

**LIST OF RESPONDENTS TO THE CONSULTATION DOCUMENT
'TRADING DISCLOSURES' IN THE ORDER THEY WERE RECEIVED**

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8	Mr P Dunbavin
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RESPONSES TO THE CONSULTATION DOCUMENT TRADING DISCLOSURES

Question 1: Do you agree that a company should be required to display its name at its registered office and at any service address? Should companies be required to display their names at any other premises? If so, where?

Respondent (doc number) Comments
<p>F A G Kay (1)</p> <p>My view is that a company should display its name at its registered office and at any other place it carries on business - and the name should be displayed prominently as opposed to discreetly.</p> <p>The purpose of a service address is to provide an address at which service of a notice can be legally made on the principals. If an incorporated company is the principal then there is no need for a service address because the proper place to serve notices is at the registered office.</p> <p>In the case of an individual or partnership I can see the need for stating names on all letters, etc, using a business name and also for giving an address for the service of notices. But giving an address for the service of notices in these circumstances would be superfluous for an incorporated company provided there was a requirement to give not only its name but also its registration number and country of registration, and address of its registered office. For example</p> <p style="text-align: center;">A B C CATERING Unit 3, Water Lane Industrial Estate, Wimbledon SW19 2AR</p> <p style="text-align: center;">Proprietor: ABC Catering Company Limited (Registered in England & Wales No.4101234) Registered Officer: 11/15 William Road, London, NW1 3ER</p> <p style="text-align: center;">A B C CATERING Unit 3, Water Lane Industrial Estate, Wimbledon SW19 2AR</p> <p style="text-align: center;">Proprietor: William Bloggs Address for service of Notices: As above</p> <p style="text-align: center;">A B C CATERING Unit 3, Water Lane Industrial Estate, Wimbledon SW19 2AR</p> <p style="text-align: center;">Proprietors: William Bloggs, Mary Bloggs and James Tindell Bloggs Address for service of Notices: As above</p> <p>The RBN Act, in my view, needs to be more precise in section 4(1)(a)(iv) about the address for service of notices. When the Act first came into force I recommended to clients that this address be specified by stating on letters etc “Address for the service of notices” but it was subsequently pointed out to me by various solicitors that the Act only</p>

required an address to be given - and therefore there was no need to specify that the address was the one for the service of notices.

I still consider that in the interests of certainty there should be a specific requirement in the act not only for a full postal address including post code to be given for the service of notices, but also a statement to be included that the address is such.

The current regulations require that a company's name should be displayed *outside* its registered office and I do not disagree with this because it is not only what many companies normally do but is also helpful in locating the registered office.

But the current regulations do not take account of the many companies whose registered office is at the office of their solicitors or accountants; nor of the fact that with many office blocks it is not possible or allowed by the landlord to display "outside" the name of one let alone a hundred companies. The requirement needs to be expanded to say the company name must be prominently displayed outside the registered office, or in the vestibule or entrance to the building containing the registered office or in the reception area of the registered office itself.

Buddenbrook Consultancy (2)

Companies should be required to display their names at

- the registered office
- their trading locations

any premises where business is carried on (i.e. where it interfaces with customers).

B Strand (3)

At every place, owned, hired, leased, rented, including temporary exhibition space.

R G Curtis (4)

As a minimum information should continue to be displayed at the premises identified in paragraph 15, although I generally believe any reduction in current obligations could be a negative step. Far too small of a proportion of the public have internet access to justify reliance on the level of accessibility of information electronically.

York Place Company Services Ltd (5)

Access to information at Companies House only reveals the registered office and an address where documents might be held for inspection other than registered office. We believe it is important to have the company name displayed at all addresses belonging to the company either trading, registered office, service or inspection addresses.

MSP Secretaries Ltd (6)

The requirement to display the company name at the registered office is essential as is that of any service address. Serving writs is hard enough as it is without any further disguise. I do not find a need for the display of the company name to be made elsewhere.

Bonnier plc (7)

The present regime serves well enough to exempt the temporary resident. Every company setting up at premises would reasonably be accorded a period of grace within which to comply, so if a company is only temporarily based at a location, the requirement is not a burden.

A company should be required to display its name at its registered office address and the address at which any public registers are kept and, if neither of these is its principal trading address, then that address also. It is important for the public to be able to contact company staff in person at a true trading address, but not at every single address. It follows that, if a true address, other than the Registered office address, is required to be disclosed on business stationery, this too should be filed at Companies House.

A company should not have to display its name at an address which is on the public file at Companies House as being also the residential address of one of the directors. This gets round the present anomaly that (i) it is not practical to expect a private address to display the company's name, but that (ii) any such exception should focus only an address which is truly residential and capable of receiving service of notices or requests for access to and copying of registers and for which there exists a valid reason for its selection as registered office.

P Dunbavin (8)

YES. All addresses. Do not create a legal 'loophole', as all fraudulent activity will then migrate to take place from these addresses.

William Davis Ltd (9)

The display of the company's name at the registered office or at an office for the service of legal documents is possibly of less importance than the prominent display of the name at a place where business is carried on. To illustrate this point, if the registered office is the head office of the company concerned, then the name needs to be displayed prominently, but if the registered office is a professional office, not owned or managed by the company concerned, it seems less important than the name that needs to be displayed. Having said that it is important that the name that is displayed at a place of business should be the name of the company which owns the business if that should be different from the trading name.

D L Lupton (10)

Yes. Also display at any premises where business is carried out on a permanent basis.

K S V Thorogood (11)

Agreed.

It is recommended that names should also be displayed:-

on company vehicles, including freight and delivery transportation,

at construction sites,

at exhibitions, trade stands and public shopping malls - the latter is a common locale favoured by some phoenix companies in an attempt to add stature to their business.

William Sturges & Co (12)

All companies should be required to display name at principal place of business (and at any registered office of any registered company) and at any address for service. The requirement should be to display at ground floor level indicating on which floor the accommodation that it exclusively occupies which (if not displayed in the street) should be visible from the street or from an entrance lobby to which there is public access during normal working hours.

R J Steer (13)

Yes. 1a. When sharing an address/building. The name of company to be placed on notice board on wall on ground floor as you enter the premises.

G L B Pitt OBE (14)

(a) Yes.

(b) Yes.

(c) Any place where business is or may be transacted with the public or to which the public are invited explicitly or implicitly by the company, public here including suppliers. Also "at premises where the company keeps documents for inspection". Surely, this will help would-be inspectors find the premises easily.

P Lipscombe (15)

Yes.

G Murray (17)

Yes, all businesses should display their full name on the outside near to the main entrance of every one of their places of business and in the case of shared building or site the full name of all the businesses carrying on businesses there.

In the case of a registered office location, the sign should indicate that it is the registered office. This is important not only for people serving notices at the premises but also to identify the company that they may be doing business with or which may be liable in the event of injury of damage.

J Brady (18)

Yes, it should its name, but it is not important at any other premises.

Findlay Durham & Brodie Ltd (20)

Yes, the name should be displayed at its registered office and any service address, not necessarily at other premises.

J Bingley (21)

Company name should be displayed at its registered office and at any addresses where documents are available for inspection or at which the service of any document relating to the business will be effective.

Industry Canada (22)

The CBCA (*Canada Business Corporations Act*) no longer requires a corporation to display its name at its registered office. The requirement was repealed in 1975 with the introduction of the new CBCA. The only requirement that remains under the CBCA is that a corporation shall set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the corporation.

