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

By e-mail: CompanyFilingReqts@bis.gsi.gov.uk

22 November 2013

Dear Sirs

Response to BIS consultation paper, Company Filing Requirements – Red Tape Challenge

I am writing on behalf of GC100 to respond to the above consultation paper.

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. There are currently over 125 members of the group, representing some 81 companies.

Please note, as a matter of formality, that the views expressed in this letter do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

The GC100 welcomes the opportunity to respond to this consultation.

General Observation

Whilst we are broadly supportive of the Government's Red Tape Challenge initiative to scrap or improve certain company regulatory requirements, there are certain proposals in the consultation paper which if implemented will, from a practical point of view be very difficult for large companies or groups of companies to implement. These are commented on further below.

The GC100 also believes that further clarity may be required on certain proposals in the consultation paper in order to achieve the objectives. For example, there are some conflicting messages around the government's desire to see companies comply with their statutory obligations without prompting from Companies House and the view that certain filing requirements could be used as a mechanism to ensure that statutory obligations are met. It would be helpful if a consistent approach could be undertaken in this respect.

Below we address each of the consultation paper's questions in turn.

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?

We agree with the proposal to remove the requirement to file an annual return and are in support of an event driven filing system.

Whilst we acknowledge that the annual return could act as a reminder for companies to ensure

they have complied with their statutory filing requirements, we do not believe that the annual return was intended for this purpose and companies should not be encouraged to rely on the annual return as a control mechanism for their compliance obligations.

In addition, we acknowledge that the information in the annual return provides a snap shot of a company's information which is often useful for external users e.g. when a due diligence exercise is being carried out on a company. However, it must be recognised that the information may not always be accurate at that point in time as the information in the annual return is only made up to a particular date. We would suggest that Companies House give consideration to a system whereby a reminder is sent to companies to review the information held at Companies House and update the records where necessary. This could be done electronically. We are concerned that without such a reminder, some companies may not keep their information up to date.

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?

We believe that this proposal is not dissimilar to the current Web Filing system and we do not view it as an alternative to the requirement to file an annual return.

Question 3 (paragraph 45)

Do you wish to retain the annual return?

Please see response to Question 1 above.

Question 4 (paragraph 45)

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

We do not agree with this proposal. From a company perspective, we do not believe there is any added value in registering a SIC code to identify the nature of a business of a company, particularly as it is often difficult to fit a company's actual business into the categories of business types listed by Companies House.

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.

Aligning the filing dates for accounts at both HMRC and Companies House would not be beneficial to the members of the GC100 and indeed large companies. Aligning these dates would require a major reorganisation of internal processes and procedures which will not be cost effective for these companies and it is highly questionable as to whether it could be achieved.

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?

The above proposal will have little or no impact on the GC100 companies and other large companies. However, we are of the view that, for companies whose directors and shareholders are the same people, the removal of the requirement to make the company registers available at their Registered Office or SAIL would not reduce to any significant degree, the burden of the responsibility of complying with this requirement.

We would like to point out that if there is a change in the structure of management or ownership of the company, such that, the directors and shareholders are no longer the same people, the company would then have to take into account, the change to their statutory responsibility with regard to the keeping of registers.

The creation of different rules for different company structures would complicate an otherwise simple record keeping system for companies. This we believe is contradictory to the objective of simplifying current statutory compliance rules.

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?

We are broadly in support of this proposal and private companies could opt for this if it is considered advantageous to their business. A potential problem with adopting this proposal is that a private company will no longer retain control of their shareholder details or control over third parties who will have now access to this information.

Question 8 (paragraph 74)

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

Suppressing a director's date of birth in full has clear advantages in that it would ensure an additional level of privacy protection for the directors. We therefore broadly agree with the proposal to suppress dates of birth in part. However, we would point out that there are benefits in having a director's date of birth on display as it serves as a useful search tool in identifying a particular director in situations where there is more than one director on the Companies House record with the same name.

We would suggest therefore that an additional search function is built into the Companies House system whereby those searching the register would be able to enter the date of birth of the director as known to them to assist in searching for other directorships held by the particular director.

Question 9 (paragraph 79)

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

We note the proposed contents for the Statement of Capital. We are of the view that requirements of the Statement of Capital should be consistent throughout the Act.

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?

Please see response to Question 9 above.

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?

Currently, the Statement of Capital is supplied in the annual return as well as in the annual accounts. We agree that the Statement of Capital should be supplied on an annual basis but we believe that such disclosure should be retained in the annual accounts rather than in the annual return. This will further support the drive the remove duplication in reporting and cut red tape.

Question 12 (paragraph 89)

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

The purpose of this proposed amendment is unclear. S. 555 of the Companies Act 2006 requires a company to file a return with Companies House when shares are allotted in the company. The Articles of Association will provide information on the classes of shares in a company and the rights attached to these shares. The Articles will not provide information on the number of shares allotted on a particular date, the price paid for those shares or the total number of shares in issue. To amend the Act and to require that such information be provided in the Articles would mean amending the Articles of Association of a company each time there is an allotment of shares. It should be pointed out that amendments to the Articles of Association must have the approval of shareholders. It would be impractical to hold a company General Meeting to approve amendments to the Articles following each allotment of shares.

Question 13 (paragraph 101)

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

We understand the need to drive an increase in transparency in company disclosures. Currently companies are required to disclose a list of subsidiaries in either the annual return or the annual accounts. We do not believe that there is any added value in reporting on the total number of a company's subsidiaries. For some companies, the number of subsidiaries in the Group change on a frequent basis as a result of the nature of the business and corporate transactions being carried out.

