



Department
for Business
Innovation & Skills

**TRANSPARENCY & TRUST:
ENHANCING THE TRANSPARENCY
OF UK COMPANY OWNERSHIP
AND INCREASING TRUST IN UK
BUSINESS**

Discussion Paper: Executive
Summary

JULY 2013

Foreword



At the G8 Summit in June, the Prime Minister persuaded his G8 counterparts to join him in committing to an ambitious set of reforms to ensure that we know who really owns and controls our companies. These reforms are important. Enhanced transparency of company ownership will help us to tackle tax evasion, money laundering and terrorist financing. It will improve the investment climate and make doing business easier.

Enhanced transparency will also help ensure that businesses, investors, employees and consumers have trust in UK companies. Trust is an essential element of a business environment that encourages investment and growth.

I know that the overwhelming majority of UK companies contribute productively to the UK economy, abide by the law and make an enormous contribution to society. But there are exceptions – and I want to address that.

Government is not alone in recognising the importance of this agenda. Leading figures in the business community acknowledge the importance of transparency and trust. They know that having an effective system for identifying and dealing with poor business behaviour gives confidence in UK companies and helps create an environment in which honest entrepreneurs are willing to invest in activities promoting growth and employment. Businesses and individuals who behave honestly and responsibly should not be placed at a disadvantage by those who do not play by the rules.

At the same time I remain firmly committed to reducing regulation and burdens on business. I am continuing to look at options to reduce administration and compliance costs for businesses as part of Government's ambition to create a streamlined, effective and pro-growth business environment. I will consult on these proposals in the autumn. We will develop these deregulatory measures alongside the proposals in this paper to form a cohesive package of reform.

Enhanced transparency and increased trust are good for business and good for growth. I am wholly committed to this agenda and want to see reforms introduced in this Parliament.

This discussion paper is the first stage in that process. It outlines a range of proposals to enhance the transparency of UK company ownership and increase trust in UK business. The proposals will help prevent illegal activity such as money laundering and tax evasion. They will give investors and others the tools to hold companies to account. They will provide businesses, investors, employees and

consumers with confidence that companies are acting fairly – and that those who deliberately or recklessly break the rules will be punished.

The paper is a clear sign of our commitment to ensure that the UK is and remains an open and trusted place to do business and invest. I look forward to hearing your views on how best we can, together, achieve that ambition.



VINCE CABLE

SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS

Overview of proposals

This paper considers a range of proposals to **enhance the transparency of UK company ownership and increase trust in UK business**. This will help prevent illegal activity; better enable companies to be held to account; and provide businesses, investors, employees and consumers with confidence that companies are acting fairly.

Ensuring that we know who really owns and controls UK companies

At the UK-chaired G8 Summit in June, the UK committed to introduce new rules **requiring companies to obtain and hold information on who owns and controls them**; implement a **central registry of company beneficial ownership information**; and to review the use of **bearer shares** (which do not require the identity of the holder to be entered in the company's publicly available register of members) and **nominee directors** (which can be used to conceal the identity of the person really controlling the company). This paper invites views on the following areas:

- We propose that the registry should hold information on the **beneficial owners** (i.e. on individuals with significant control or influence) **of all UK companies**, but consider whether companies already subject to stringent disclosure rules should be exempt.
- We intend to **give all companies statutory tools** to identify their beneficial ownership; and we consider what **additional requirements** might be required to ensure beneficial ownership information on all companies is indeed obtained.
- We look at **what information** should be provided to the registry; **how frequently** it should be updated; and how to ensure that it is as **accurate** as possible.
- We consider whether information in the registry should be made **public** – noting the strong case for openness but recognising that there may be concerns.
- We propose that the creation of new **bearer shares** should be prohibited; and that existing bearer shares should be converted to ordinary registered shares.
- We consider options to enhance transparency around the use of **nominee directors**; and whether companies should be prohibited from being appointed company directors, i.e. whether we should ban **corporate directors**.

Ensuring that the UK is a trusted place to do business and invest

We think there may be ways to **strengthen the system** for tackling the small minority of **company directors that don't follow the rules**. This is especially important in the light of the company failures during the financial crisis. The paper starts this debate by putting forward a number of proposals:

- Following the Parliamentary Commission on Banking Standards' recommendation that directors of banks should have a primary responsibility to ensure the safety and stability of their firms, we consider whether to **amend directors' statutory duties in key sectors such as banking** and whether to **allow sectoral regulators to disqualify directors** in their sector.
- We consider what **additional factors** the court might take into account in director disqualification proceedings, such as the nature and number of previous company failures a director has been involved in.

- We look at options to help **creditors receive compensation** when they have suffered from a director's fraudulent or reckless behaviour.
- We propose that the **time limit** for bringing disqualification proceedings in insolvent company cases should be extended from two to **five years**.
- We propose directors who have been disqualified should be offered **education or training** to equip them with the skills they need to go on to run a successful company.
- We consider whether individuals subject to **foreign restrictions** should be prevented from being a director of a UK company; and whether directors convicted of a **criminal offence** in relation to the management of an overseas company should be able to be disqualified in the UK.