Macmillan Publishers Ltd (23)

I think that the requirements should distinguish between active and dormant companies. Companies that are able to file dormant accounts and have therefore not been trading for a full accounting period should not, in my opinion, be required to display their company name at their registered office or any service address. Information concerning these companies is available electronically from Companies House and I do not think that their shareholders should have to bear the cost of displaying the company name.

S Carmichael (24)

I consider that every company should continue to be required to display its name outside its registered office, any service address and at premises where it keeps documents for inspection. There is, of course, the situation created by multi-storey buildings but it is my opinion that the name should still be displayed outside the building.

Whether a company's name should be outside every place of business I am unsure but the name should be made available to the public.

R Flavell (25)

Yes. I would suggest that a company should also be required to display its name at all branch offices and places of manufacture or trading where the address is different from the registered office.

KPMG (26)

We agree that a company should be required to display its name at its registered office and any service address; it remains important that customers, suppliers and the public are able to identify business premises at which the service of any document will be effective.

We consider that the requirement to display the company name should extend to all premises to which customers, suppliers or the public have access so such parties are made aware of with whom they are dealing. This requirement should extend to

temporary premises, trade shows and even a director's home address if used as a business address for dealing with customers, suppliers or the public. In order to avoid potential confusion in connection with the serving of documents, a service address should also be shown at each place of business where the corporate name is displayed.

H W Fisher & Co (27)

It is believed that it is appropriate that a company should be required to display its name not only at its registered office but also at any address where any operation conducted by the company occurs. The rationale for this in Company Law is that in return for the cloak of limited liability, any other third party whether an individual or a corporate entity dealing with that entity can discover by simple inspection the location activities of that company.

Experian Ltd (29)

We agree the obligation to display name at registered office and service address should continue, as without an alternative they are still important.

There is a need to tie different locations together, as trading style can mask the fact that a problem company at location x is indeed linked financially with what appears to be a satisfactory company at location y. As stated above, we believe that the company name and all trading styles should be displayed on a web site with an obligation to respond to e-mail enquiries.

H W Higginson (30)

The present requirement in section 348 that a company shall display its name at every office or place in which its business is carried on should remain. A person who enters a company's place of business should know with whom he deals and someone who has dealt with a company by post should be able to recognise the address if he wishes to visit it. He should not find it necessary to get the information from Companies House. The burden of display is not heavy and, so far as I am aware, there is no demand for its repeal. Neither the Jenkins Report nor any evidence given to it suggested opposition to the requirement.

The requirement to display the name at the registered office and at any other service address should, of course, remain. Section 725 provides that a document may be served at the registered office and that where a company is registered in Scotland carries on business in England and Wales process of a court in England and Wales may be served at the company's "principal place of business in England and Wales". But there is no requirement to notify the registrar of the situation of its principal place of business. That should be added.

The Institute of Chartered Accountants in England & Wales (31)

A company should be required to display its name at its registered office and service address. It should not be required to display its name at any other premises. We note that this requirement is routinely ignored, and rarely enforced, particularly where the registered office is a private, residential address.

The Institute of Chartered Secretaries and Administrators (32)

A company's name should, as a minimum, be displayed at its registered office, any trading address and any address where documents are available for inspection or at which service of any document or notice relating to the business will be effective.

Extending the requirement further poses a problem that we do not have the answer to. On the one hand we believe that any commercial organisation should be required to have the trading and/or corporate name visible from outside any of its premises. On the other hand there are circumstances where this may not be prudent. The example that springs to mind would be a company operating Women's Aid Hostels.

If the requirement extends to all premises there is also a question of what "where a company normally or regularly carries on business" actually means. If a company hires premises such as a church hall to hold weekly training sessions or group activities we would not expect the name of the company to be on permanent display outside the hall. Another example would be where Company A subcontracts cleaning services to Company B who then have a permanent office on Company A's premises. If Company B is required to show its details on the outside of Company A's premises this could cause confusion but unless they do no one will know they are there. (In this example we would suggest that Company B's name should appear outside the office it permanently occupies even though that is within the offices of Company A.)

Labour Finance & Industry Group (33)

We wish to make only one objection to the disclosure requirements in your paper and that is to your statement that "in our view, it is essential that every company's name be displayed at its registered office".

Over the last 20 years great swathes of our inner cities, particularly Victorian and Edwardian residences, have been converted into flats, held on long leases with the freehold of the building held by the lessees through the medium of a limited company whose only shareholders are the lessees of the flats. Most of the companies do not "carry on business". Their formation was forced by the peculiarities of English property law.

Solicitors have been advising purchasers of long leases to acquire the freehold in this form for many years, as the only alternative is complicated and expensive. According to the Companies Registry "a large number of companies on our register are classed as 'flat management companies'".

Your proposal would require these companies to display registered office notices on the exterior of the building, something generally prohibited by the leases they have granted, to the detriment of the appearance of the property and giving to the public the belief that a business is being carried on at the premises - also generally prohibited by the leases.

Recent and proposed legislation relating to small companies has been to simplify and deregulate. Your proposal does the opposite, resulting in unnecessary costs and misleading notices.

The Companies Registry has sensibly advised those companies to organise their affairs

so as to be treated as dormant; your proposal does not even exempt dormant companies. An article from "Registry", the Companies House journal dated "Winter 2000" is attached, which is helpful in understanding the position of such companies and their numbers.

The answers to your questions 1, 2 and 10 is therefore "Yes, but only if Flat Management Companies, whose ownership is limited to lessees of the flats in the building of which the company is the freeholder, are exempted".

And in response to reply pointing out proposal is to relax existing requirement:

Thank you for your letter of 14 March. The point I am making is that as every company has to register its registered office at Companies House there is no advantage, particularly in the case of non- trading companies, in having hundreds of thousands of nameplates on residential properties, which are in breach of the terms of most standard forms of residential lease, confusing to the general public and an expense to companies, who if they follow the recommendations of Companies House have no funds and merely exist to hold the freehold title. Surely the purpose of the review is to improve on the present law, particularly by removing all unnecessary obligations on small companies- which is what "think small first" is meant to achieve. In practice such companies do not exhibit registered office nameplates, putting them in breach of the law though not of their leases. Using professional advisers' addresses is an additional cost-exactly what the review is meant to reduce. Why on earth would a member of the public want to read the address of such a company? It has no office, no staff, the officers will most likely be out at work and its only asset is the building, which even the most assiduous writ server or bailiff can do nothing with. Who other than the lessee/shareholders, who know where they live, has a statutory right to inspect documents, unless the company is in liquidation? It is a rare liquidator who does not make a company search on his computer before he does anything else. It is important that the new Companies Act relates to the real world.

London Society of Chartered Accountants (35)

Yes. Corporate and trading names should be displayed at all premises where a company is required to make documents available.

Manches (36)

A company's registered office is, in a number of cases the sole physical manifestation of its existence. In practice, the office may be at the offices of solicitors or other agents. However, its very presence gives the public a point of contact – whether for actual trading, inspecting books, registering complaints or serving documents.

Even if they are not in direct contact with the company at such premises, they know their contact will be passed on. If not, they once again have the reassurance of knowing exactly who is to blame. In other words, the public have not only the abstract details of a company, but also the tangible ability to contact it: Surely an integral part of maintaining the responsibility of company owners, even if their liability is limited.

