

Consultation Response

Corporate Transparency & Register Reform (Powers of the Registrar)

January 2021

AIA Response: Corporate Transparency and Register Reform – Powers of the Registrar

Executive Summary

The Association of International Accountants (AIA) is responding to this consultation on Corporate Transparency and Register Reform (Powers of the Registrar) published in December 2020 on behalf of its membership and in the wider public interest.

AIA's population in practice are primarily involved in the preparation of accounts and company filing for small and medium-sized enterprises.

Accountants are key gatekeepers for the financial system, facilitating vital transactions that underpin the economy. As such, they have a significant role to play in ensuring their services are not used to further a criminal purpose.

Legal arrangements and company structures play a legitimate role in global commerce; however, their status encourages the creation of complex corporate schemes designed to conceal ownership which can facilitate money laundering.

As an approved professional body supervisor under the UK Money Laundering Regulations AIA works in the public interest to tackle economic crime and supports the work of the Economic Crime Plan to work together and reform the incorporation of companies within the United Kingdom, recognising that individuals offering Trust and Company Services are at a high risk of being exploited by criminal elements. This approach forms part of the plan to mitigate the risk of corporate structures being used to launder the proceeds of corruption and organised crime.

Overall, AIA argues that any reforms should work to improve transparency and strengthen the fight against fraud and money laundering.

AIA looks forward to continuing to work with Companies House to strengthen corporate transparency in the UK and ensure these significant reforms can be introduced with an effective and efficient process.

AIA Response

Question 1: Do you agree that the querying power should be exercised on a risk-based approach?

AIA supports the use of a risk-based approach which targets both the proportionality of any powers, the costs attributed to enforcement action or querying resources and is a methodology which is already in use to implement the government's Economic Crime Plan 2019-22.

Question 2: Are there specific circumstances under which you consider the querying power should be exercised?

AIA has identified no specific circumstances under which the querying power should be exercised although would highlight at this juncture that allocating excessive specificity to the querying power may impose a limit on flexibility to the Registrar's powers and therefore act to undermine the main aims of the government's corporate transparency reforms.

Question 3: In what circumstances do you think the power should be used in the context of company names? Please provide reasons for your answer.

AIA agrees with the principle outlined in the consultation document concerning the power of the Registrar to query company names.

Where there is evidence of any deliberate abuse of naming processes to suggest illegitimate links to established firms, or to misleadingly suggest that any company provides services and expertise that they do not, AIA agrees that the power to query should be available to the Register post-registration to ensure that all potential issues may be identified at the registration stage.

It may not be reasonable for all potential issues to be identified at the company registration stage, given the large number of registrations involved and this should be addressed on a risk-based approach.

Question 4: Do you agree that this is an appropriate use of the querying power? Please explain the reason for your view.

AIA agrees with the principle that the Registrar to have the power to both query and, wherever relevant, reject or require changes to company names. The option for any firm to have any such decision adjudicated upon already exists, although AIA would also consider it appropriate for decisions to be published to ensure transparency in the use of such a powers and these to be reported on.

Question 5: 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?

AIA would suggest that in consideration of the resources available to the Registrar it would be entirely appropriate to ensure that the responsibility to demonstrate that a name is being registered or was registered in good faith be given to the applicant.

Question 6: Do you agree that the "sensitive words and expressions" regulations should be amended to capture circumstances such as those described above?

AIA would agree that the regulations should be amended to prevent misleading or offensive nomenclature in line with the consultation approach.

Question 7: Do you agree that we should close this gap in the way we propose? Are there any other gaps that we should consider?

AIA agrees with the proposed action and has not identified any additional gaps for consideration.

Question 8: What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?

In general AIA agrees with the principle that sanctions should be leveraged to incentivise compliance with the new requirement to respond to a query raised by the Registrar

Question 9: 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?

AIA agrees that in most cases it cannot see why the removal of a document which gives legal effect from the register should not remain a matter for the courts.

Question 10: 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?

AIA agrees that for simple or straightforward filings such as director appointments and changes of registered office address these filings should be able to be removed by the Registrar. There are no specific additional areas identified where the Registrar should have any other role in respect of legal effect filings.

It would be useful to enquire at this stage whether filings removed by the Registrar would be flagged on the company filing history.

Question 11: 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.

AIA agrees with the position that evidence provided to satisfy the Registrar's queries should only be used for that purpose and not published as a matter of course. Evidence to prove identity or residence can by its nature contain sensitive information which should not be published.