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Executive summary

The importance of transparency and trust

1. Business success - and therefore economic growth - depends on investors, employees, consumers and the wider public having confidence in business. When companies do business with each other, those transactions must also be built on trust.
2. In the UK, we have a history of championing the importance of good corporate governance – and that trend continues. We are ensuring that equity markets support long-term growth through the implementation of Professor Kay’s recommendations. We are working to improve the diversity of UK boardrooms and to encourage companies to focus on the issues that really matter through changes to narrative reporting. And our executive pay reforms, which will come into force in the autumn, have been widely welcomed.
3. These reforms are important – we know that good corporate governance is inherently linked to trust in our capitalist system and that effective governance is therefore a critical characteristic of a business environment that promotes long-term sustainable growth. This in turn makes the UK an attractive place for business and investment.
4. This year the UK is using its Presidency of the G8 to promote this agenda on a global stage, encouraging our G8 partners to take steps to promote improved governance and accountability through increased transparency alongside reforms to the international tax architecture.
5. We know that the overwhelming majority of UK companies contribute productively to the UK economy, abide by the law and make an enormous contribution to society. Companies make up over 60% of private enterprises and over 80% of private enterprise employment and 95% of turnover¹.
6. But there are exceptions. Increased transparency can help shine a light on those who don’t play by the rules and pave the way for legitimate investment. Transparency is also an essential element of good corporate governance - it gives investors and others the tools to hold companies to account.
7. Businesses, investors, employees and consumers must have confidence that companies are acting fairly and that those who don’t will be identified and appropriately sanctioned. Businesses and individuals who behave honestly and responsibly should not be at a disadvantage to those who do not. Having an effective and trusted system for identifying and dealing with poor business behaviour gives reassurance that we operate a level playing field, and creates an environment in which investors and honest entrepreneurs are willing to invest in activities promoting growth and employment.

¹ IDBR, March 2013

8. This paper sets out a number of proposals **to enhance corporate transparency and increase trust in UK business**. Together, these measures will support the development of a business environment where companies and individuals can operate and invest with confidence.
9. It is intended that the proposals in this paper would apply UK-wide. As some of the policy areas are devolved to Northern Ireland and Scotland, we will work with the Northern Ireland Executive and the Scottish Government to consider the application of these proposals to Northern Ireland and Scotland.

Enhancing the transparency of UK company ownership

10. The vast majority of UK companies abide by the law. But it is a fact that companies can be misused to facilitate a range of criminal activities - from money laundering to tax evasion, corruption to terrorist financing. Greater corporate transparency will make it more difficult to carry out this abuse and act as a deterrent to crime. Where abuse does take place, transparency should help law enforcement and tax authorities identify and sanction the individuals really responsible.
11. We already know who legally owns UK companies. The names of legal owners appear on an individual company's share register, which is publicly available. But if we want to know who *really* owns and controls a company, we must identify its beneficial owners too. The beneficial owners are the individuals that ultimately own or control the company - either because they hold an interest in more than 25% of the company's shares or voting rights; or because they control the management of the company in some other way. With this level of interest or control, they can materially influence corporate decisions, and this confers the potential for abuse, irrespective of whether they own or control the company directly as a legal owner or director or indirectly by using a nominee shareholder or director to own shares or manage the company on their behalf.
12. There is currently no requirement for companies to hold information on their beneficial owners as a matter of course. This means that individuals can hide the fact that they own or control a company; and then use the company to help them carry out a range of illegal activities. It is very difficult to prove that these individuals are linked to the company in question, which decreases the likelihood of a successful outcome for law enforcement and tax authorities.
13. There is a clear correlation between illicit activity and lack of transparency in the ownership and control of companies. For example, in 2011 the World Bank – UN Office for Drugs and Crime Stolen Asset Recovery Initiative reported that 150 of the 213 grand corruption cases investigated involved the use of at least one corporate vehicle to hide beneficial ownership and the true source of funds². In these 150 cases, the total proceeds of corruption were approximately \$56.4bn.

² 'Barriers to Asset Recovery', 2011: <http://star.worldbank.org/star/publication/barriers-asset-recovery>

14. The Financial Action Task Force (FATF) is the international body that sets the standards on combating money laundering and terrorist financing. It recommends that: *“Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons”*³. This recommendation is reflected in EU proposals for a 4th Money Laundering Directive⁴, currently being negotiated by Member States and the European Parliament.
15. The G8, under the UK’s Presidency, has endorsed the need for action and moved this agenda forwards. At the G8 Summit in June, G8 countries agreed a number of core Principles⁵ that are fundamental to the transparency of ownership and control of companies and legal arrangements. These Principles underpin individual country Action Plans setting out how the FATF standards will be implemented in their jurisdictions. The UK, as well as the US, Canada, France, Italy and Japan published their Action Plans at the Summit. The UK’s Overseas Territories and Crown Dependencies also agreed to publish Action Plans setting out the concrete steps they will take to implement these Principles (some have already done so).
16. **Given the international and cross-border nature of company misuse, collective action at G8, G20 and European Union (EU) level is vital.** That is why we intend that implementation of UK reforms will be through and at the same time as transposition of the 4th EU Money Laundering Directive from 2014 to 2015 and through changes to company law. But as we shape the international debate the UK should be at the forefront of taking practical action to build confidence in the UK business environment.