In light of the importance of a registered office, we fully support the requirement that a company's name should be displayed there. This provides a point of identification and reassurance to the public, without onerous investigations or the need to disclose their business by making enquiries. Very little expense, and no apparent disadvantage is caused to the company itself. Similarly, we believe that it is right that a company's name is required to be displayed at other service addresses. If a company has made the

conscious decision to represent another set of premises as a further point of contact, there does not seem to be any reason why their name should not be displayed there.

The main issue, as the Paper identifies is whether the requirement for a company to display its name outside every place in which its business is carried on is necessary. It could be argued that this is necessary to provide a point of contact to the actual business of the company, rather than the registered office, which may be a solicitors, accountant, etc. Nevertheless, we believe that this requirement is unnecessary if the company name is displayed at the registered office and service addresses. If a company wants people to visit their business, they will advertise it.

H L Miller & Co (38)

No we do not believe that a company should ALWAYS be required to display its name at its registered office and at any service address (or any other address). This requirement is already frequently breached by small companies trading in multi occupied buildings where the Lessors control displays, and is not practical for example, when a group of associated companies occupy one office. It is also not practical when a large number of companies use the same registered office address because they share the same accountant. The name should only be required to be displayed on premises where members of the public would be expected to attend in the ordinary course of business.

National Association of Pension Funds (40)

The NAPF considers that companies should be required to display their names at its registered office and any (legal notice) service address. It is suggested that the most appropriate position is where the public access route is. It is not considered necessary to display company name at all locations.

Institute of Credit Management (41)

The Institute agrees that a company should be required to display its name at its registered office and at any service address. This should include all premises where that company's business is carried out, even if the transactions are infrequent. Limiting the requirement to display the company name to premises where customers and suppliers normally have access might enable the company to conceal assets.

Wales Council for Voluntary Action (42)

Yes – companies should display their name at their registered office and at any service address.

C Perkin (43)

I support the view that a company's name should be displayed at its registered office, any service address and at every place where it carries on business. Furthermore, the formula used in section 4(1)(b) of the Business Names Act 1985 – the name must be displayed 'in a prominent position so that it can be easily read' – should be adopted.

Exceptions to this requirement would be understandable if the obligation was unduly onerous or costly but this is not the case. Moreover, one wonders why a company that was pursuing its business lawfully would object to publicising its name on its premises. It is suggested that 'place where it carries on business' is preferable to 'premises to which customers and suppliers have access' since the latter excludes other persons who may have an equally legitimate reason for visiting the company's premises.

The Abbey National Group (45)

The company name and registered office/address for service of the relevant trading corporate entity, should be displayed at (i.e. within) all business premises (registered office and business places) to which the public have access and, if different, the address for service. We do not believe companies should be required to display all corporate names used outside their business premises. In the case of a large group, it may not

always be practical to display names in this way.

A Kaye (46)

Yes. A company should display its name at its registered office and at any address for a service of notice. I do not consider it necessary that the name be displayed at every other place of business, rather only at such places where it invites members of the public to attend upon it.

Reed Executive plc (48)

Given that among the objectives of trading disclosures legislation are openness and accountability of limited liability companies, we agree that it is an essential requirement that a company should display its name at its registered office and any service address. For the same reason, we also consider it important that a company should display its name at premises where it normally or regularly carries on its business. In our view, this is preferable to the suggested alternative of limiting this requirement to premises with customer/supplier access since companies that conduct their businesses remotely would escape this requirement. However, we consider that any definition of carrying on a company's business should exclude ancillary or support functions which are essentially overheads of the business and not commercial activities (e.g. an in-house legal department), so premises where only such support functions are carried out should be excluded. Furthermore, we consider that where a company chooses to make documents available for inspection at premises other than the registered office, then it should be required to display its name at such premises. This would close off any potential loophole whereby a company might seek to frustrate any inspection of its documents.

The Law Society of Scotland (49)

Yes at registered office, service address and any other premises in accordance with the Business Names Act 1985.

The Institute of Chartered Accountants of Scotland (50)

While we agree that a company should display its name at its registered address and other service addresses, we are against proliferating the requirement. We agree it should be limited to premises where customers and suppliers have access. We also agree that it should display its name at premises where it keeps documents for access.

Lloyds TSB Group plc (51)

Yes at registered office, service address and at all places of business.

The Law Society (52)

We suspect that many organisations which form "off-the-shelf" companies (which have that organisation's address as their initial registered office) find it impossible to comply with the strict requirements of the existing legislation, and that others (such as some professional firms) which act as the registered office for numerous clients have the same difficulty.

To deal with the first category, we suggest that a company should not be required to display its name outside its registered office until it commences doing business (which would have the same meaning as in section 117 of the Act and would also include acting as agent for another person).

To deal with the second category, we suggest that it should be sufficient for the names of the companies which have their registered offices at a particular address to be recorded in a book which is available for inspection by members of the public during normal business hours. However, we suggest that the views of The Post Office should be taken into account on this question as we have experience of their refusing to undertake to deliver mail to a business address of a company if its name is not shown outside those premises.

We are uncertain as to what is meant by a "service address" in the case of a company which only trades under its own name (and so is not presently required to state a service address under the Business Names Act).

Subject to the views of The Post Office referred to above, we do not think that a company should be required to display its name at any other premises (including other offices or places where its business is carried on, as presently required): however, this view is dependent on the extension of the categories of documents on which a company's corporate name should be shown being extended as outlined below, as we think that this is necessary for the protection of those doing business with the company (especially consumers).

Jafco Tools Ltd (54)

I agree with the proposal that a company should be required to display its name at its registered office and at any service address (on the basis that this includes any address at which customers or suppliers have access). I also support the view that this should extend to those premises at which documents are retained for inspection.

Danziger plc (56)

Our view is that the registered office requirement has become obsolete and has little practical significance currently. It should be abolished and replaced by the requirement that every company should have (one) registered place of business, or registered address, at which the company would accept service of documents and be contactable by customers, suppliers and creditors. The company would then be required in terms of provisions of the Companies Act to display its name prominently at its registered place of business, but nowhere else.

If the registered office requirement is retained, then we think that the company should be required to display its name at that office. This may not be achievable in practice, however, because the same registered office address is often used by hundreds or even thousands of companies, where that address is the address of the companies' accountants or the address of a company secretarial firm. In such a situation, the display of company names may be meaningless or even impossible

International Underwriting Association (58)

We feel that the requirement to display the company name outside every place may be too onerous on some companies and may also in many cases be of limited benefit. We agree with the recommendation to limit the display requirements to the company's registered office, service offices and those premises that customers may have access to. We believe the last point to be crucial in maintaining the transparency and openness of the company to the public. We would support a more flexible requirement for other company premises, including those holding company records. We would also support increased promotion of Companies House as a forum for accessing company details electronically as this serves to extend company accessibility and accountability.

Consumer Credit Trade Association (59)

CCTA agree that companies should be required to display their company name in a "prominent position" (as required by the Business Names Act) at its registered office and also any address for services of or inspection of documents. CCTA supports the principals expressed at paragraph 18 of the Consultation Document, namely that the coverage and detail of controls under the Companies Act and Business Names Act need to be revised to ensure that they are consistent and that there are no anomalies.

