression. Moreover, it is possible that a word or phrase that in English is not a "sensitive word or expression" might by coincidence be the equivalent of a sensitive word or expression in a foreign language. We assume it is not the intent of the proposals to capture these scenarios.

In addition, there may be words that are used both as an abbreviation for a sensitive word or expression and separately as a word in their own right or as an abbreviation for or contraction of a non-sensitive word or expression.

The power to challenge company names on the basis of language should therefore be limited to circumstances where there is a clear attempt to circumvent the prohibition of sensitive words and expressions by using abbreviations or non-English/Welsh/Gaelic equivalents – i.e. where it could be reasonably informed that the name is meant to have the same connotation.

2.7 **Q7: Do you agree that we should close this gap in the way we propose? Are there any other gaps that we should consider?**

Yes.

2.8 **Q8: What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?**

The consultation paper proposes a 14-day period for responding to a query raised by the Registrar. This appears to represent a sensible and proportionate period of time for more straightforward queries and usefully coincides with other periods of time for taking action under the Companies Act 2006.

However, for certain more complex queries, 14 days is unlikely to be a sufficient and reasonable period of time for a company or applicant to respond adequately. This may be because the company or applicant requires more time to assemble sufficient evidence to satisfy the Registrar, because relevant persons (for example, company directors or senior executives, or professional advisers) are unavailable for some legitimate reason (such as hospitalisation), or because some intervening event has beset the company (such as a fire or flood in its premises).

This may in turn result either in an applicant or company being denied an entirely legitimate registration, or in companies and applicants preparing hurried and unsatisfactory responses to queries, in turn necessitating further queries by the Registrar and creating an inefficient and expensive process.

To address this, we suggest one or both of two modifications:

- that, for certain more complex queries, a company or application have longer than 14 days to respond (for example, 28 days); and

- that, where a respondent is asked to address a query within a 14-day period but can legitimately demonstrate that it is not feasible to respond during that period, it may request and be granted additional time. Companies House could issue guidance on circumstances in which it will grant indulgence.

Sanctions should be normally limited to fines and subject to reasonable defences. This is consistent with other sanctions provided for in the Companies Act 2006. To the extent it is decided to impose criminal penalties, these should be consistent with similar penalties in the Companies Act 2006 for administrative offences (such as a daily default fine for continued contravention). Given that the Registrar would ultimately be vested with the power to take action to avoid and mitigate any risk of fraud or to the integrity of the register, there does not appear to be a case for imposing custodial sentences. That should instead be the subject of any separate proceedings in fraud or other dishonesty offences.

To avoid delays where, for example, filings are made by someone on behalf of a company (such as a lawyer, accountant or corporate services provider), queries should be addressed both to the person who is referenced as having made the filing (at the address provided for that person) and to the company's directors at its registered office. Where a query arises out of a challenge made by a third party, there may be an argument for sending a copy of any queries to that person as well.

In some cases, a query may relate to a filing that concerns an individual or other organisation. This may be the case, for example, where the filing relates to the registration of a director, secretary or person with significant control. Moreover, in some cases, action taken in response to the query may have legal effect. This would be the case if, as proposed by the Government, the legal status of a person’s appointment as a company director is determined by their inclusion on the register maintained by the Registrar. In these cases, there is an argument for directing any queries additionally at the person involved and to allow that person to make representations and adduce evidence in response.

2.9 **Q9: Do you agree that the removal of most documents which have legal effect by virtue of registration at Companies House should be a matter for the courts?**

Yes. See Q10 below.

2.10 **Q10: We propose that the Registrar should be able to remove certain filings which in future, will give legal effect such as director appointments. Do you have any views on whether the Registrar should have any other role in respect of legal effect filings? What information will be published?**

We do not think there is a need for an expanded role for Companies House in respect of legal effect filings. Such a role would jeopardise the public's ability to rely upon the register. Removal of legal effect documents could affect the rights and obligations between companies and their shareholders and is therefore a matter for the courts.

Other "legal effect" filings include (as mentioned in the 2019 Response), filings of documents in relation to a reduction of capital by way of a solvency statement and registration of charges.

With regard to a reduction of capital, it is unclear what the effect of the removal of registration of a valid reduction would be. Arguably this would affect the validity of the reduction and therefore affect the company's capital. This should be a matter for the courts.

With regard to registration of charges, it is unclear what the effect of removal of an MR01 form and the accompanying security document would be. If it were to have an effect on the validity or priority of the charge, it should be a matter for the courts. Any removal of information by Companies House would need to be annotated on the register to ensure a reliable record.