A central registry of company beneficial ownership information

17. The UK Action Plan⁶ states that we will **require companies to obtain and hold information on their beneficial ownership and make this information available to law enforcement and tax authorities through a central registry maintained by the Registrar of Companies** (Companies House). There is a question whether this information should be publicly available – there are clear advantages but also potential concerns. In the UK Action Plan, we set out the intention to consult on this issue.
18. The Money Laundering Regulations 2007⁷ **define a ‘beneficial owner’** as any individual with an interest in more than 25% of the shares or voting rights of the company; or who otherwise exercises control over the way that the company is run. By applying this definition, the registry would hold information on those individuals able materially to influence the way that the company is run. Throughout this document, we use the term ‘beneficial owner’ and ‘beneficial ownership’ in line with this definition.

³ ‘The FATF Recommendations’, February 2012: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁴ ‘Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’, February 2013: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0045:EN:NOT>

⁵ ‘Common principles on misuse of companies and legal arrangements’, June 2013: <https://www.gov.uk/government/publications/common-principles-on-misuse-of-companies-and-legal-arrangements>

⁶ ‘UK action plan to prevent misuse of companies and legal arrangements’, June 2013: <https://www.gov.uk/government/publications/uk-action-plan-to-prevent-misuse-of-companies-and-legal-arrangements>

⁷ 2007, No. 2157: http://www.legislation.gov.uk/ukxi/2007/2157/pdfs/ukxi_20072157_en.pdf

19. This definition would not allow individuals to evade disclosure requirements by holding a lower level of interest in the company. Where a number of individuals collectively held more than 25% shares and agreed to vote those shares together, for example, they would be treated as one person and considered as the beneficial owner of the company. And if an individual effectively exercised control over the company, they would also be caught by the definition – irrespective of the number of shares (if any) that they held.
20. In terms of **which companies would be in scope** of a registry, our starting point is that beneficial ownership information on **all UK companies** should be held in the registry. However, as companies listed on the Main Market of the London Stock Exchange are already subject to stringent ownership disclosure requirements, we do not think there is additional value in information on their beneficial ownership being held in a central registry. There may be other types of company that should be similarly exempt.
21. We also need to consider whether beneficial ownership information on **other types of legal entity** should be held in a registry. We think, for example, that there is a strong case for the inclusion of Limited Liability Partnerships (LLPs), alongside companies.
22. Central to beneficial ownership reform is **how this information is obtained**. Our starting point is to **give all companies the power to ask detailed questions in relation to their beneficial ownership**. The Companies Act 2006 (CA06) already enables public companies to do this, but not private companies. We then consider what additional obligations might be required to ensure that information on all companies' beneficial ownership is provided to the registry.
23. We must also decide **what information is provided to the registry** and how we ensure that it remains as **accurate and up to date** as possible. We need to give particular consideration to how quickly individuals or companies might be required to update beneficial ownership information held by the company or the registry. The fact that information currently held by Companies House is open to public scrutiny and that it is an offence to provide false information to the registry helps ensure that information held in the registry is as accurate as possible. The question of how we ensure accuracy of beneficial ownership information is therefore linked to the question of **whether it is made public**.
24. We think there is a **strong case for openness**. There are advantages in terms of allowing public scrutiny and ensuring investors, the market and other companies understand better with whom they are doing business. However, we also recognise that there may be legitimate concerns. At a minimum, the information will need to be accessible to specified law enforcement and tax authorities.

Additional reforms to prevent the misuse of companies

25. A central registry of beneficial ownership information will be a significant step forward in understanding who is really behind UK companies.
26. There are two related areas that we must also consider – bearer shares and nominee directors. The G8 Principles on preventing the misuse of companies highlight the importance of preventing: “[...] *the misuse of financial instruments and certain*

shareholding structures which may obstruct transparency, such as bearer shares and nominee [...] directors⁸”.