J Jasper (60)

I agree that, in general, a company should be required to display its name at its Registered Office and any service address. However I have been involved as a Director and Company Secretary with small companies where this requirement has presented difficulties. In one case I was a director of a company which operated a flying group. The company owned a light aircraft and its 15 equal shareholders were private pilots who flew this aircraft. Initially there was a plaque on the outside of the member's home

where the registered office was situated showing the name of the company. The registered office one day was changed to another address: the home of the company secretary, which was actually a flat in an apartment block. In this case it was difficult to erect a sign either on the outside of the apartment block or outside the entrance to the flat, so in fact no sign was erected. I am not involved any more with this company and since then the registered office has changed to another address.

In another example I now operate a single member company with a paid up share capital of 8,000 pounds. It is registered at my home address. I am the sole shareholder and director. The company has no visitors, apart from the postman, as all business is done by mail, telephone, fax and internet. I do go out and visit the customers but they do not come to my home. The requirement to display the company name is rather strict in this instance. Maybe there could be some exemption for small companies in these circumstances. Another example might be Flat Management Companies where the registered office is located at the home of one of the residents in the block of flats. As you mention in your report it is easy to find the location of a registered office by using the Companies House web site so having a sign does not have any benefits in these cases. In practice a sign offers little benefit since any visitor would know that they are at the right address.

J M Swallow (61)

No – what about accountants with lots of Registered Offices?

The Association of Chartered Certified Accountants (62)

The paper suggests that the current requirement for a company's name to be displayed outside every office or place in which its business is carried on might be discontinued in favour of a requirement to disclose such details only outside the company's registered office and any service address it may have.

The registered office of many small private companies is situated at the address of its independent auditor, solicitor or company secretary. The current rule ensures, at least in theory, that notification of a company's corporate details are displayed outside its premises even where this is the case. Restricting the disclosure requirement to the registered office and any service address would mean that a company whose registered office was situated at an adviser's address would not be under any obligation to display its corporate details outside its business premises.

The heading above s348 suggests that the purpose of the current rule is to allow customers and others dealing with a company to identify the company and thereby its officers. Were there to be a total departure from the current requirement for notification outside places of business, the result would be a deterioration in the information available to third parties.

We accept the argument that the current requirement for notice to be displayed outside every place of business may be in need of revision. We suspect in any case that the rule is widely ignored.

We believe however that, in addition to a requirement for notification to be made outside a company's registered office, there should be a requirement for notification outside any premises at which the company carries on business and to which customers and suppliers normally have access.

M Hardy (63)

Yes. All places where the company carries on business, whether real or virtual, and specifically at any and all locations where statutory records are maintained. (see also general comments).

Association of International Accountants (64)

Yes at registered office and service address.

Office of Fair Trading (66)

Yes. A company must display its name at its registered office and any other premises to which customers or suppliers have access or which are in regular use for the conduct of business. Whilst we tend to concentrate on the interests of customers the interests of other businesses may be even greater.

We do recognise that many registered offices are those of accountants or solicitors who may deal with many businesses. However, although this may be difficult in practice, there should still be an obligation on each company to indicate that the premises constitute its registered office. Likewise, if the registered office is located at a private address, the company's name should still be displayed clearly.

A company's name should be displayed at every principal place of business and branch outlet. The name, address and telephone number should be displayed either by plaque or over the door and all stationery should give the registered office.

South East Trading Standards Authorities (67)

1a. Yes

1b. Yes those that customers and suppliers have access to.

BBC (68)

1a. Yes.

1b. We are not convinced of the case for this (See paragraph 4 General Comments)

The Committee of Scottish Clearing Bankers (69)

Yes. In addition the company should display its name at any other premises where the company carries on business.

Question 2: Do you agree that company's name should be required to be in a prominent position so that it can be easily read by any member of the public?

Respondent (doc number) Comments
<p>F A G Kay (1) To meet this requirement could mean a ten foot long by two foot high name board if the company's premises were some way from a footpath such as on an industrial estate. It has to be remembered that companies occupy a variety of premises. Some are in prestigious office blocks in the middle of cities, some are in suburban shopping centres, while others are on industrial estates and yet others occupy railway arches and temporary buildings in all sorts of odd places. And the regulations have to cover them all. The company name has to be apparent to anyone who approaches the entrance to the company premises. My best suggestion is that "The company's name shall be displayed outside the entrance to the company's premises with reasonable prominence." I do not think we should be concerned with "so that it can be read by any member of the public" because it is not there for any member of the public, but for specific members of the public who have business with the company. Armed with a full postal address including postcode it should be possible for anyone to locate a company.</p>
<p>Buddenbrook Consultancy (2) Yes – name to be prominent.</p>
<p>B Strand (3) Yes, with a minimum size specified (i.e. large enough to read at arms length i.e. without need for a magnifying glass!) and also visible in entry to the premises/site.</p>
<p>R G Curtis (4) Yes – this is far more practicable.</p>
<p>York Place Company Services Ltd (5) We consider that any sign be in a prominent position but not necessarily outside the premises.</p>
<p>MSP Secretaries Ltd (6) The company name should be readable by any one visiting the premises involved. This suggests that the name should be on the outside of that part of the premises occupied by the registered office so that it can be seen when the premises are closed. An option should be that it is displayed inside the premises but that it can be seen from the outside. We maintain about 1,500 registered offices and have a letter from the Registrar of Companies confirming that the Act is complied with if the names are held on a computer and continuously scrolled through. It would be helpful if this facility were included in the Act. It is easy to appreciate the problems both of space and updating should this not be allowed.</p>
<p>Bonnier plc (7) The name should be displayed outside the address or in any reception area immediately within the principal entrance to such address (i) which is clearly designated as such and visible from public areas outside the premises and (ii) to which the public are clearly invited to have free access at all times during business hours.</p>
<p>P Dunbavin (8) YES. Do not create a legal 'loophole'. If addresses can be hidden away then all fraudulent activity will migrate to take place from these addresses.</p>

<p>William Davis Ltd (9) The answer is similar to Question 1, that if it is a place where trade or business is carried on, then the name should be capable of being read by a member of the public.</p>
<p>D L Lupton (10) Yes.</p>
<p>K S V Thorogood (11) I agree.</p>
<p>William Sturges & Co (12) The requirement should be to display at ground floor level indicating on which floor the accommodation that it exclusively occupies which (if not displayed in the street) should be visible from the street or from an entrance lobby to which there is public access during normal working hours.</p>
<p>R J Steer (13) Yes.</p>
<p>G L B Pitt OBE (14) Yes. Better than the existing requirement.</p>
<p>P Lipscombe (15) Yes, and accessible.</p>
<p>G Murray (17) Yes, it should be prominent and not just hidden away in small print.</p>
<p>J Brady (18) Yes</p>
<p>Findlay Durham & Brodie Ltd (20) We do not believe that general members of the public are necessarily interested in reading the company's name at their registered office and as long as the names are displayed in accordance with the Act, this should be sufficient.</p>

J Bingley (21)

Any member of the public arriving at the office should be able to confirm easily that this is the company's office. I would prefer the definition in the Business Names Act. The name might be displayed on the post box at a house or office up a drive in a residential area, not necessarily at the road side, or at the entrance to the relevant floor of an office block with a list, rather than an open display, available at the entrance reception.

Industry Canada (22)

No.

Macmillan Publishers Ltd (23)

Yes, I agree with this statement. I also agree that it does not need to be outside premises.

S Carmichael (24)

Whether a company's name should be outside every place of business I am unsure but the name should be made available to the public.

R Flavell (25)

Yes. This is essential, otherwise why display a name where it can't be read?