If, notwithstanding our response to this question, Companies House is given a power to remove legal effect documents, pending a court order, we believe that a power to annotate the register could be appropriate if an alleged transgressor makes no response in the time period to address the allegation or evidence received by them was inadequate. However, the relevant legislation should include appropriate safeguards to ensure that any power to annotate the register is used only in circumstances where the Registrar would otherwise have power to remove a document, and that, when making an annotation, the legislation appropriately balances the public interest in flagging up genuinely incorrect or fraudulent information (on the one hand) and the potential damage to a company or some other person arising out of the annotation (which might, for example, damage the company's or person's reputation or cause third parties to cease dealing with the company pending resolution of the query).

2.11 **Q11: Do you agree that the evidence provided as a result of the Registrar's queries should not be published unless it comprises information that would normally be published? Please give reasons for your answer.**

Yes, we agree. Queries will be dealt with more efficiently if companies are able to discuss them with the Registrar in confidence, without this necessitating the publication of what may well be confidential information.

2.12 **Q12: The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?**

In order for the company to understand the query and how to respond, the explanation should give a clear justification for the query (with factual basis, rather than simple point of principle) and, where possible, indicate what evidence or information is required.

As noted above, it would be helpful for the Registrar to publish guidance as to what kinds of documentary evidence are likely to be required for particular types of query. For example, where a company files a return stating that an non-UK company has been entered into its PSC register, the Registrar might require evidence that the non-UK company is a legal entity and is subject to its own disclosure requirements and so eligible to be entered into the company's PSC register. Supporting evidence in this instance might include a certified copy of the non-UK company's incorporation documents or a certified extract from the register in which non-UK company is registered, and verifiable details of the securities exchange to which the non-UK company's voting shares are admitted.

The query communication should also contain a reference number and contact details of an allocated Companies House case officer (see our comments above) and set out the period during which the recipient must respond. It should also set out the consequences of failing to respond to the query. This might, for example, provide that the recipient has a further period within which to respond and that, if it does not do so within that period, penalties will be imposed. It may be possible to draw inspiration from the system of sending warning notices and restrictions notices under the PSC regime.

2.13 **Q13: What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?**

This will depend on the nature of the query and the circumstances in which it is made. It is difficult to be prescriptive given the breadth of the querying power. See our comments on Q12 for a specific example in relation to PSC filings.

In any case, it needs to be clear exactly what a recipient is required to provide. For example, if the recipient is to provide specific documents, the query should provide as detailed a description as possible of the documents required. If the recipient is to provide non-documentary evidence (for example, an account of events or a declaration), the legislation should set out the form and format which that evidence is required to adopt and any content requirements.

2.14 **Q14: What guidance on the Registrar's use of the querying power would you expect Companies House to publish?**

The following should be included in any guidance that is published:

- a list of the circumstances in which the power is likely to be used (to the extent this is not included in amended legislation);
- the timing and process according to which Companies House will deal with queries and provision of further information (time periods for responses from the Registrar should form part of the legislative changes);
- the scope of the power and the filings subject to it;
- the factors Companies House will take into account, and the strength it will accord different types of evidence, before making a decision whether to raise a query or to take action to alter the register;
- instructions for communicating with Companies House regarding a query, and the process for escalation; and
- forms of proof which might be acceptable in resolving particular queries.

2.15 **Q15: Do you agree that complaints should be handled using the same process as the current Companies House complaints process? If not, please include reasons for your answer.**

No. Although we do not envisage extensive use of a complaints procedure, we would be concerned to ensure that where, for example, a transaction is at risk of delay, there is a clear line of communication with Companies House with regard to resolution of the query.

3. CHAPTER 2: REFORMING THE REGISTRAR'S EXISTING POWERS

3.1 **Q16: Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?**

Yes, we agree, provided this is done on request of an officer of the relevant company. The approach should be consistent with that under 1075 CA 2006 (informal correction of documents) - the power will only be exercised with the consent of the company.

A more flexible approach is welcome. Extending the narrow discretion currently given to the Registrar under the Companies Act 2006 would avoid companies wasting time and money in going to Court to change a simple error.

With regard to legal effect documents, see our comments on Q10.

The Registrar currently has powers under sections 1075 and 1076 to correct and replace documents respectively. Under section 1075, the Registrar may informally correct a document, upon instructions from and with the consent of the company where the document appears "incomplete or internally inconsistent". Under section 1076, the Registrar may replace a document which has been delivered to it where the document does not comply with the requirements for proper delivery or contains "unnecessary material".

