

Transparency and Trust
Corporate Law Reform Team
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By email: transparencyandtrust@bis.gsi.gov.uk

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Dear Sir/ Madam

BIS Discussion Paper: PSC register

We welcome the opportunity to comment on the BIS discussion paper on the PSC Register. The Institute of Chartered Secretaries and Administrators (“ICSA”) is the professional body that qualifies Chartered Secretaries and, as such, our members are well placed to understand the issues connected with recording details of persons with significant control and the related registers. In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, which includes company secretaries from more than 30 large UK listed companies from the FTSE100 and FTSE250. However, the views expressed in this response are not necessarily those of any individual members of the ICSA Company Secretaries Forum nor of the companies they represent.

General comments

We appreciate the intentions behind the PSC register and the government’s Transparency and Trust initiative, which this seeks to support. As with all such initiatives a balance needs to be struck to ensure that the administrative burden on companies does not outweigh the benefits. As the discussion paper states, imposing disproportionate requirements on companies needs to be avoided so as to minimize burdens and maximize compliance. We support a system and guidance which is clear, concise, consistent, relevant, appropriate,



proportionate, user friendly and comprehensive (without being exhaustive), as outlined in the discussion paper, and which respects confidential information. We would also add that the mechanism for reporting needs to be sufficiently flexible and adaptable over time to allow for changing circumstances. We acknowledge that, in the majority of cases, requesting and reporting the information will be straightforward. Where it is not, clear guidance needs to be provided for both those required to issue requests and those required to respond. Furthermore, responsibility for obtaining and providing accurate information also needs to be proportionate and balanced between the parties involved.

Commentary on specific sections

Chapter 1: Understanding the new requirements

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

A1) A combination of practical examples and high level principles as suggested in the discussion paper would probably be the best approach.

2) Do you agree that a Working Group would be useful?

a) If yes, which organisations and interests ought to be represented on it?

b) If not, what would be your preferred alternative?

A2) option a) Yes we would recommend that a Working Group be established as this would allow an opportunity to incorporate the views of experts and practitioners. ICSA would be very willing to lead this project for BIS, given our member base experience in this arena already. We can draw on in-house and public practitioner experts, and have considerable contacts with other representative bodies. We also have a track record for providing such guidance¹.

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

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

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

A 3, 4, 5) Again ICSA would like to offer its assistance in leading the production of such guidance. We are very experienced in providing practical guidance for members, by members, thus ensuring key areas and topics, identified by those affected, such as clear definitions, practical examples and approaches, are all addressed.

Chapter 2: Recording nature of control on the PSC register

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

¹ FRC Guidance on Board Effectiveness 2011; Enhancing Stewardship Dialogue Commissioned by the 2020 Investor Stewardship Working Party; Annual reports contents list consultation and guidance as requested by BIS – to be published soon.



A6) As stated in the introduction, ICSA supports a system and guidance which is clear, concise, consistent, relevant, appropriate, proportionate, user friendly and comprehensive (without being exhaustive) and which respects confidential information. We would also add that the mechanism for reporting needs to be sufficiently flexible and adaptable over time to allow for changing circumstances.

- 7) Do you agree with the approach of simplifying and standardising what is recorded under nature of control? a) If yes, which is your preferred model?
b) If not, what is your preferred alternative?
- 8) Should there be a different approach for more complex arrangements? Does this need to provide a full explanation of the nature of control?
- 9) If you prefer a less prescriptive system, what safeguards should exist to ensure that entries in the register are comparable and easy to understand?

A 7, 8, 9) The rationale for a standardised approach is appreciated and will work in the majority of cases and provide comparability and understanding. Provided there is also provision for those with more complicated share ownership structures then a mixed approach (standard and free text) would seem appropriate. Again the specifics for this could be discussed by a working group where reporting scenarios could test the alternative approaches.

Chapter 3: Protection regime

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

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

A10, 11) The proposals as described in the discussion paper sound reasonable. We would suggest that applications on behalf of the company can be made by third party advisers, such company secretarial practitioners (as well as lawyers and accountants).

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

A12) In the majority of cases the option of reduced information rather than nothing at all would be acceptable. However, further investigation would be necessary to establish whether there are cases for legitimately suppressing all data.