27. As noted above, the legal owners of a company are recorded on the company’s register of members. However, **bearer shares** provide a way for individuals to avoid having their identity revealed on that register. A company can issue ‘bearer shares’ which belong to whoever holds the physical share warrant - the company’s register will simply record that the shares are held by the bearer of that warrant.
28. Whilst bearer shares may be used legitimately there is also clear scope for misuse. A number of international standards have highlighted the misuse of bearer shares as a way to facilitate tax evasion and money laundering. Bearer shares also permit a level of opacity which is incompatible with the principles of our ambition to know who really owns and controls UK companies. We therefore consider that it may be appropriate to **prohibit the creation of new bearer shares to prevent the potential for misuse.**
29. This highlights the question of existing bearer shares. We think the most appropriate option would be to **provide a set period of time for holders to convert their bearer shares to ordinary registered shares.** This model has been adopted in other countries; and provides a way to ensure full transparency of company ownership without disenfranchising the holders of the shares.
30. **Corporate and nominee directors** can also be used to conceal corporate control. Company directors are registered at Companies House. Where individuals want to use a company to facilitate criminal activity they are unlikely to want to register themselves in this way. They may therefore appoint a ‘**nominee director**’. The nominee is placed on the register of directors but follows the directions of the person who is really controlling the company (i.e. the beneficial owner). In some cases, the nominee will have no involvement in the management of the company at all – the beneficial owner can simply ‘rubber stamp’ company documents with the nominee’s signature.
31. There are legitimate commercial uses for nominee directors. For example, where a parent company needs to be represented on the board of its subsidiary. **We do not intend to interfere with these kinds of commercial practice.**
32. However, as with bearer shares, there is clear scope for misuse and we think that reform is required to **enhance transparency around their use.** One option would be to require any director who has entered into a legal arrangement which permanently hands over all responsibility for the management of the company to another individual to **disclose this fact to Companies House;** as well as the identity of the person on whose behalf they have been appointed. This should make the use of nominee directors less attractive as a means to conceal corporate control. We would need to consider whether these declarations should be made public.
33. Alternatively, it could be made an **offence for directors to divest themselves of their duties as a director** by signing such legal documents. They might then be subject to

⁸ ‘Common principles on misuse of companies and legal arrangements’, June 2013:
<https://www.gov.uk/government/publications/common-principles-on-misuse-of-companies-and-legal-arrangements>

disqualification from being a director – forcing the real owner to find another individual willing to break the law in order to continue to conceal their control.

34. Criminals looking to misuse companies will likely want to make the company's ownership structure as opaque and complex as possible. UK company law allows a company to be the director of a company (a '**corporate director**'). Where the corporate director of a UK company is a company incorporated offshore, it becomes very difficult for law enforcement and tax authorities to identify the true beneficial owners of the UK company.
35. Whilst we accept that there are potentially legitimate uses of corporate directors in the UK, we consider that the scope for abuse necessitates action. Various jurisdictions have opted to completely **prohibit corporate directors** and we consider that there is a **case for the UK to do the same**.

Reducing regulation

36. The Government remains committed to reducing regulation and burdens on business. For example, we are developing a number of company law deregulatory proposals following our Company and Commercial Law Red Tape Challenge. These proposals will look to reduce compliance and administrative costs for businesses as part of Government's aim to create a streamlined, effective and pro-growth business environment.
37. We propose to **consult on a range of these deregulatory measures in the autumn**. This paper references where and how some of these deregulatory proposals might interact with how we implement corporate transparency reforms. We will develop corporate transparency reforms alongside possible deregulatory measures to ensure that we deliver a cohesive package of reform.

Increasing trust in UK business

38. The proposed reforms outlined above will enhance the transparency of UK company ownership. This transparency will create an environment where it is more difficult for individuals to abuse the company structure; and easier to identify and sanction those that do.
39. But in looking to create a trusted business environment, greater transparency is only half the story. In parallel, companies, investors, employees and consumers must have confidence that companies and those running them are acting fairly and that those who do not will be dealt with appropriately.
40. Each year around 1,200 directors of companies are disqualified from acting in the management of companies for up to 15 years; and around 90 directors are prosecuted for criminal behaviour in relation to the management of a company. Whilst the latest survey by the Insolvency Service suggested that around 65% of those questioned had

confidence in the enforcement regime⁹, its adequacy has been called into question as individuals apparently responsible for major corporate failures have seemingly gone unpunished. This has been a particular issue in the banking sector, leading the Parliamentary Commission on Banking Standards (PCBS) to put forward a number of recommendations designed to improve governance of banks.

41. This paper implements the PCBS recommendation that the Government should consider whether **directors' statutory duties should be amended for those operating in the banking sector** to promote a more responsible approach to managing large financial services companies. We also consider **other options for tackling unacceptable conduct by company directors**, both in key sectors like banking and more widely.
42. We will continue to ensure that these robust powers are used only in appropriate cases - so that honest directors do not need to fear sanctions where they have acted in good faith. Many companies fail for genuine reasons. Failure in itself is not an indication of misconduct. And **responsible risk-taking is an essential element of entrepreneurialism that we need to drive economic growth**.
43. The need for increased levels of trust and confidence extends to the professionals who deal with companies when they go insolvent. The issues of most concern currently to business and consumers are the **use of pre-pack administrations**¹⁰ and the **fees charged by Insolvency Practitioners (IPs)**.
44. We are taking steps to address both these issues, in parallel with the proposals in this paper. An **independent review of pre-pack administrations**, headed by Teresa Graham was launched on 15th July. Emeritus Professor Kempson of the University of Bristol has concluded a **review of IP fees**. Her findings were also published on 15th July and we will respond in due course. In addition, we have recently launched a **Complaints Gateway** to make it easier for a consumer or small business to make a complaint about an IP by providing a single point for such complaints. Regulators have also agreed to introduce **common sanctions** against IPs when complaints are upheld. Finally, we are looking to **enhance the powers of the Insolvency Service as oversight regulator** for sanctioning regulators of the insolvency profession where regulatory failure has occurred.
45. In this paper we will explore proposals to identify and deal with poor business behaviour.