The GC100 would suggest maintaining the requirement to disclose a list of the subsidiaries of a company, but such list should be made up to the Company's accounting reference date and filed when the company annual accounts are filed at Companies House. The list however, would not

form part of the annual accounts.

Question 14 (paragraph 101)

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

As mentioned above, companies are required to disclose a list of their subsidiaries in the annual report. Currently most companies set out a list of their principal subsidiaries in the accounts and file a comprehensive list of subsidiaries with the annual return.

We would suggest that the current practice of disclosing principal subsidiaries in the annual accounts be maintained and a comprehensive list of subsidiaries be filed with the accounts (although not forming part of the accounts) as suggested in our response to Question 13 above.

Question 15 (paragraph 108)

Are there any notices that should not be sent electronically?

We agree that there should be a reduction of hard-copy correspondence from Companies House and, from the perspective of GC100 companies, the delivery of hard-copy reminders in relation to annual returns and accounts, for example, is of little value. We do however agree with the assertion that some critical notices, such as final notices to strike-off should continue to be delivered in hard-copy form as well as electronic

Whilst it is acknowledged that some smaller companies may benefit from having all Companies House correspondence directed to a single email address, we believe that such an approach would present a number of issues for larger groups. The Secretariat functions of such organisations tend to be much larger and may experience regular staff turnover, therefore identifying one individual to whom all correspondence should be directed in the first instance might be problematic and keeping this contact up to date for each entity within the group (sometimes stretching into the hundreds) would add to the administrative burden associated with those companies and might lead to the non-receipt of important notices.

Question 16 (paragraph 108)

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

Within GC100 companies, it is highly unlikely that correspondence with other public authorities (e.g. HMRC, the OFT or Information Commissioner) would be directed to the same individuals as Companies House correspondence. We do not therefore believe that this would be a practical solution and, to the contrary, might cause confusion and create complexity in areas within which clear communication channels with public authorities are of vital importance.

Question 17 (paragraph 108)

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

We have no suggestions for other means of electronic communications. However we believe it is important that Companies House should offer more opportunities for payments to be made online

and via credit/debit card.

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 do not believe that making additional information, such as the company website, available on Companies House would provide any value to users. It would most likely be easier for a user to identify a companies' website via an internet search engine

There would be an administrative burden associated with keeping such information up to date and therefore an increased likelihood of such information becoming outdated, particularly if there is no requirement to confirm and verify non-statutory information on an annual basis. Further, permitting the inclusion of such information on an optional basis would lead to inconsistencies in the type of information held for each company; we do not believe this would be a desirable outcome.

Question 19 (paragraph 114)

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

The GC100 do not believe that any specific changes are needed in respect of upfront validation. We do however believe that quicker and more effective remedies could be provided in instances where Companies House has been asked to correct small typographical errors on the public record as the process at present can be particularly burdensome. A number of our member companies have experienced significant delays in having such matters being rectified.

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, we agree. As a minimum, it should be possible to effectively correspond with the company at that address.

Question 21 (paragraph 127)

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

The view of the GC100 is that this issue should only come into question in circumstances where a complaint has been made. It should not be necessary to evidence the effectiveness of an address in the normal course of business.

Question 22 (paragraph 127)

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

We do not believe that using a director's address for this purpose would be suitable; the directors

of a large number of companies will have recorded a service address in any event, most likely the registered office. In circumstances where this is not the case we feel it would be inappropriate to publish a director's residential address on the public record for a purpose to which they have not consented.

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?

Companies within the GC100 have well established procedures for obtaining and recording director consent and for providing the necessary information to Companies House upon a directors' appointment. Such procedures provide comfort and control from the perspectives of both the company and the director and we do not believe that changing the requirements in this area is necessary. It is thought that switching to a process of confirmation could add additional unnecessary steps and introducing a new standard form document would complicate what is currently a straight forward process.

Question 24 (paragraph 138)

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

We do not believe that such disputes would typically arise within larger companies and groups and, as noted above, our member companies would generally have an effective record of a directors' consent.

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?

We agree that where an address has been hijacked it would be helpful for an accelerated procedure to be put in place to resolve this issue. It would certainly seem sensible if the procedure outlined in paragraph 123, by which the registered office would default to the relevant Companies House address, were to be applied in such cases.

We do have concerns that a timescale of just 6 weeks for an enforced strike-off could result in companies being incorrectly struck-off; the two week window suggested for response could very easily be breached as a result of circumstance and in the absence of any wrong doing.

Question 26 (paragraph 146)

Are there any potential consequences of an accelerated strike off process that we should bear in mind?

Please see response to Question 25 above.

Question 27 (paragraph 146)

Are there any other circumstances in which an accelerated strike off process would be appropriate?

From the GC100 perspective, having an accelerated process in place for voluntary strike-offs would provide significant timesaving benefits.

Question 28 to 30

We would welcome views on the assumptions and estimates used in the costs benefits analyses, particularly where we have not been able to quantify some of the costs and benefits.

Are there any other costs or benefits that should be included in the analyses?

We would welcome views on likely take-up of proposals, particularly in relation to company registers and electronic communications.

No comments.

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Overall, new regulations which lead to dual pathways should be avoided as they result in extra complexities and create too many options for companies.

We would welcome the opportunity to discuss these issues with you further.

Yours faithfully

Mary Mullally
Secretary, GC100
020 7202 1245