Question 12: The Registrar will provide an explanation about why the query is being made. What other information would you expect the query to contain?

Any explanation should provide clarity about the reasons for the query or adjustment being made to avoid confusion for the filing agent or company.

Question 13: What kinds of evidence do you think it would be appropriate for the Registrar to request in support of a response to a query?

By its nature, the breadth of filing information which the Registrar could query may be substantial and so AIA suggests that the Registrar uses evidence accepted by other government agencies to standardise its approach to allowable evidence. However, for certain filings the evidence required may differ and so it would be useful to provide examples of acceptable documentation when raising a query.

For example, AIA considers that it would be reasonable in such cases to request evidence of property ownership or rental agreements should there be a query relating to registered office address or location.

Companies House could also consider implementing a random sample check of filing updates on a risk-based approach even for filings it has not initial concern over.

Question 14: What guidance on the Registrar's use of the querying power would you expect Companies House to publish?

As expressed in the consultation document Companies House should ensure that any guidance published does not disclose its methodology for undertaking querying of filings. However, it would be useful to have accessible and clearly set out guidance on what to expect when receiving a query from the Registrar and the kind of evidence that may be requested along with the legal framework surrounding the request powers.

Question 15: 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.

AIA can see no reason why the current Companies House complaints system could not be used,

Question 16: Do you agree that the Registrar should have greater powers to remove information? Do you have suggestions for other approaches we could take?

AIA agrees with the proposed reform to increase powers to remove information.

In addition, AIA supports the Registrar having the power to annotate the register to make clear that information has been removed – this would increase transparency over the reasons for removal of information and reduce uncertainty.

Question 17: 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?

Applying a risk-based approach is key to this question and AIA believes that the Registrar should be able to change an address to the default address without an application, particularly where evidence is received.

Question 18: 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?

AIA understands that limiting to a specific period the amount of time a company (or entity) can be defaulted to the Companies House address would enable an additional level of control, however there

may be circumstances where a company may warrant applying to retain its default address and so such application may be considered as and when they are submitted.

Question 19: What action do you consider should be taken if a company remains at the default address for longer than 12 months?

Unless there is an established genuine need for a company to remain at a default address upon application then AIA would support the introduction of sanctions where warranted should a company remain at the default address for longer than 12 months, providing there was clear guidance within the incorporation process that this requirement, if not complied with, had specific sanctions attached.

Question 20: Do you agree that it is appropriate to reduce the 28-day period to 14 days? If not, what period do you consider is appropriate and why?

Balancing the speed of incorporation with the necessity to undertake due diligence is vital to taking a risk-based approach, however AIA supports the proposed reduction of the 28-day period to 14 days. With electronic notification and filing it should be easier for company officers to make changes and 14 days does not seem overly problematic.

Question 21: Do you agree that the Registrar should have the ability to remove the name or address of the affected individual while a response is awaited from the company?

It is important to note that not all information that the Registrar queries may be inaccurate and a presumption that this is the case could lead to errors in the register should they be removed. Depending on the specific circumstances, and on a risk-based approach, AIA can see there are merits to introducing the ability to remove the name or address of an affected individual while a response is awaited from the company.

Question 22: 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?

Yes, although it should be noted that in certain circumstances not all individuals preparing documents may have access to electronic means.

Question 23: 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?

No and AIA can see the benefit of companies maintaining one official Register of Directors which should decrease a business burden.

About AIA

The Association of International Accountants (AIA) was founded in the UK in 1928 as a professional accountancy body and promotes the concept of 'international accounting' to create a global network of accountants.

AIA is recognised by the UK government as a recognised qualifying body for statutory auditors under the Companies Act 2006, across the European Union under the mutual recognition of professional qualifications directive and as a prescribed body under the Companies (Auditing and Accounting) Act 2014 in the Republic of Ireland. AIA also has supervisory status for its members in the UK under the Money Laundering Regulations 2017. AIA is a Commonwealth Accredited Organisation.

AIA believes in creating a global accountancy profession and supports the International Federation of Accountants (IFAC) in their vision of a global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets, and economies. AIA has adopted IFAC's Code of Ethics for professional accountants and incorporates IFAC's International Education Standards (IES) into its qualifications and policies.

AIA has members working throughout the whole spectrum of the accountancy profession. Many of our members are at the top of the accountancy industry, from senior management to director level. Conversely, significant numbers of our members work in small and medium sized businesses (SMEs) and we strive to champion the importance of SMEs and their needs.

Further Information

The above replies represent our comments upon this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

If you require any further information, please contact:

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