13) We welcome views on: a) The factors that should be taken into consideration when deciding whether someone is eligible for protection?

b) Where the line should be drawn between actual and possible threat?

c) Whether there are sectors or types of company or individual that will be inherently at risk? Which?

d) Any evidence you have on the link between public disclosure and the consequences for individuals at risk; and the costs/impacts of those consequences?



A13 a-d) This area needs further investigation as all of the examples cited in the discussion document are valid, albeit it on a sliding scale. It is easy to accept grounds of serious risk or harm as those highlighted in examples 1 and 2 in the discussion paper. One such area is animal rights activists, where companies have found sister companies, directors, employees, shareholders, supply chain, family members and others targeted. However, there could be a valid argument in certain cases for protection against asset stripping, kidnap, religious or political affiliations, but these would need greater justification. We do agree that issues concerning competition and reputational impact are not valid given the UK wishes to operate in an open and transparent environment.

14) We welcome views on:

- a) Who should be able to make an application, including whether and when third parties should be able to apply?
- b) The evidence requirements to support the application?

A14) It would be prudent to allow applications from company advisers such as public practitioner company secretaries as well as lawyers and accountants. The format and evidence requirements outlined in the discussion paper sound reasonable, depending on the grounds for the application.

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

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

A 15, 16) Care would need to be taken as to the extent of the number of third parties who could certify applications and any unintended consequences, a balance between ease and ability to submit an application and the ability of the registrar to verify authenticity would need to be made.

17) We welcome views on:

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

A 17 a-d) We can see valid grounds for retrospective applications and cumulative applications. Care would need to be taken with regard to prospective applications, especially in terms of how far in advance these could be made as the provision could be abused. We would guard against blanket applications, unless there are rare and exceptional circumstances in which these could be justified. It is easy to see how this could be abused and overused, running counter to the whole transparency and trust ethos.

18) We welcome views on:

- a) Whether a PSC's protection should be indefinite?
- b) If not, how and how often it should be renewed?

A18) It would seem reasonable to require a PSC's protection to be renewed, as was the case with directors' confidentiality orders which lasted for a period of 5 years. It may be that an alternative period may be more appropriate and safeguards would need to be put in



place whilst renewals were pending. However, requiring PSCs to re-apply would ensure that PSCs are not hiding behind outdated applications.

19) We welcome views on an appeals process.

20) We welcome views on a revocation process.

A 19, 20) Again, both areas require careful consideration and investigation. However, we would in general support the view in the discussion paper that it would not be practical for third parties to make appeals. However, action could and should be taken for false statements as outlined therein.

Chapter 4: Costs and access

21) We welcome views on:

a) Whether the current list of public authorities is appropriate in the context of PSCs' URA information?

b) Whether the current list of public authorities should be narrowed in the context of information of PSCs at serious risk of harm?

c) If yes, who should still have access?

A 21 a-c) We are not aware of any issues with regards to the current list as per Annex B in the discussion document.

Chapter 5: Impact of proposals

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

Nature of control

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

b) The expected benefits for (i) the simpler approach and (ii) the more detailed approach.

Protection regime

a) The costs for companies and individuals of familiarisation with the guidance;

b) The costs of gathering data and the type of evidence set out above and applying for the protection regime;

c) The possible numbers of applications by (i) companies and (ii) PSCs themselves;

d) The size and sectors of companies most likely to apply for protection on behalf of their PSCs;

e) Whether the degree of evidence/validation would affect the numbers of applications;

f) The expected benefits of protecting information on individuals at risk; and

g) The expected benefits of international exchange of PSC information.

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

A22, 23) N/A

Conclusion

As stated at the beginning of this submission, ICSA supports the intentions behind the PSC register and the government's Transparency and Trust initiative. A balance needs to be



struck to ensure that the administrative burden on companies does not outweigh the benefits. Imposing disproportionate requirements on companies should be avoided, in order to minimize burdens and maximize compliance. Furthermore, responsibility for obtaining and providing accurate information also needs to be proportionate and balanced between the parties involved. Similarly, the mechanism for reporting needs to be adaptable and flexible to allow for changing circumstances. For the majority of cases, requesting and reporting the information will be straightforward. Where it is not, clear guidance needs to be provided for both those required to issue requests and those required to respond. As stated above in our response, ICSA would be very willing to lead a Working Group or write guidance and have made a similar offer in respect of any Companies House guidance that may be required.

We hope our feedback is useful and if you would like to discuss any comment in more detail, please contact me.

Yours faithfully



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