

Company Law Simplifications Team,  
BIS,  
Spur 2, Level 3,  
1, Victoria Street,  
London  
SW1H 0ET



By email to: [CompanyFilingReqs@bis.gsi.gov.uk](mailto:CompanyFilingReqs@bis.gsi.gov.uk)

22 November 2013

Dear Sir/ Madam,

### **Company Filing Requirements**

ICAS welcomes the opportunity to respond to this consultation paper.

The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants, ICAS represents around 19,000 members who advise and lead businesses across the UK and in almost 100 countries around the world. We also regulate circa 75% of insolvency practitioners (IPs) who take appointments in Scotland and we have an in-depth knowledge and expertise of insolvency law and procedure. ICAS regulated IPs play a key role in delivering a trusted business environment in the UK through the investigation and reporting of director misconduct or criminality identified as part of insolvency proceedings.

ICAS's Charter requires it to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

#### **Question 1 (paragraph 45)**

*Do you agree that the requirement to file an annual return is removed and that the system relies on event driven filing? OR*

#### **Question 2 (paragraph 45)**

*Do you agree that companies should be allowed to simply check and confirm that their information is up to date once a year? OR*

#### **Question 3 (paragraph 45)**

*Do you wish to retain the annual return? OR*

#### **Question 4 (paragraph 45)**

*Do you agree that the SIC code should be required at incorporation and maintained as part of an annual check?*

Whilst ICAS appreciates the benefits of not filing, we believe that a mechanism is needed to provide a safeguard to ensure that the information Companies House contains is accurate. Our preference is the option in question 2.

Our IPs report that they regularly come across situations where there is reliance on information contained within Annual Return to establish a relationship or contact with an insolvent company and its officers. This can either be because the company statutory records are not updated or the company cannot be located. We would be concerned if there was a move to event driven filing that IPs would have even greater difficulty in establishing company officers etc.

**Question 5 (paragraph 51)**

*We would welcome views on the impact on companies and on the transparency of the register of aligning filing dates for accounts at both HMRC and CH.*

We support the intention to improve systems for facilitating joint filing for those who wish to take this option but we would not support it being mandatory.

We note that the consultation document indicates that there will not be any change in the filing dates at this stage. ICAS does not support any changes to the dates for filing tax returns and associated documents with HMRC and we would like confirmation that there will be no changes both at this stage and in the future. The UK corporation tax system has a well-established and well understood deadline for filing returns within 12 months of the year end and there is no compelling reason to amend this deadline. The complexity of the UK corporation tax rules means that many companies need the full 12 months to complete their returns and associated documents for submission to HMRC.

**Question 6 (paragraph 60)**

*Do you agree that for those companies whose directors and shareholders are the same people, the requirement to make their registers available at their Registered Office or SAIL should be removed?*

Yes. We also agree with the comment in paragraph 58.

**Question 7 (paragraph 68)**

*Should private companies have the option of holding their registers at CH, in the same way that they are able to nominate a SAIL?*

Yes.

**Question 8 (paragraph 74)**

*Should dates of birth be suppressed in part, or in full?*

We agree that confidentiality and risk of identify fraud is a valid concern. Further information is needed to establish how best to meet the dual objective of confidentiality and transparency. Our IPs report that dates of birth are essential identifiers to link an individual with multiple companies to identify serial company failures etc. and also as part of investigations for director disqualification proceedings. The suppression of dates of birth, even in part, would potentially hinder this work. While Companies House may hold the information, if it is not publically available then this will add to the costs of an insolvency, as an IP would require to correspond with Companies House to obtain necessary information rather than obtain from public searches.

**Question 9 (paragraph 79)**

*Should the Statement of Capital requirements be changed, as set out above?*

Yes.

**Question 10 (paragraph 82)**

*Should the statement of capital on formation requirements be the same as the other statement of capital requirements throughout the Act?*

Yes.

**Question 11 (paragraph 87)**

*Do you think companies should only have to supply a statement of capital on a specified date if they have not updated their information within the year?*

We believe a safeguard is required as a trigger to ensure annual accuracy of data. As an example confirming that either the statement of capital was submitted early following a change, or will submit if no in year changes.

