

The Transparency and Trust Team
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Dear Sirs,

The Register of People with Significant Control – Scope, nature and extent of control, fees, the protection regime and warning and restrictions notices

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. We support BIS' initiative to consult on the draft regulations needed to finalise the register of people with significant control (PSC Register) and welcomed the opportunity to form part of the PSC Register Guidance Working Group developing the non-statutory guidance on the PSC register and representing the interests of small and mid-size quoted companies, which could be very affected by this reform and by the implementation of the changes in the 4th Money Laundering Directive.

We believe that, given the policy objective for the regime to be delivered swiftly, it would be useful for all if the final regulations and guidance were issued for a further complete consultation and views taken on board in order to ensure the widest possible understanding of the regime before it comes into effect.

We encourage BIS and HM Treasury continue to work for improvement in the 4th Money Laundering Directive to exempt all AIM and ISDX companies from the 4th Money Laundering Directive regime because, as BIS has recognised in the PSC regime, they are all DTR5 issuers.

We have provided a detailed response to the consultation questions below.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

Responses to specific questions

Q1 Do you have any comments on the impact assessments covering the protection regime and the costs of making registers publicly available?

Please see our comments to Q11.

Q2 Do you agree with the proposed exemptions?

Yes.

Whilst it is appreciated that the point has been made a number of times, we encourage BIS and HM Treasury continue to work for improvement in the 4th Money Laundering Directive to exempt all AIM and ISDX companies from the 4th Money Laundering Directive regime because, as BIS has recognised in the PSC regime, they are all DTR5 issuers.

Q3 Should other companies be exempted, and why?

Please see our response to Q2.

Q4 Should an exemption be applied to issuers on any of the regulated markets outside the EEA? If so, which markets and why?

Yes.

Provided that a market upon which the entity incorporated in any part of the United Kingdom is admitted to trading/listing has a disclosure regime which is broadly equivalent to DTR5, the issuer should be exempt from a need to duplicate that process. We do not believe that this should be limited to EEA states.

We have not analysed the requirements of regimes globally but understood, for example, that the disclosure requirements of the New York Stock Exchange and Nasdaq are substantially the same as under the DTRs. If a global survey by BIS is not practicable, we suggest that issuers whose shares are traded should simply be able to file a notice confirming that they are subject to an equivalent disclosure regime, and what it is.

Q5 Are there other entities not included in this list which you believe to be subject to very similar disclosure and transparency rules as DTR5 issuers? If so, please explain with reference to relevant legislation.

Yes.

As noted in Q4, we have not carried out a global analysis but understand that the NYSE and Nasdaq rules are very similar. There may well be others (e.g. Hong Kong, Singapore, Toronto).

If it is not practicable to carry out a full survey by BIS then, as noted above, we suggest that the presumption could be reversed and, if an issuer is subject to a transparency regime which proves to be materially inferior to the DTR5 regime, it will be in breach of the PSC regime. This will, in the interests of time in this very brief consultation, remove the risk and prejudice of an equivalent regime being missed.

Q6 Do you agree with the proposed dual approach for recording the relationship between the PSC and the company, showing which condition or conditions are met and to what extent? If not, what alternative would you propose?

Yes.

Q7 Are the proposed 25% bands for share ownership and voting rights too narrow, too broad or and at the right level? Is there merit in a separate category for 100% control?

It would be useful to have further bands:

- 25-29.99 (which would clearly show which entities with concert parties sit just below the Code rule 9 mandatory bid threshold);
- 30-49.99;
- 75-94.99;
- 95-99.9 (this would be useful to explain if there are *de minimis* minority interests, for example in a company incorporated before the relevant provisions of Companies Act 1989 came into effect allowing for single member companies);
- 100.

Q8 Would it be simpler to require companies to state the exact proportion of shares or voting rights controlled? If so, do you have any views on how the impact might be mitigated for the small percentage of companies whose register would be subject to frequent updating?

Companies should be asked to state the exact proportion instead.

Nevertheless, as criminal liability may result from getting the information wrong, and the fact that shareholding control levels might be subject to marginal fluctuation to reflect capital changes, the banding approach seems sensible. However, it is suggested that an error around the boundaries of the banding disclosure is not as egregious an offence as making an inaccurate disclosure as to significant control and this should be reflected in the penalty regime.

Q9 Do you agree with the proposed approach for requiring companies to note other information on their register? If not, please explain why.

Yes.

However, it is important to ensure that the register does not become too unwieldy. There are already many fields of information and, from BIS's examples, there seems little consistency in how the register should look. We would welcome the drafting of a specimen by BIS.

Q10 Which fee structure, Option 1 or Option 2, do you prefer and why?

Option 2 (fixed fee for request).

The clarity of fixed fees is preferred, although perhaps there needs to be an ability for the company to levy an additional fee of, say, £100 or £500 once there is more than, we suggest, 20 entries on the register.