Clarifying the responsibilities of directors in key sectors

46. Company law applies to all companies, economy-wide, that fall under the CA06. In addition, companies that operate in regulated sectors have to abide by the laws and rules set out in sector-specific regimes. For banks specifically, the PCBS recommended ways in which both sector regulation and wider company law could be strengthened. This included calling on the Government to consult on changing the

⁹ 'Stakeholder Confidence Survey', Insolvency Service, 2012: <http://www.bis.gov.uk/insolvency/About-us/our-performance-statistics/StakeholderConfidence>

¹⁰ A pre-pack is where a sale of the business of the insolvent company is arranged shortly before it goes into administration and is executed immediately thereafter, often with little or no marketing on the open market.

statutory duties of directors of large banks¹¹ so that they are required to prioritise the “safety and stability” of the firm first over the interests of shareholders.

47. The PCBS aim with this recommendation is clear - to ensure that bank directors are never in doubt about their primary responsibility to maintain bank stability. We accept the need for reforms that will have a real impact on bankers’ behaviour. This paper therefore implements the PCBS’ recommendation to consider whether **directors’ duties should be changed for the banking sector**. We also ask whether this should **extend to other key sectors**.

Allowing sectoral regulators to disqualify directors in their sector

48. There are, however, questions as to the effectiveness of changing directors’ duties for certain sectors and about the potential wider impacts. This paper therefore considers whether there are alternative ways of strengthening the regulation of directors in certain sectors. One option would be to consider granting appropriate **sectoral regulators the ability to ban people from acting as a director in any sector**. This would mean that following a breach of sectoral regulations that cause an individual to be barred from a particular sector, the regulator would be able to extend the ban more widely. In practice, this could be done by extending the powers of regulators such as the Pensions Regulatory Authority, Financial Conduct Authority and Prudential Regulation Authority.

Factors to be taken into account in disqualification proceedings

49. Another option to effect behavioural change and thereby enhance trust in both banks and the wider business environment is to consider whether, for all business sectors, we should **widen the factors that can be taken into account by the court when considering whether to disqualify a director or the length of the disqualification period**.
50. When determining whether an individual is unfit to act as a director, the court must take account of matters set out in the Company Directors Disqualification Act 1986 (CDDA). Given the punitive and financial effect disqualification may have upon an individual, the standard of evidence required by the court to determine misconduct is fairly high.
51. The CA06 does not explicitly provide the Secretary of State or the court with the option of considering material breaches of relevant sectoral regulation when deciding whether and for how long to disqualify directors. Yet there is a strong case for arguing that a material breach of sectoral regulations – such as in the banking sector – is incompatible with fulfilling directors’ duties as set out under the CA06¹².
52. For these reasons, we are interested in views on whether Schedule 1 to the CDDA should be amended to explicitly allow the court the **option of taking into account material breaches of relevant sectoral regulation**. This could be used to help determine whether directors should be disqualified or the length of the disqualification period.

¹¹ Banks over the ring-fence threshold (in line with the recommendations of the Independent Commission on Banking)

¹² ‘General duties of directors’, Sections 171 to 177, Companies Act 2006, c. 46:
<http://www.legislation.gov.uk/ukpga/2006/46/contents>

53. Similarly, the court, in adopting a proportionate approach to considering whether and for how long to disqualify a person, may take into account the scale of loss suffered by creditors as a result of misconduct and any wider economic or social impacts. There is however no explicit requirement to do so. Given the catastrophic failure of certain firms and the impact this has had on wider society over the last few years, there is a strong argument that **the scale of loss suffered by creditors and the impact on wider society should be explicitly taken into account** when determining whether to disqualify directors and/or for how long.
54. The CDDA is intended to protect creditors and consumers from repeated harmful behaviour by directors by removing such directors from the market for a specific period. We want to ensure that this protective function is enhanced by **ensuring that a director who has displayed a pattern of behaviour resulting in company failure or creditor loss - whether due to incompetence or culpable behaviour - can be prevented from doing so again**. And where a director's misconduct has resulted in **losses to more vulnerable or less sophisticated creditors**, this should be reflected on by the court when deciding on the appropriate action.

