

Spotlight on Corruption submission to the Companies House consultation on ‘Corporate transparency and register reform: powers of the registrar’

Organisation overview:

Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK’s anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

Spotlight on Corruption welcomes this review and recognises the substantial progress Companies House has made over the last decade toward creating a transparent and accessible register. In the context of repeated international corruption scandals facilitated by UK-registered companies, the agency’s powers to query and remove suspicious data should be extended to ensure data held on the register is accurate. Moving toward enhanced regulation backed up by an increase in enforcement actions for non-compliance would offer a strong deterrent against using the register to facilitate fraudulent and corrupt activity.

Summary of recommendations:

- **Risk-based approach to querying data must be based on a sufficiently wide scope of risk indicators and updated continually in light of emerging threats**
- **Companies House must be given new resources to query records and intervene where necessary including expanding the number of forensic accountants to monitor increasingly complex fraud risks**
- **Annotation and removal of documents would help the public to navigate risks and promote overall compliance**

A risk-based approach:

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

Yes. The RBA represents the best available strategy for reaching an acceptable trade-off between commercial viability and maintaining the integrity of the register. The RBA should be exercised with the following caveats;

- **Implementing the RBA must be backed up by appropriate staffing resources.** The number of dedicated staff needed to receive and process intelligence from third parties (i.e. law enforcement and the public) and take action in a timely manner including removing documents or making referrals to law enforcement at present outstrips current CH capacity.¹ Implementing the RBA and querying more pieces of data will result in a sharp-increase to staff case

¹ The latest figures in the public domain (FATF UK mutual evaluation report December 2018) state there are 300 examiners.

loads. In addition, the number of specialist forensic accounting staff able to undertake investigations into complex frauds should be increased.²

- **Criteria underpinning RBA needs to be continually updated in line with evolving threats.** The matrices underpinning the RBA must be continually updated to consider evolving AML/TF risks as identified in; HMT's National Risk Assessment of money laundering and terrorist financing, NCA's Annual Strategic Assessment of Serious and Organised Crime, Joint Terrorism Analysis Centre's TF Threat Assessment. In accordance with FATF recommendations,³ the RBA should be extended to include screening all PSCs to persons or entities subject to targeted financial sanctions.
- **Companies House should hold regular meetings with civil society and technical experts to explain current status and evolution of RBA matrices.** CH officials should meet regularly with stakeholders to give an overview of how the RBA matrices are being updated and used in relation to evolving AML risks.

Querying power: potential scenarios:

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

Querying powers should be exercised where AML red flags or other indicators of suspicious activity are present, such as when;

- Persons or entities subject to PF TFS incorporate companies.
- Companies are structured to include subsidiaries in less transparent jurisdictions (e.g. outside any UK-bilateral information sharing agreement), particularly when such subsidiaries have controlling interests in UK entities.
- Companies using foreign bank accounts in high-risk jurisdictions or where CDD requirements are lower than the UK. Where acceptable levels of director ID verification have not been achieved, CH should not accept registration which if replicated across the register would generate false confidence.
- England and Wales limited partnerships (EWLPs) and Northern Ireland limited partnerships (NILPs) use complex corporate structures involving entities based in high-risk jurisdictions.
- Companies have been established through TCSPs outside of UK AML supervision, include nominee directors, benefit from nominee services in high risks jurisdictions, and UK mail forwarding address used by significant numbers of other companies.⁴
- Companies attempting to skirt existing rules on 'circular ownership' through complex ownership chains using companies on PSC statements.
- Companies attempt to use exemptions such as section 790ZG of the Companies Act to avoid beneficial ownership information being published on the register.⁵

Application of the new querying power to company names:

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

² There is no information in the public domain as to how many specialised forensic accounting staff are currently available to undertake detailed checks.

³ Para 449. FATF UK mutual evaluation report December 2018).

⁴ Unknown individuals and companies use foreign TCSPs to conceal their identities from the register. In November 2020 the Gambling Commission revoked the operating licence of the operator of a high-profile Casino in London where proof of ownership could not be provided. The UK-registered company at the time registered a Swiss shareholding management company as the owner. This has the effect of concealing the identity of the casino's true owner and is open to abuse by criminals.

