

Article by Andrew Bailey, Company & Commercial solicitor at Payne Hicks Beach first published on 17 September 2013 at Director of Finance online

<http://www.dofonline.co.uk/index.php/governance/166-governance-2010/11670-transparency-in-company-ownership-45345>



Company Ownership Transparency and Trust: Reaction to the Government's Discussion Paper

Details

Published on Tuesday, 17 September 2013 09:51

Written by **Andrew Bailey of Payne Hicks Beach**



The changes may create an overly burdensome Company Law regime. The fear being that company formations could take days rather than hours.

On 15 July 2013 the Department for Business, Innovation & Skills published a discussion paper titled Transparency & Trust: Enhancing the transparency of UK company ownership and increasing trust in UK Business.

The Paper is in reaction to a commitment made at June's G8 summit in Ireland.

The proposals include creating a registry of beneficial owners of companies registered in the UK. This would include introducing new statutory

powers for companies to identify beneficial owners of shares and obligations on beneficial owners to notify companies of their interest.

An individual with a holding or voting rights in a company over 25% would be treated as a beneficial owner. The proposals would therefore capture trust arrangements.

The Paper seeks to formulate ideas on what information should be submitted to the registry and made public.

The main idea is that details on beneficial ownership would need to be provided to Companies House on incorporation of a company and periodically thereafter. Consideration is also being given to making the company share registers publicly available at Companies House.

In addition, the use of nominee and corporate directors may be banned, as will the creation of bearer shares, with existing ones having to be converted to ordinary ones.

The drivers for change are to achieve ideals such as transparency, public oversight and preventing social ills such as money laundering and tax evasion. All positive ideals. However, a deeper examination of the Paper and its implications reveals more thought is needed on how such proposal will work in practice.

Article by Andrew Bailey, Company & Commercial solicitor at Payne Hicks Beach first published on 17 September 2013 at Director of Finance online

<http://www.dofonline.co.uk/index.php/governance/166-governance-2010/11670-transparency-in-company-ownership-45345>

Should the proposals become law it would likely cause problems for thousands of the existing businesses/investors who have come to this country, due to a loss of confidentiality regarding their ownership and activities.

There are also risks that the changes may create an overly burdensome Company Law regime. The fear being that company formations could take days rather than hours.

There is also likely to be the additional costs and management time associated with the on-going obligations to comply with the regulations.

Considerations arising from the Paper for companies include:

- How can directors ensure investors comply, and how can information provided be verified? This could also have an impact when a company seeks external investment, for example from Business Angels.
- How is the conflict between the various layers of ownership to be dealt with?
- What if the directors cannot find out who is behind, for example, an overseas Trust?
- To what further extent will directors owe fiduciary duties?
- With responsibility lying with directors, how would they seek the necessary comfort or advice when offered a directorship?
- What would be the additional costs and management time incurred by having to comply with the on-going regulatory obligations?
- How will a company assess and address the potential impact if sensitive shareholder information becomes available on the public record.

Equally the Government should consider:

- To what extent will the Companies Act 2006 have to be amended?
- If the law allows the exclusion of certain areas, how can there be a level playing field?
- What if the reason for non-disclosure is that the parties involved genuinely do not know who is at the bottom of it all? Who will be held responsible?
- What about organisations operating in sensitive areas (e.g. defence, medical experiments)?
- Will it really deter the genuinely fraudulent or secretive - especially if they are abroad?
- Will it actually encourage investment through English Companies, or will it put this country at a disadvantage compared with those who not require public disclosure?

From a government, taxpayer or business perspective it may be justifiable for a director to have the right to know who the ultimate owner of a company is, and the same may apply to tax authorities and other regulators. However, it is not so obvious that this information should be publically available.

Proponents of the reforms ought to think carefully about who will benefit from any changes and how best to reach their aims. The changes should not be at the expense of the UK losing its status as an attractive and practical place to set up in business and to attract external investment. Nor should the new laws be at the expense of creating extra regulation for law abiding small to medium sized enterprises which, in reality, are not the target of the regulations.