Improving financial redress for creditors

55. A complaint frequently heard from creditors is that although disqualification can prevent a director acting as such in future, it provides no compensation to those who have suffered from their misconduct. We need to find ways to increase trust in our regime by ensuring that if directors (and those advising them) act fraudulently or negligently they will run the risk of **needing personally to compensate those who have suffered loss** as a result – and that directors are aware of this.
56. We therefore want to increase the prospects of culpable directors being pursued where they have been responsible for causing or allowing companies to trade wrongfully or fraudulently. Currently, a liquidator may bring a civil claim for fraudulent or wrongful trading against the directors of an insolvent company. However, the liquidator has no right to sell or assign the action in the way they can other assets of the insolvent company. Therefore, if the liquidator does not have sufficient funds to pursue the claim, there will be no way of securing financial redress under these actions for the creditors, however strong the claim.
57. To increase the prospects of culpable directors being pursued, we propose **granting liquidators the statutory right to sell or assign fraudulent and wrongful trading actions**. This would enable a liquidator to sell the claim on to an individual creditor, group of creditors, or possibly even a third party. Creditors would benefit from the proceeds of the sale and the claim would be more likely to be pursued. We anticipate that a market in these actions would develop, and increase the prospect of actions being taken against directors.
58. We also want to explore **giving the court a new power to make a compensatory award** at the time it makes a disqualification order. This would increase the likelihood of culpable directors being called to account for their actions, whilst providing better recourse to creditors who have suffered. There are practical implications of this approach which need to be fully considered. However, we invite views on whether this would increase confidence in the corporate enforcement regime.

Time limit for disqualifications

59. Under the current regime, disqualification proceedings in insolvent company cases must usually be commenced within two years of the first insolvency event. In a small minority of cases where the information about unfit conduct does not come to light until a very late stage or where the case is exceptionally large, complex or time consuming, this time limit might prevent disqualification action. In such cases, the time limit may mean that misconduct is not addressed and so an extension of time would be desirable.
60. One option would be to **remove the time limit completely**. However, this may unfairly impact directors, who would be left in indefinite uncertainty as to the possibility of action being taken against them. Instead, we propose that the **limit be increased to five years**. We envisage that this extended period would only be required in a small minority of cases and the majority of proceedings would continue to be initiated within two years.

Educating directors

61. Where a company has failed, the lessons a director has learnt from being involved in the management of that company might equip them to have another go and make a success of any new business. In other cases, directors may have specific education or training needs which need to be addressed before they can go on to successfully run another company.
62. We think the public interest may be better served by offering directors some form of education or training to help them take positive steps to learn from their previous mistakes. International comparisons suggest that other countries do more to promote 'bounce back' from failure.
63. Directors against whom disqualification action is to be taken could therefore be offered the opportunity of undertaking some form of **education or training which would result in a reduction of the length of their disqualification period**. Additionally, a disqualified director could be required to undertake training before being able to obtain the court's permission to act in the management of a specific company whilst disqualified.

Extending overseas restrictions

64. A person who is disqualified or who has been convicted of a criminal offence in connection with the management of a company overseas is not currently prevented from acting as a director of a UK company. Although this would apply to a small number of cases from a certain range of countries, it leaves open the possibility of unfit persons being able to operate as directors of UK companies.
65. Not only are the savings from disqualification, as set out above, noteworthy, but we also want the business community, consumers and investors to trust our corporate regime and have confidence that individuals who have been found unfit to manage companies overseas are not able to set up and run companies here.

66. It is therefore crucial that individuals who are unfit, and have been deemed so in another jurisdiction, are not permitted to run a UK company. At the very least, those dealing with limited companies ought to be able to **check that officers of the companies with whom they deal are not subject to restrictions** that would prevent them from running companies elsewhere.
67. We propose to go further, and to use existing powers in the CA06 to make regulations that would **prevent a person who is subject to foreign restrictions from being a director of a company in the UK**. These regulations could provide for a foreign restriction to apply in the UK automatically or, alternatively, only after an application has been made to the court for a finding of unfitness. It would also be possible to make different provision in different cases having regard to the nature of the foreign restriction, the conduct in question and the country where the restrictions were imposed.
68. We also propose to amend the CDDA to **enable disqualification proceedings to be brought against any individual who has been convicted of a criminal offence in connection with the management of a company overseas**, if it would appear to be in the public interest to do so.

Reducing regulation

69. As noted above, we remain committed to reducing regulation and burdens on business. As part of the Government's Red Tape Challenge we initiated discussions with interested parties and identified a number of ways to improve our insolvency processes, making them simpler and less burdensome. One proposal is to **streamline the way in which insolvency practitioners report possible misconduct by directors** after a company has entered a formal insolvency procedure. This would mean a simpler and more timely reporting process as part of a more intelligence-led approach to prioritising cases for investigation. Other measures would simplify a range of processes in insolvency law. A consultation on these specific proposals will be published very soon.
70. In addition to this, the Deregulation Bill - a draft of which has been published for pre-legislative scrutiny - will **give insolvency investigators greater powers to request relevant information from any person**, including the directors they are investigating. Currently, investigators have to rely on asking the company's liquidator or administrator to make such enquiries which is inefficient and burdensome to all parties.