⁵ This exemption is currently being used by companies owned by foreign nationals with political connections in the UK e.g. in the case of Aquind whose ultimate beneficial owner was identified through the Luxembourg business register which has no such exemptions. There is no information in the public domain as to number of companies taking advantage of the 790ZG exemption.

CH officials should have the power to query company names in relation to;

Company names being used to facilitate financial crime in the UK and abroad. Where CH officials are suspicious that a company name may be used as part of activities such as bank frauds, predatory lending schemes, phishing, or investor scams such as variants of Ponzi schemes.

Public health emergencies. Company names may be used as a means to add credibility to the appearance of companies defrauding the public through offering false or misleading services, or claiming involvement in government health measures and/or responses.⁶

Emergency economic measures. Where company names may be used to suggest official involvement or connection to emergency government funding instruments but are then used to collect information or receive funds fraudulently.

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

Yes. If company names are used as part of strategies to defraud the public, or facilitate financial crime schemes then CH officials should have the power to query.

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?

Yes. Legitimate companies can demonstrate that trading names have either a direct relevance to their business activity or are chosen for a practical reason. Where doubts arise, companies can reasonably be expected to provide documentation and other forms of evidence that proves the relevance or utility of the name.

6. Do you agree that the “sensitive words and expressions” regulations should be amended to capture circumstances such as those described above?

Yes. The regulations should be amended to acknowledge that company names may be used as mechanisms to assist in financial crime.

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

Yes. Companies House must have the powers to issue orders to prevent companies from reverting back to previous names after an adjudication process has ruled against them.

The querying process and annotation of the register:

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?

Prominent annotation of documents. Companies unwilling to comply and respond to queries to should have contested documents annotated to indicate a dispute over their accuracy and/or veracity. This should be combined with a note on the company’s filing history on the register that indicates the company is not in compliance and with a signpost to the relevant document.

⁶ At the time of writing there are 257 active companies on the register with ‘COVID’ as part of the name. Many of these will be legitimate businesses but, as media reports have shown, some are being used to defraud the public through offering counterfeit vaccines.

Removal of material. Persistent non-compliance with queries should lead to documents being removed from the register. In these cases, a note should remain on the company's entry flagging that material has been removed with an overview of the circumstances leading to removal.

Introduction of offence for failing to respond to a query. Both civil and criminal offences should be introduced for failing to respond to a query combining civil penalties with imprisonment for the most serious of offences.

Legal effects documents:

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?

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?

Questions 9 and 10 are answered together.

The registrar should have the power to remove legal effect documents where a specific evidential threshold has been met indicating the falsity of documents. This would be based on an administrative process that if disputed by affected parties, would be amenable to judicial review. While appeals or litigation processes can lead to a temporary suspension of a decision prior to a court decision, basing the process on judicial review would allow CH to act decisively to remove information while individuals' right to challenge a decision in court would remain unaffected.

What information will be published?

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.

Yes. It should not be necessary to publish evidence supporting queries as this could unfairly jeopardise the commercial ability of some companies if later exonerated from all claims. This mechanism has the potential to be hijacked and gamed to force Companies House into disclosing information which could be used by third parties to gain unfair commercial advantage or as part of fraudulent activity.

Transparency on the use of the querying power

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

The query should also set out in clear terms the potential civil and criminal sanctions for non-compliance.

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?

Supporting evidence could consist of; non-commercially sensitive business documentation including MOUs, commercial utility bills, and correspondence with other government entities (both UK and non-UK).

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

Companies House should provide an overview of the risk assessment criteria underpinning the query power.

Complaints:

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.

Yes. The three-stage complaints process does look on the surface to be a sensible approach. However, the Companies House annual reports indicate most complaints are resolved at the first point of contact and this does not reveal whether there could be a tendency to reject valid complaints out of hand at the first stage. It would be useful for additional statistic information to be provided such as the percentage of cases that arrive at each stage of the process with a summary of the most common reasons for discontinuing the process. At present it is difficult to know how well the process is working from the limited information available.

Contact: Susan@spotlightcorruption.org