However, in practice these powers do not tend to be sufficiently wide to cover errors which commonly occur, for example where filings are mis-labelled (such as a special resolution appending new articles being labelled only as a special resolution). In addition, the experience of some of our members is that these powers do not cover all sections of a company overview that provide important information in relation to a company, such as the overview list of a company's persons with significant control. We recommend that a more flexible approach be adopted and the Registrar be given broader, more principles-based powers to remove, correct and annotate entries on the register where the company requests that this be done, and consents.

3.2 **Q17. Do you agree that the Registrar should close this loophole or are there circumstances where remaining at the default address, or moving to the default address more than once, is warranted?**

Yes. As the consultation paper notes, the current inability of the Registrar to do this leaves the register open to abuse. Any new power would avoid the affected individuals having to keep re-applying to the Registrar.

3.3 **Q18: Do you agree that the amount of time a company (or other entity) can be defaulted to the Companies House address be limited to a specified period, e.g. 12 months?**

Yes, we agree that a time limit should be imposed.

3.4 **Q19. What action do you consider should be taken if a company remains at the default address for longer than 12 months?**

One possible course of action is for the company to be placed into a compulsory striking-off procedure. This approach would be consistent with that taken where a company fails to file its accounts or confirmation statement.

Given the severity of striking a company off, it should occur only after a series of warning communications have been given to the company. If the company is subsequently restored to the register (for example, to serve a claim as a creditor), there would need to be a procedure for determining what the company's registered office address should be on restoration. One option is for the restoration order made by the court to specify a new registered office address.

3.5 **Q20. Do you agree that it is appropriate to reduce the 28-day period? If not, what period do you consider is appropriate and why?**

Yes, subject to our comments above regarding the Registrar's power to make changes to or remove legal effect filings, the possibility of retaining a longer period (such as a 28-day period) for more complex queries and the potential right for a recipient to request more time in appropriate circumstances.

3.6 **Q21. Do you agree that Companies House should have the ability to remove the name or address of the affected individual while a response is awaited from the company?**

This may have unintended consequences, as it would mean that a person dealing with the company may not be able to access important information. It may also mean that a person who is genuinely acting as a director is unable to provide evidence to a third party that they are entitled to act as the company's agent. Whilst a removal power may be valuable in a scenario where there is a genuine risk of fraud or criminal behaviour or to the integrity of the register or the UK's business environment, it may be penal and damaging to a company where the query is ill-founded or can be resolved adequately with evidence.

One alternative would therefore be to annotate the register to indicate that a filing, or the subject of a filing, is undergoing confirmatory checks, rather than removal of the document which may cause confusion or uncertainty. See our comments on Q7 above. It is critical that the precise wording with which the Registrar can annotate the register is prescribed and sensitively worded so as to avoid any adverse impact on the company itself.

There need to be clear parameters around the approach and the redress for an innocent party against whose name an annotation is made on the public record. The Registrar should look at the strength of the objection and give the person concerned an immediate right of response, as this may resolve the query without any need for an amendment to the register. If it cannot be resolved, then an annotation as described above should be placed on the register pending resolution.

3.7 **Q22: Do you agree that the power to require (or mandate) delivery by electronic means should be conferred from the Secretary of State to the Registrar?**

We assume that "delivery by electronic means" in this context means the use of a portal for sending documents electronically (for example, in PDF format), eliminating the need to submit physical (i.e. paper) documents by post or by hand. On this basis, we agree with the concept of conferring the power to mandate electronic filing from the Secretary of State to the Registrar to allow for more flexibility. However, there will need to be clear guidance and parameters around which documents do need to be filed electronically. There will also need to be clarity and assurances around how quickly electronic filing will take place, especially where the filing has legal effect.

In some cases, electronic filing refers to the delivery of the relevant information to Companies House through an electronic system, such as WebFiling or software filing. In this respect, we would note that not all applicants will have access to these systems, and so any decision to

mandate filing in this manner will need to be taken carefully after carrying out an impact assessment.

4. CHAPTER 3: RULES GOVERNING COMPANY REGISTERS

4.1 Q23: We intend to remove the requirement for companies to keep and maintain their own Register of Directors. Do you have any concerns about this approach?

The Societies have responded before in relation to registration in the public register constituting legal effect. If nevertheless this reform is enacted, we would not see any basis for a continued requirement for companies to maintain their own register of directors. If the requirement is not removed, under the new regime, there would be potential for discrepancies between the company's own register and the public record which would cause confusion and uncertainty.