KPMG (26)

Yes. For a skyscraper, a prominent position in the foyer denoting the corporate name and floor should suffice for all business occupants of the premises.

H W Fisher & Co (27)

The company's name should be displayed prominently. See comments in Question 1 above.

Experian Ltd (29)

We agree any notice or premises should be displayed at all premises and via the web.

H W Higginson (30)

I agree that the company's name should be required to be in a prominent position so that it can easily be read. There is a problem, as recognised in paragraph 14, where the office or place of business forms only part of a building. In such a case, display outside the part of the building where the office or place of business is located may not be enough to enable a member of the public to find the location without difficulty. The requirement should be, to display the name in such a way that a person attending at the address given shall be able easily to locate the office or place of business.

The Institute of Chartered Accountants in England and Wales (31)

Yes.

The Institute of Chartered Secretaries and Administrators (32)

Any member of the public arriving at the premises should be able to confirm easily that it is the company's office. We prefer the definition in s4(1)(b) of the Business Name's Act. The name might be displayed on a post box or house at the end of a drive, not necessarily at the roadside unless the drive is closed to the public so that they cannot approach to read it in the building itself. Where an office block is open 24 hours, it might be at the office entrance on the relevant floor rather than in open display available at the entrance reception. The information should also be readable when the office is closed which means it needs to be on the outside or possibly visible through a plain glass window. We understand that Companies House have confirmed that the current requirements of the Act are complied with by having the names of companies using an agency address as their registered office continuously scroll through on a computer screen visible from outside the office. We have some doubt about this advice and it would be helpful if the point could be clarified.

Labour Finance & Industry Group (33)

"Yes, but only if Flat Management Companies, whose ownership is limited to lessees of the flats in the building of which the company is the freeholder, are exempted."

London Society of Chartered Accountants (35)

Yes. We prefer the Business Names Act's plainer English. However, it did strike us that the law makes no provision for the blind who are members of the public being able to "read" a company's name.

Manches (36)

Logically, the reason for a company's name to be displayed on any premises, must be so that people know that the company is connected with those premises. If the company's name is not easily readable, there seems little point in it being displayed.

It could be argued that the Business Names Act 1985 requirements for an easily readable sign in a prominent position are excessive. However, in practise the requirements for the display of names are complied with to the minimum possible standard by many.

Therefore, such a requirement really only ensures readability.

We agree with the Paper that this should be the generally adopted definition. Indeed, the Companies Act requirement that the sign is "outside" appears to us to be more onerous (and certainly less practicable and unclear, for example in a high rise building).

H L Miller & Co (38)

If the name is required to be displayed then obviously it should be REASONABLY legible but for the reason given in reply to 1 above this should not always be required.

The National Association of Pension Funds (40)

Yes.

Institute of Credit Management (41)

The Institute supports this proposal.

Wales Council for Voluntary Action (42)

Yes – companies should display their name "in a prominent position so that it may easily be read".

C Perkin (43)

I support the view that a company's name should be displayed at its registered office,

any service address and at every place where it carries on business. Furthermore, the formula used in section 4(1)(b) of the Business Names Act 1985 – the name must be displayed ‘in a prominent position so that it can be easily read’ – should be adopted.

Exceptions to this requirement would be understandable if the obligation was unduly onerous or costly but this is not the case. Moreover, one wonders why a company that was pursuing its business lawfully would object to publicising its name on its premises. It is suggested that ‘place where it carries on business’ is preferable to ‘premises to which customers and suppliers have access’ since the latter excludes other persons who may have an equally legitimate reason for visiting the company’s premises.

The Abbey National Group (45)

We agree there should be a clear indication of the full names of (1) the corporate entities trading and (2) the registered office/service address of such entities.

These should be displayed within all places of business to which the public have access. It is important that the notices can be easily read by them.

A Kaye (46)

Yes. I agree but with the caveat that if a name be displayed inside then it should be at least in the vestibule to the entrance to the building as well as outside the actual entrance to its premises if different (e.g. if it is in a shared building).

Reed Executive plc (48)

We agree with this in principle, however, clarification is required where a company occupies shared office accommodation. Would this requirement entail displaying its name outside so it can be seen at street level, or will it suffice to display its name in the reception area which although easily legible upon entry onto the premises, may not be so from the street? Subject to this clarification, we also agree that the wording contained in the Business Names Act (i.e. “in a prominent position so that it may easily be read”) is preferable to that contained in the Companies Act (ie. “in a conspicuous position”).

The Law Society of Scotland (49)

Yes, but what would the sanction be and how will it be enforced? The Committee also believes that "prominent" and "easily read" must be interpreted in a sensible and practical way.

The Institute of Chartered Accountants of Scotland (50)

It is unclear what "a prominent position" is. For example, is the doorpost of a basement office regarded as prominent? If not, would a large sign at street level be required? This could cause problems in certain locations such as Edinburgh where large signs showing company names are banned. However we agree that company names should be placed where "they can be easily read by customers and others" and that this phrase might be used in the legislation.

Lloyds TSB Group plc (51)

Yes.

The Law Society (52)

See our answer to Question 1 above in relation to professional firms. In other cases, any new legislation should make it clear as to whether the requirement applies at all times or only during normal business hours (so that, for example, a company which has its registered office in a multiple-occupancy building which is not open to the public out of normal business hours would satisfy the legislation by displaying its name within the part of its own office suite which is open to visitors during normal business hours and would not have to display it so as to be visible from outside the building). Again, this is subject to any views which The Post Office may have on the practical implications of the name not being displayed as hitherto.

Jafco Tools Ltd (54)

I agree that the company's name should be in a prominent position so that it can easily be read by any member of the public.

Danziger plc (56)

A stroll through any commercial area in Britain will indicate that the requirement to display the company's name on the outside of premises is widely ignored. Possible reasons are snobbishness about displaying one's name to the public, opposition by landlords to the fixing of names to the outside of buildings because of damage to cladding or external surfaces, and unwillingness to "deface" older buildings with signs of commercialism.

Our view is that every company exists to make profits, profits result from marketing to customers, and marketing is effected by displaying the company name as prominently as possible. If for whatever reason companies fail to display their names, this should not be a matter for the Companies Act. We think that the requirement to display the name on premises should be left up to market forces, and should not be a legal requirement in the Companies Act. This would seem merely to confirm what appears in any case to be occurring in practice.

International Underwriting Association (58)

We agree with the proposal that the company's name should be required to be in a prominent position so that it can be easily read by any member of the public.

Consumer Credit Trade Association (59)

CCTA agree that companies should be required to display their company name in a "prominent position" (as required by the Business Names Act) at its registered office and also any address for services of or inspection of documents. CCTA supports the principals expressed at paragraph 18 of the Consultation Document, namely that the coverage and detail of controls under the Companies Act and Business Names Act need to be revised to ensure that they are consistent and that there are no anomalies.

J Jasper (60)

Yes, sign should be in prominent position.

J M Swallow (61)

No except at their Trading premises.

The Association of Chartered Certified Accountants (62)

Yes.

M Hardy (63)

Yes. In the case of physical buildings, if the disclosure is not affixed to the outside of the premises, the disclosure must be capable of being easily read from the outside at all times by any person.

Association of International Accountants (64)

Yes.

Office of Fair Trading (66)

Yes. A consumer must have ready access as to where to complain or seek redress.