Timing and next steps

71. This discussion paper will be open for comment until **Monday 16th September**. Once responses have been received and analysed, including any estimates of the economic impacts of the proposals from consultees, we will issue a Government response.
72. That response will consider how reforms might be implemented. Some changes in this paper would require primary legislation. We would therefore look to secure an appropriate legislative vehicle. Other changes might be taken forward through UK

implementation of the EU's anti-money laundering proposals. Where possible, we will look to introduce reform before the end of this Parliament.

73. The proposals in this paper relate to companies incorporated in the UK, their directors and their owners. Some proposals might also impact other types of legal entity, such as Limited Liability Partnerships. We welcome responses from companies, directors and investors; industry representative bodies; professional bodies such as law firms and insolvency practitioners; and other interested parties.

74. Details on how to respond to this paper are provided on page 26.

Please note that a full version of this discussion paper can be accessed at <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>.

Overview of questions

We welcome views on:

Part A

- Beneficial ownership and a central registry

1. The proposed definition of beneficial ownership and its application in respect of information to be held by a central registry?
2. The types of company and legal entity that should be in scope of the registry?
3. Whether there should be exemptions for certain types of company? If so, which?
4. Extending Part 22 of the Companies Act 2006 to all companies as an aide to beneficial ownership identification by the company?
5. Placing a requirement on the company to identify the beneficial ownership of blocks of shares representing more than 25% of the voting rights or shares in the company; or which would give the beneficial owner equivalent control over the company in any other way?
6. Placing a requirement on beneficial owners to disclose their beneficial ownership of the company to the company?
7. Whether there are additional or other requirements we could apply to ensure that information on all companies' beneficial ownership is obtained? If so, what?
8. Requiring the trustee(s) of express trusts to be disclosed as the beneficial owner of a company?
9. Whether it would be appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?
10. Extending the investigative powers in the Companies Act 1985 to specified law enforcement and tax authorities?
11. Using the requirements that apply in respect of a company's legal owners as the model for beneficial ownership information to be provided to the company and the registry?
12. If not, what additional or other information we might require? How?
13. Whether there is a need to introduce additional or other measures to ensure the accuracy of the beneficial ownership information that is filed with Companies House and retained on the register?
14. If so, what? To what extent would the benefits of these measures outweigh the costs and other impacts?

15. Whether companies should be required to update beneficial ownership information at fixed intervals or as the information changes?
16. Whether beneficial owners should be required to disclose changes in beneficial ownership information proactively to the company?
17. The appropriate timeframes for notification of changes to the company or Companies House?
18. The broad possible costs and benefits of a policy change to the annual return.
19. Whether information in the registry should be made available publicly. Why? Why not?
20. If not, whether the information should be accessible to regulated entities? Why? Why not?
21. Whether a framework of exemptions should be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?
22. The broad possible costs and benefits of a policy change to the registers of members?
23. Whether beneficial ownership information held by the company should be made publicly available? How?
24. Should any framework of exemptions in relation to information held by the registry also apply to information held by the company?
25. The costs and benefits of this policy change for companies, beneficial owners, regulated entities and other organisations.
26. In particular:
 - The link between the proposals and crime reduction
 - The link between the proposals and the incentives to invest
 - The numbers of companies affected
 - The amount of time it would take to obtain, collate and report data on beneficial ownership – for both simple and more complex ownership structures
 - Costs to the regulated entities
 - The changes which regulated entities might make to their actions
 - The number of beneficial owners
 - The degree of publicity and guidance required

- Likely compliance
- Potential unintended consequences
- The varying impacts of the alternate options.

- **Bearer shares**

27. Prohibiting the issue of new bearer shares.

28. Whether individuals should be given a set period of time to convert existing bearer shares to ordinary registered shares? How long?

29. Whether there are additional or other measures that we might take?

30. The costs and benefits of this policy change.

- **Nominee directors**

31. Whether we should more widely communicate the application of directors' statutory duties to all company directors and whether we should – alternatively or in addition – require nominee directors to disclose their nominee status and the name of the beneficial owner on whose behalf they have been appointed? Why? Why not? If yes, should that disclosure be made available on the public record?

32. Whether we should make it an offence for a director to legally divest themselves of the power to run the company. Why? Why not?

33. Whether there are additional or other measures that we might take?

34. The costs and benefits of this policy change.

- **Corporate directors**

35. Whether we should prohibit UK companies from appointing corporate directors. Why? Why not?

36. If yes, what transitional arrangements might be appropriate?

37. Whether there are additional or other measures that we might take?

38. The costs and benefits of this policy change.

Part B**- Clarifying the responsibilities of directors**

39. The merits of strengthening responsibilities of banking directors by amending the directors' duties in the CA06 to create a primary duty to promote financial stability over the interests of shareholders. *This should be considered in the context of the banking regulation reforms the Government has already committed to and the further economy-wide measures set out in the rest of this paper.*

- Allowing sectoral regulators to disqualify

40. Whether, in certain circumstances, directors barred or prohibited from senior positions in key sectors should be considered for disqualification from acting as directors of any CA06 company?