As the consultation paper notes, the Government has confirmed that it intends to amend the law such that the appointment of a director will not take effect in law until the director's identity has been verified and their details entered onto the public register. The position regarding the resignation or removal of a director has not been definitively stated, and so we assume that such a resignation or removal will not be dependent on being registered at Companies House. This would be consistent with the existing position under the Companies Act 2006 and the Model Articles. That being so, the public register at Companies House will not be a definitive record of a company's directors where a resignation or removal has taken effect but not yet been notified to the Registrar. Thought will need to be given as to how a company will be required to record and evidence the removal or resignation of a director if the requirement for an internal register of directors is abolished.

4.2 Q24: What impact would changes to the requirement to keep any of the registers in the list above have?

Register of Members –We appreciate it is a question of policy whether a company's register of members should be kept centrally at the public register at Companies House and, consequently, whether legal changes to a company's membership should take effect only when that public register has been updated. However our view remains that a company should itself continue to maintain the register of members, principally as it is more appropriate that it has control over the updating process (and the timing of legal effect) and to maintain confidentiality in respect of certain matters that currently do not have to be disclosed. In more detail:

- as stated in the 2019 Response, we continue to believe that the only information which must be available publicly (via the confirmation statement) is a shareholder's name and shareholding: individual shareholders may legitimately feel their address should not be publicly disclosed (unlike a director, they are in most cases not able to use the company's registered office as a service address), nor the amount paid on share transfers;

- often it is essential for a change in a company's members to take effect as quickly as possible or on a precise date or at a precise time. A change in members, particularly for companies limited by shares, may be a pre-requisite to a subsequent or parallel corporate transaction. This is particularly relevant where a lender or security trustee needs to take security over shares, or where shares need to be transferred on to a subsequent owner in short succession. This currently lies within a company's control, as it is able to update its register of members almost immediately after the stamping process is complete (if, indeed, stamping is required). If a company were required to keep its register centrally, there would need to be confidence and certainty that the process of updating the register can be achieved quickly and without disruption or interference; and

- if a company's register of members were kept centrally, any change to the register would be made by way of a filing at Companies House. In line with the consultation generally, consideration would need to be given to what powers (if any) the Registrar would have to query filings to update the register. The potential for the Registrar to raise a query, causing a potentially significant delay to the transfer of legal title, could be fatal to many corporate transactions.

Register of Secretaries – Although company secretaries do not have the same range of powers and duties as directors, the process of appointing a secretary and recording their details is substantially similar. We are therefore of the view that the Register of Secretaries should be treated in the same way as the Register of Directors (whatever that may be). However, to be clear, given that a company secretary does not take part in the management or control of a company, we are not advocating that a person's identity should need to be verified before their appointment as a company secretary takes legal effect.

PSC Register – We would be in favour of maintaining PSC information only at Companies House. All information on registrable persons and registrable relevant legal entities is already filed at Companies House, and there is therefore no need for this to be mirrored in a register kept separately by the company.

Register of Directors' Usual Residential Addresses – We propose that the requirement for companies to keep a register of directors' usual residential addresses be removed. The addresses would still be provided to Companies House and, as is currently the case, be included on a secure register to which access will be restricted to certain public authorities and credit reference agencies. Directors who consider themselves or their family members to be at risk of violence or intimidation would still be able to apply for their usual residential addresses to be protected from such disclosure.

Register of Charges – We note that, since 6 April 2013, there has been no requirement for a company to keep a register of charges it creates on or after that date. Strictly speaking, a company is still required to keep its own register of charges in relation to charges created before 6 April 2013. However, that register no longer has any legal significance, as the enforceability in insolvency of a charge created by a company is determined by its registration by the Registrar, not by the company's internal register. As a result, we are of the view that the requirement to keep this historic register should be removed as well.

In all cases above, where the register is in a company's possession, it has complete oversight and control over the process for maintaining and updating it. If this control is to be relinquished, companies will need clarity around how this will work, how quickly the information can be updated (including any identity verification and other querying processes), and what redress the company and any other affected persons will have in the case of errors.

4.3 **Q25: We may also consider further changes to the election regime for private limited companies which was introduced in 2016. How useful is the election regime for private limited companies?**

We are not best placed to comment on this, as our clients do not frequently use the election regime. However, our understanding is that a very small minority of companies elect to keep some or all of their registers centrally at Companies House. With the exception of a company's register of members, companies are already required to supply the information set out in their statutory registers to the Registrar. It is therefore possible that this low take-up reflects merely the fact that there is no tangible advantage to a company in opting into the election regime.

For further information, please contact Richard Spedding of the CLLS Company Law Committee: Richard.Spedding@traverssmith.com .

ANNEX

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (***CLLS***) and the Law Society of England and Wales (the ***Law Society***).

2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society.