**Question 12 (paragraph 89)**

*Should we amend S. 555 to rely on Articles of Association to provide information on allotment of shares?*

We believe it is important to know the structure and ownership of shares so would not support this move as it reduces transparency by making it harder for users to identify.

**Question 13 (paragraph 101)**

*Do you agree that companies with subsidiaries must include a total number of subsidiaries? If not, why?*

We agree with option 2.

**Question 14 (paragraph 101)**

*Do you agree that the information must always be included in the accounts?*

Yes.

**Question 15 (paragraph 108)**

*Are there any notices that should not be sent electronically?*

-

**Question 16 (paragraph 108)**

*Do you agree that the email address should be made available to other public authorities, specified in law?*

Yes.

**Question 17(paragraph 108)**

*Are there any other means of electronic communication that CH should explore?*

-

**Question 18 (paragraph 111)**

*Do you think companies should be able to supply the Registrar with additional information, such as a website, to display on the public record?*

We agree - a website address would be useful.

**Question 19 (paragraph 114)**

*Do you think that CH has the balance between upfront validation and verification and quick and effective remedy right?*

See our comments in the ICAS submission to the BIS consultation on [Transparency and Trust](#) (part A).

**Question 20 (paragraph 127)**

*Do you agree that there should be a requirement for the Registered Office to have a link to the company?*

Yes. The implementation of the process must be clear and simple to avoid administration problems e.g. ways to prove address. Please refer to our comments at question 25 regarding the use of accelerated strike off.

**Question 21 (paragraph 127)**

*What criteria do you think should be specified to evidence an 'effective' Registered Office?*

-

**Question 22 (paragraph 127)**

*Do you think replacing an ineffective Registered Office address with a Director's address is a viable approach?*

A directors address would be a useful alternative, although there are some concerns around personal confidentiality and security. Our understanding is that there are procedures in place to deal with this. For example, there are directors serving on the board of charities working with adults and children who may have been exposed to criminal activity, it would not be appropriate for the residential addresses of these directors to be accessible to members of the public. The procedures in place for managing these concerns would be to use service addresses as permitted by the Companies Act 2006 to protect their confidentiality. These procedures would need to be well disseminated to ensure they are implemented where appropriate to manage valid confidentiality and security concerns.

**Question 23 (paragraph 138)**

*Do you agree that the consent to act should be replaced with a simple confirmation that the company holds the consent?*

Yes. A simple confirmation that the company holds consent would be beneficial.

**Question 24 (paragraph 138)**

*Should companies be required to provide evidence of a Director's appointment, in the event of a dispute?*

Yes.

**Question 25 (paragraph 146)**

*Do you agree that there should be an accelerated strike off process particularly in the event of a company hi-jacking an address?*

Our IPs are not convinced that accelerated strike off is appropriate for hi-jacked addresses. The suggestion is that these are used by unscrupulous and fraudulent individuals. If that is the case then the company should not be struck off and disappear as quickly as possible thereby avoiding investigation. It is better to change the address to another address connected with the company (e.g. director).

Our IPs cite several examples where a company has been struck off when it was not appropriate to do so because the company still held assets and was dissolved through a director simply not attending to Company House correspondence. An accelerated strike off procedure would probably increase this occurrence. There is a potential that this would result in creditors of the company incurring significant additional expense in having the company restored in order to then appoint an IP to distribute the assets.

There is also a concern that this could be used by unscrupulous directors to avoid formal winding up procedures and investigations into their conduct. There would however be one advantage in an accelerated strike off procedure being available and that relates to early dissolution under the provisions of sections 202 (England and Wales registered company) and section 204 (Scottish registered company) of the Insolvency Act 1986. Under these provisions an IP can apply for the company to be dissolved early where it is demonstrated that the costs of the liquidation will exceed the available assets. These sections would require to be amended as currently they provide for 3 months dissolution from application.

We hope this is helpful.

Yours sincerely,

ALICE TELFER  
Assistant Director, Business Policy and Public Sector