41. Which sectoral regulators should have the ability to make an application to the Court for a disqualification order, or to accept a disqualification undertaking from a director?

42. The potential costs and benefits of this proposal.

- Factors to be taken into account

43. Whether Schedule 1 to the CDDA should be amended to provide that any breach of sectoral regulations is a matter of unfitness that may be taken into account by the court in disqualification proceedings?

44. Whether Schedule 1 to the CDDA should be amended to provide that 'wider social impact' is a matter to be taken into account by the courts in disqualification proceedings?

45. How wider social impact should be defined and whether a materiality test should be applied?

46. Whether, where unfitness meriting disqualification has been found against a director of a company that dealt with high volume deposits or otherwise vulnerable creditors, two tariffs of disqualification should be handed down (or agreed by way of undertaking):

- A tariff with respect to acting in the management of all companies; and
- An increased tariff with respect to acting in the management of any company dealing with high volume deposits or otherwise vulnerable creditors (or a company engaged in a business similar to that in relation to which he had been disqualified).

47. Whether Schedule 1 to the CDDA should be amended to provide that failure to pay particular regard to the protection of deposits, pre-payments or otherwise vulnerable creditors once a company has become insolvent is a matter to be taken into account by the court when deciding whether a director is unfit and should be disqualified (or by the Secretary of State in deciding whether to accept a disqualification undertaking)?

48. What account the court (and the Secretary of State when deciding whether to take action) should take of the track record of the director (including the number of failures a director has been involved in) when deciding whether or not to disqualify an individual and for how long?
49. Whether there should be a certain number of failures beyond which the presumption is that a director is unfit and should be disqualified. If so, what should that number be?

- **Improving financial redress**

50. How frequently the possibility of bringing wrongful and fraudulent trading claims arise, are pursued and what value the existing civil remedies for wrongful and fraudulent trading provide?
51. Whether, if liquidators were able to sell or assign wrongful and fraudulent trading actions, more actions would be taken? If so, how many more?
52. To what extent creditors would benefit from this proposal?
53. What practical difficulties might prevent third parties pursuing claims and how these might be overcome?
54. Whether safeguards would need to be introduced to prevent certain parties acquiring such a claim? If so, who should they apply to and what form they should take?
55. Whether this proposal would improve confidence in the insolvency regime?
56. The benefits of giving courts the power to make compensatory awards against directors?
57. The potential costs and drawbacks of this proposal?
58. Who should receive any monies recovered by action: should it be creditors generally or left to the court to determine?
59. Whether the IS (acting on behalf of the Secretary of State) should be able to request and agree a compensation award from a director when it accepts an undertaking from the director not to act in the management of a company for a certain number of years?
60. Whether this proposal would improve confidence in the insolvency regime?

- **Time limit**

61. Whether the period within which disqualification proceedings under section 6 of the CDDA must be instituted should be extended beyond two years?
62. If yes, should that period be five years, some other period, or no limit at all?
63. How many directors are likely to be affected?

- **Educating directors**

64. Whether, if some form of director education were to be introduced, it would increase trust in the enforcement regime?
65. What form the training should take and who should provide it?
66. What would be the likely cost of such training?
67. Whether successfully completing any such training should enable a reduced period of disqualification; or should be a pre-condition for any disqualified director wishing to seek leave of the court to run a company whilst disqualified?
68. Whether there would be value in offering such training to all directors of failed companies – irrespective of whether they were disqualified - having regard to the fact that the director would need to cover the cost?

- **Overseas restrictions**

69. Whether regulations should be made using the powers in Part 40 of the CA06 to prevent persons who are subject to foreign restrictions (which fetter their freedoms to act in connection with the affairs of a company) being able to be directors or act in the management of companies in the UK?
70. If yes, should the foreign restrictions be made to apply automatically in the UK, or should they require the Secretary of State to make an application to a court?
71. If not, should a person subject to foreign restrictions be obliged to notify the Registrar of Companies if they act in the promotion, formation or management of a company in the UK?
72. Whether the Secretary of State should have the power to bring disqualification proceedings against a person on the sole basis that that person has been convicted of a criminal offence overseas in connection with management of a company or business overseas?

How to respond

Submissions of evidence should be emailed to transparencyandtrust@bis.gsi.gov.uk clearly marked as a response to the '*Transparency and Trust discussion paper*'. Evidence will be reviewed thereafter. If further information or clarification is required, we will make contact as appropriate.

We are therefore inviting submissions and evidence by **Monday 16th September 2013** to inform our consideration of proposals to enhance corporate transparency and increase trust in UK business.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, where applicable, please make it clear who the organisation represents and how the views of members were assembled.

In exceptional circumstances we will accept submissions in hard copy. If you need to submit a hard copy, please provide two copies to the Corporate Governance team at the following address:

Transparency and Trust
Spur 1, 3rd floor
Corporate Governance Team
Business Environment Directorate
1 Victoria Street
London
SW1H 0ET

We regret that we are not able to receive faxed documents.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

If you have any questions about the policy issues raised in this document, please use the contact details above.

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