If a name is to be displayed then it should be displayed clearly, where both consumers and other businesses can easily read it. Otherwise the requirement to display a company name is undermined. Also, if the company's business premises are located within a large high-rise building, then the name should be displayed clearly near the main entrance to the building and not simply on the floor where the company is located.

South East Trading Standards Authorities (66)

Yes.

BBC (69)

Yes.

The Committee of Scottish Clearing Bankers (69)

Yes.

Question 3: Should a company trading under a name that is not its corporate name be required to display its service address alongside its corporate name? If so, at which premises and in which documents?

Respondent (doc number) Comments
<p>F A G Kay (1)</p> <p>No. I have dealt with this in detail in my answer to Question 1.</p> <p>I see no need for an incorporated company to give a service address if it states on letter heads etc that it is the proprietor of the business using the trading name and gives its country of registration, registration number and address of its registered office.</p>
<p>Buddenbrook Consultancy (2)</p> <p>An address for service should be required to be shown at the same premises as shown in the answer to Q1 and in all documents interfacing with third parties.</p>
<p>B Strand (3)</p> <p>Yes (see general comment above) in ALL documents and AT all sites/branches.</p>
<p>R G Curtis (4)</p> <p>Status quo should be maintained – I see no reason to reduce this. A company elects for commercial reasons to use a trading name so this requirement is not unduly onerous.</p>
<p>York Place Company Services Ltd (5)</p> <p>Yes, at all addresses as response to Q1 above [all addresses belonging to the company either trading, registered office, service or inspection addresses] and all documents as response to Q6 below [All documents used by company to enter into contracts or give advice].</p>
<p>MSP Secretaries Ltd (6)</p> <p>I have no reason to think that a service address needs to be displayed alongside its corporate name if the latter is different from its trading name.</p>
<p>Bonnier plc (7)</p> <p>Where a company trades under a name that is not its corporate name, it is sufficient for the company to display also its true corporate name, but no more. There is no benefit here in requiring a service address to be displayed.</p>
<p>P Dunbavin (8)</p> <p>YES. Do not create a legal ‘loophole’, otherwise all fraudulent activity will take place under trading names. Again the service address must be at <i>all premises</i> and in <i>all documents</i> otherwise all fraud will simply migrate to utilise the exception and your entire efforts to improve the companies act will produce no reduction in fraud!</p>
<p>William Davis Ltd (9)</p> <p>Premises that constitute places of business should display both trading name and corporate name with its head office address if the head office is the place at which the directors are resident. Insofar as documents are concerned, the information should appear on all letterheads, invoices or any document which forms part of, or may be preliminary to, the joining of third parties in contracts.</p>
<p>D L Lupton (10)</p>

<p>Yes. Registered Office/permanent address (if different) and in letterheads, orders, invoices, statements and compliment slips.</p>
<p>K S V Thorogood (11) Yes. Registered office(s), particularly if this is located outside the U.K. Construction sites, Exhibition and trade stand venues. Documents on which data to appear: Invoices, Orders, Advertisements.</p>
<p>William Sturges & Co (12) Where a trade is being conducted under a name that is not the name of the proprietor, the proper name of the proprietor and an address for service should be displayed in conjunction with the trade name. This should be the rule for all premises and all documents or electronic transmissions.</p>
<p>R J Steer (13) Yes. (3a) At its trading offices and any account/trading documents. No subsidiary should hide its involvement with the main company.</p>
<p>G L B Pitt OBE (14) (a) Yes. (b) As regards premises, same as 1 (c) above. As regards documents, no views.</p>
<p>P Lipscombe (15) Yes, at any service address and on all documents that carry the corporate name.</p>
<p>G Murray (17) At premises as for Q1 – e.g. ABC Co. Ltd trading as XYZ business. For documents as for Q6.</p>
<p>J Brady (18) No, it is not necessary to show the address.</p>
<p>Findlay Durham & Brodie Ltd (20) Yes, letters and orders.</p>
<p>J Bingley (21) A company trading under another name should display either its correct name and number or its registered address at every trading site. The key requirement is to enable others to identify with whom they are doing business.</p>
<p>Industry Canada (22) The <i>CBCA</i>, allows a corporation to carry on business or identify itself by a name other than its corporate name if that other name does not contain a legal element such as “limited” or “Inc.” There is no requirement under the Act for the display of a service address at a place of business. The only requirement is that a corporation shall have a registered office address, and this address be recorded in the articles of the corporation, as amended from time to time, and in the public records maintained by the Corporations Directorate.</p>
<p>Macmillan Publishers Ltd (23) I think a company should be required to display either its service address or its</p>

registered office alongside its corporate name. It is essential for any one dealing with the company to know what company they are actually dealing with and where they can serve documents on that company.

R Flavell (25)

Yes- at all business premises per answer 1 above, and on those documents specified under section 349 companies Act 1985.

KPMG (26)

Yes. As discussed in our response to question 1, we consider that a service address should be displayed alongside the corporate name at all business addresses to which customers, suppliers or the public have access.

We do not see a need to alter the existing Companies Act 1985 requirements for the disclosure of corporate details in documents. However, if there was evidence that customers, suppliers or the public were being inadequately protected, for example where contractual arrangements were being effected with documents not falling within the definition of a business letter or order form, we would support the introduction of a requirement to include a service address in such documents.

H W Fisher & Co (27)

It is clearly appropriate if a limited company is using a trading name for that name to be displayed at its main trading premises. As the information regarding a service address for legal documents would be the registered office and this is already disclosed on the formal letterhead of the company, there would appear to be no further requirement to display this service address alongside its corporate name.

Experian Ltd (29)

We agree strongly that trading styles/names should also be displayed at all premises and via the web.

H W Higginson (30)

A company trading under a name that is not its corporate name should not be required to display its service address alongside its corporate name. It is required to state the address of its registered office and documents may be served there.

The Institute of Chartered Accountants in England & Wales (31)

No.

The Institute of Chartered Secretaries and Administrators (32)

A company trading under another name should display its trading name, its corporate name and registration number and its registered/service address at every trading site. The key requirement is to enable others to identify with whom they are doing business.

London Society of Chartered Accountants (35)

We consider that there should be a requirement for both the corporate and trading names to always be displayed together. Consequently, it would not be necessary to display the service address as this can be traced at Companies House by having the details of the names.

Manches (36)

The requirement for the company's corporate name to be displayed effectively puts the company in the same position as any other company. Therefore, there is no reason why they should also have to display their service address, when other companies do not.

We would suggest that a requirement similar to the one discussed above (that the corporate name is displayed on an easily readable sign in a prominent position) should be added, and possibly a requirement for specific wording, to make the relationship between the two names clear.

H L Miller & Co (38)

A Company's service address should not be required to be displayed as it is a matter of public record.

National Association of Pension Funds (40)

The NAPF supports full transparency and agrees that it is appropriate a company trading under a name that is not its corporate name should be required to display service address alongside its corporate name. This should also be included in business letters, pro forma order forms and in other means of communication including electronic ones. The NAPF also suggests that companies should be required to show on all business letterheads, orders etc. its registered number. This number is unique to the company and will enable identification of that company from this data alone.

Institute of Credit Management (41)

The Institute agrees that a company trading under a name that is not its corporate name should be required to display its service address alongside its corporate name. The Institute considers that the corporate name should be displayed at all premises where business is carried out as stated in question 1, and be displayed as required under existing rules relating to documentation. The use of "limited" or other Companies Act suffixes should not be permitted with names that are not the company's registered name (see also question 7 below.)