Q11 Do you think the level of the fees in the options is correct? If not, please explain why.

Not sure.

The fee levels do seem low and will not compensate the company for the inconvenience. We believe that if the fee were raised to £50 this would provide more adequate compensation without being so high as to dissuade an appropriate request.

Q12 Do you think the definition of 'an entry' in the draft regulations is correct? If not, please explain why.

Yes.

Q13 Is the process for protecting residential addresses from credit reference agencies appropriate and complete?

No.

We believe that the process should be simplified and accelerated to protect the relevant individuals. The vulnerable individual needs to be able to protect himself or his family/contacts, etc. There seems to be little acceptance in this regime that such persons may be innocent victims and vulnerable persons and government does have a duty of care to protect such persons.

Q14 Is the process set out in draft regulations 25-36 appropriate and complete?

Not sure.

As noted in regards to Q13, we believe that the process should be simplified and accelerated for regulations 25-36 as well. It would be beneficial if the proposed exemptions were extended to include a class of material and disproportionate economic damage that could arise from data being publicly available.

Q15 Are the grounds for making an application clearly defined? If not, please explain.

Yes.

However, the drafting of the regulations is not in particularly plain English, capable of being understood and actioned by the average private shareholder.

Q16 Are the transitional arrangements appropriate?

Yes.

As a general comment we would note that companies and shareholders have been given very little time to understand and take action under this new regime.

The statutory and non-statutory guidance is not yet publicly available and the relevant regulations will only be passed two or three months before the regime comes into effect. The whole process seems to have been rushed to the detriment of allowing for better scrutiny.

Q17 Is the 28 day limit for an individual to cease to be a PSC appropriate? If not, please explain why not.

No.

We are aware that discussions have already been had with BIS where a powerful case for forced disposal within a period of 6 or 12 months as being more appropriate and proportionate has been made. These securities may not be easily realisable.

Q18 Is the mandated content of the warning and restrictions notices useful? Are the notices too detailed or are there elements that can be omitted?

It would be useful if the proformas of the notices could be set out in the regulations to avoid any doubt or argument that a notice delivered is, in fact, a warning or restrictions notice.

Q19 Do you agree that capacity to respond should be the only factor a company must take into account in considering reasons for non-compliance? If not, please indicate what other factors a company should take into consideration and in what circumstances this would be appropriate.

Not sure.

Assuming that the guidance provides a satisfactory and sufficiently wide explanation of what is meant by "incapacity", we believe this should be the only factor taken into account.

Although not directly relevant to the question, we note that the reference in paragraph 102 to "unless there was a valid reason for not responding" seems to imply that if there were a valid reason then the PSC would be able to benefit over the period of non-compliance. We do not believe this would be practicable, nor is it consistent with regulation 13.

Do you have any other comments on the consultation?

It is appreciated that there is a policy objective for the regime to be delivered swiftly. However, given the speed with which this has been delivered, it would be useful for all if the final regulations and guidance were issued for a further complete consultation and views taken on board in order to ensure the widest possible understanding of the regime before it comes into effect.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,



Tim Ward
Chief Executive

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Colin Jones (Deputy Chairman)	UHY Hacker Young
Nathan Leclercq	Aviva Investors
David Isherwood	BDO LLP
Nick Graves	Burges Salmon
Nick Janmohamed	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Nicholas Stretch	CMS Cameron McKenna LLP
Louis Cooper	Crowe Clark Whitehill LLP
Nick Gibbon	DAC Beachcroft LLP
Tracy Gordon	Deloitte LLP
Andrew Hobbs	EY
Eugenia Unanyants-Jackson	F&C Investments
Melanie Wadsworth	Faegre Baker Daniels LLP
Rob Burdett	FIT Remuneration Consultants
Richie Clark	Fox Williams LLP
Michael Brown	Henderson Global Investors
Bruce Duguid	Hermes Equity Ownership Services
Julie Stanbrook	Hogan Lovells International LLP
Bernard Wall	
Claire Noyce	Hybridan LLP
James Hodges	Hydrodec Group PLC
Peter Swabey	ICSA
Jayne Meacham	Jordans Limited
Eric Dodd	KBC Advanced Technologies PLC
Eleanor Kelly	LexisNexis
Jane Mayfield	
Anthony Carey	Mazars LLP
Mebbs Dossa	McguireWoods
Peter Fitzwilliam	Mission Marketing Group (The) PLC
Cliff Weight	MM & K Limited
Caroline Newsholme	Nabarro LLP
Jo Chattle	Norton Rose Fulbright LLP
Julie Keefe	
Amanda Cantwell	Practical Law Company Limited
Kelly Millar	PricewaterhouseCoopers LLP
Dalia Joseph	Stifel
Marc Marrero	
Philip Patterson	TMF Corporate Secretarial Services Ltd
Edward Beale	Western Selection Plc
Alexandra Hockenhull	Xchanging PLC