Wales Council for Voluntary Action (42)

Yes - a company trading under a name that is not its corporate name should be required to display its service address alongside its corporate name. There are several instances in the voluntary sector of organisations using a name which has become very well known, but which is not the name by which it is formally registered. This does lead to confusion and a lack of clarity; in the voluntary sector we wish to promote transparency and proper accountability.

C Perkin (43)

I support the statutory position laid down in section 4 of the Business Names Act 1985 with the exception of 'service address' which, given that there is likely to be an address in one of the documents listed in subs. (1)(a) and the fact that subs. (1)(b) assumes the existence of a business location which will be known to customers and suppliers, is unnecessary.

The Abbey National Group (45)

We agree that the general principle to be observed is one of clearly understanding whom you are trading with. In respect of notices at business premises, we would suggest our reply to question 2 above. A Notice similar to that under the Business Names Act could be used.

Similarly for business correspondence, we believe the same principle should apply; the corporate name and registered office/service address must be shown as well as the trading name.

Your proposal of placing corporate names alongside trading names seems to suggest a need for 'linkage' between the names. Again, as in the Business Names Act, business correspondence could make that linkage clear to all those dealing with the entity through appropriate descriptive words. For example, "Shades" is the trading name of London

Lighting plc.
<p>A Kaye (46) It should be sufficient to just display the corporate name. However if the service address is not the registered office, then this fact should be stated on all correspondence (written or electronic).</p>
<p>Reed Executive plc (48) We consider that whilst a company may elect to have a service address, it is not necessary to make this a statutory requirement. The current legislation makes display of a service address an extra requirement on a company using a trading name, and we see no reason for this distinction. Provided a company using a trading name remains under an obligation to display its corporate name alongside it, then this will put them under the same obligations as companies that trade under their corporate names.</p>
<p>The Law Society of Scotland (49) Yes. However, the Committee considers the current requirements under the Business Names Act 1985 to be adequate. The Committee believes that the corporate name and service address should be displayed at all premises and in all documents as required by the Business Names Act 1985.</p>
<p>The Institute of Chartered Accountants of Scotland (50) We do not agree that a company should be required to give its service address alongside its corporate name.</p>
<p>Lloyds TSB PLC (51) No.</p>
<p>The Law Society (52) No. The disclosure of the corporate name is sufficient.</p>
<p>Jafco Tools Ltd (54) I support the view that a company's service address should be displayed at places of business, and in letterheads, and all promotional literature.</p>
<p>Danziger plc (56) It appears from observation that it is common for companies to display a trade name or logo at their premises, in place of the full registered company name. We think that a company trading under a trade name which is not the same as its registered name should be required to disclose its registered name in all documents that bear a name and its contact details, but that it should not be required to do this at its premises, and that the display of a trade name or logo at company premises should be sufficient (if it is to be a requirement of the Companies Act that some name should be displayed at the premises).</p>
<p>International Underwriting Association (58) We agree that is not necessary for the company to display its service address in addition to their name in circumstances where the company is trading under a name other than its corporate name. The company name, in addition to full details at Companies House should be sufficient to give customers and/or the public full company details if required. Requiring the company to give its service address would, we submit, be of limited value.</p>
<p>Consumer Credit Trade Association (59) CCTA agree that companies should be required to display their company name in a "prominent position" (as required by the Business Names Act) at its registered office and also any address for services of or inspection of documents. CCTA supports the principals expressed at paragraph 18 of the Consultation Document, namely that the coverage and detail of controls under the Companies Act and Business Names Act need to be revised to ensure that they are consistent and that there are no anomalies.</p>

The Association of Chartered Certified Accountants (62)

We do not regard this as necessary.

M Hardy (63)

Yes. All places from which the business is carried on, whether real or virtual.

Any document, real or virtual, in which the business name is mentioned.

Association of International Accountants (64)

- (i) Yes – in the interest of accessibility for enquirers and complainants.
- (ii) At all major premises and on letters and financial documents, brochures and equivalent in the public domain.

Office of Fair Trading (66)

Any company trading under a name that is not its corporate name should definitely be required to display its service address alongside its corporate name. Both the corporate name and trading name(s) must be prominent. Anyone wishing to complain about a subsidiary must be able to see who the parent company is, and where they are based.

In order that consumers have clear information about where they should go for redress, the service address should be displayed at HQ premises and on all documentation and all directories.

South East Trading Standards Authorities (67)

3a. Yes.

3b. Those that customers and suppliers have access to. In business documents as defined in Business Names Act 1985 s4(1)(a).

BBC (68)

No.

The Committee of Scottish Clearing Bankers (69)

No, provided the company requires to display its corporate name as well as its trading name then information can be obtained from Companies House as to its registered office etc.

Question 4: Do you consider that the requirement for the company to disclose its name should apply to any advertisement that is a direct attempt to persuade someone immediately on reading the advertisement to enter into a contract?

Respondent (doc number)	Comments
F A G Kay (1)	I think disclosure should apply to letterheads, invoices, brochures and all forms of communication of whatever nature, be it by electronic or more traditional methods.
Buddenbrook Consultancy (2)	The full name and service address should be shown in all advertisements where there is an invitation to contract.
B Strand (3)	Yes, all forms of advert including tv advertising and so called marketing surveys in the street and on the phone.
R G Curtis (4)	In principle yes, but in practice this would be very complex. There is, however, a distinction that could be drawn. If an advert encourages entry into a contract via a telephone contact center, or any other means where an individual does not sign a contract, then the advert should state the principals name and contact. If the contract is a written one then these details can appear on contact documents in a prominent position before an individual is invited to sign the contract.
York Place Company Services Ltd (5)	Yes.
MPS Secretaries Ltd (6)	As 3 above.
Bonnier plc (7)	The distinction between an advert designed to raise awareness or to encourage a sale is impossible to define but in any event there is no practical problem here requiring a solution. If a contract is entered into with a company which does not disclose its correct name, it is doubtful whether it is properly formed at all and, if it is, it may be voidable. There are a range of responses within contract law to this sort of question and it is not the province of Company Law nor helpful to disturb the existing assumptions or solutions found elsewhere.
P Dunbavin (8)	YES. Also the company number and contact address. This is <u>very important</u> for <i>Unfair Contract Terms</i> legislation. Some companies display terms and conditions on offers but withhold their address so that the customer cannot write to them to object to certain terms (but usually there is a telephone number to make contact, or the physical presence of a salesman). The contract is then enforced as a contract of adhesion; and if the customer subsequently challenges it, then the company will claim that the terms were <i>negotiated</i> during the telephone call or with the salesman. The negotiation undermines the Unfair Contract Terms provision. It is therefore vital that there be an address for written communication prior to contract.

William Davis Ltd (9)

A distinction needs to be made between general advertising and target advertising inducing third parties to enter contracts. In the latter case, disclosure is required.

D L Lupton (10)

Yes.

K S V Thorogood (11)

Regarded by this correspondent as an imperative of the highest priority.

William Sturges & Co (12)

The requirement for all persons should be that their name and address for service is universal in relation to any material published.

R J Steer (13)

Yes.

G L B Pitt OBE (14)

Yes. However, a distinction between raising awareness and a direct attempt is subtle and may result in entrapment of simple souls. The advertiser should reveal itself in all cases. Why not, if it is conferring benefits or, more likely, hopes ultimately to profit itself? Is not transparency now all the rage?

P Lipscombe (15)

Yes.

G Murray (17)

In general yes, the full name should always be shown in advertisements. There may need to be exceptions such as advertisements for job vacancies where the name may be omitted in favour of an agent's name. But if the company chooses to declare its identity anywhere in the advertisement, it should show the full name, including its trading name if applicable, as in Q3.

J Brady (18)

Yes.

Findlay Durham & Brodie Ltd (20)

Yes.

J Bingley (21)

Any communication to which a simple response could create a trading contract should enable identification of the entity with which they are entering into a contract.

Macmillan Publishers Ltd (23)

Yes, I agree with this statement. However, I think certain things go completely over the top. For example, some of the FSA requirements for companies advertising certain products on television are completely absurd although probably out of the scope of your review. I do not feel most advertisements for consumer goods should be required to have company details for marketing purposes. These details only become relevant on purchase. However, those adverts which are intended, as you say, to persuade someone to enter into a contract should include full company details.

R Flavell (25)

Yes.

KPMG (26)

Yes. However, as noted in the consultation document, it may not be easy to define the distinction between advertisements that are a direct attempt to persuade someone to enter into a contract and those which are not. We therefore consider that the requirement for the company to disclose its corporate name should apply to all advertisements. Only this approach will afford customers, suppliers and the public (for example, potential employees) adequate protection in making them aware, in all cases, of with whom they are dealing.

H W Fisher & Co (27)

It would be an appropriate extension of the law to ensure that any third party, whether an individual or a corporate entity, about to enter into a contractual arrangement with the company should be fully aware of its registered name and therefore any advertisement that is a direct invitation to treat should include the full corporate name.

Experian Ltd (29)

We agree that the company name should be apparent on “intermediate” and “full” adverts (taking the Consumer Credit Act type definitions).

H W Higginson (30)

The requirement for a company to disclose its name should not apply to any advertisement. If, as will usually be the case, the purpose of the advertisement is to encourage persons seeing it to do business with the company, the company will, in its own interests include its name. In any other case I see no point in disclosure.

The Institute of Chartered Accountants in England & Wales (31)

Yes, although defining such advertisements may be challenging.

The Institute of Chartered Secretaries and Administrators (32)

Certainly any communication to which a simple response could create a contract or commitment should enable identification of the entity with whom the contract/commitment will be made. We are also inclined to agree that all advertisements should clearly identify the company, we understand this is sometimes a specific problem in the Financial Services industry.

London Society of Chartered Accountants (35)

Yes.

Manches (36)

We believe it would be very difficult to define what constitutes a “direct attempt” to persuade someone “immediately” to enter into a contract. How indirect would an advertisement have to be to be exempt?

Companies, by their very nature, are advertising to attract new trade. Any artificial distinctions placed within this arena will, we believe, only cause confusion and unnecessary dissent. It would in our opinion be safest to require the company’s name on all advertisements.

H L Miller & Co (38)

In any advertisement the name of the advertiser should be clear.

National Association of Pension Funds (40)

Yes. However, it is appropriate to recognise a clear distinction between general advertising and direct points of sale advertising.

Institute of Credit Management (41)

The Institute agree with this requirement.

Wales Council for Voluntary Action (42)

Yes – anyone reading an advertisement that attempts to persuade them to enter into a contract should know the name of the company involved.

C Perkin (43)

It is suggested that companies should not be required to include their names in advertisements. There is little or no comparison between the documents listed in section 349 and advertising material. The former emanate directly from the company (and not an intermediary such as an advertising agency or public relations firm). They contain factual information. Some are of a transactional character while others are financial. Thus, greater reliance is likely to be placed upon them as authoritative sources of information about the company, making them appropriate for the statutory duty of disclosure of the corporate name. However, the same cannot be said of many advertisements, which are regarded differently and, generally, focus attention on the company's product(s) or service(s), which is their primary purpose.

The Abbey National Group (45)

We foresee difficulties in defining what is a "direct attempt to persuade someone immediately on reading the advertisement to enter into a contract". An example that could fall into that category is a 'price ticket' in a store or displayed on motor vehicle; we do not consider that these require full disclosure of information.

However, any advertising that promotes a product should include the company name and registered (or service) address of the company advertising. We consider a distinction needs to be drawn between 'product advertisements' and 'name awareness' advertisements.

A Kaye (46)

Yes, it should be made quite clear in any advertisement as to the entity making the offer.

Reed Executive plc (48)

We consider that virtually all advertisements can be classified as direct attempts to persuade people to enter into contracts, and therefore such a requirement would be impracticable and unduly onerous. It would be extremely difficult to define advertisements which are purely for the purpose of raising awareness, and any such definition would tend to result in such a category being very limited. We consider that the protection given by the requirements to display a company's name at premises, business letters etc is sufficient.

The Law Society of Scotland (49)

Yes.

The Institute of Chartered Accountants of Scotland (50)

We agree that a company should give its name on an advertisement which is a direct attempt to persuade someone immediately to enter into a contract. We have some concerns that if this is now going to cover electronic data then a website to say book airline tickets would have to have lots of small print, although it should provide the

corporate name.
Lloyds TSB plc (51) Yes.
The Law Society (52) No, for the reasons given in the Paper (namely the uncertainties of definition which this would involve). But the contract itself (if in writing) should state the corporate name of the company.
Jafco Tools Ltd (54) I concede that the requirements for a company to include its name on a wide variety of documents may be unduly burdensome, but I also feel that it may be difficult to define exceptions. I certainly support the view that electronic communications should be within this scope.
Danziger plc (56) Yes.
International Underwriting Association (58) We support the view that disclosure should apply to advertisements directly seeking to persuade a party to enter into a contract. This would serve to increase openness between company and the potential client. We agree that it would be undesirable to place a similar requirement in relation to advertisements raising awareness, though we accept that a flexible definition may be required to distinguish such cases.
Consumer Credit Trade Association (59) The Consumer Credit (Advertising) Regulations 1989 (“Advertising Regulations”) divide credit and hire advertisements into three categories: simple, intermediate and full. These Regulations prescribe the minimum and maximum amount of information that may be included in any particular type of advertisement. At present all types ranging from the simple, such as a business card to the full for example a full-page credit advert inviting applications, are required to include details of the businesses full name. By “name” the Regulations are referring to the name as stated on the businesses consumer credit licence, which will be the company’s full name as opposed to a trading name. The requirements of the Advertising Regulations are not limited to publications that directly attempt to persuade someone to enter into a contract but apply to all adverts. Accordingly CCTA recommends the adoption of similar rules as contained within the Advertising Regulations. With regard to advertisements, consideration needs to be given to new methods of direct marketing, such as mobile phone text messages, and the way in which information can be displayed in an e-commerce environment. Consideration should also be given to the manner in which information can be included in more traditional forms of advertising such as via television, radio or billboards
J Jasper (60) Yes.
The Association of Chartered Certified Accountants (62) Any explicit offer document which is published by a company should certainly be covered by the notification rules. If this is not satisfactorily provided for under the current s349, an additional clause alluding to such communications should be added. As regards the introduction of a disclosure rule on advertisements generally, we do not think that this would be necessary.
M Hardy (63) Yes, and on all other advertisements of any kind.
Association of International Accountants (64)

Yes.

Office of Fair Trading (66)

Ideally, a company should be required to disclose its name in all advertisements, thus making it clear to any potential customer the identity of the business who is providing the good or service advertised. It is important that the consumer is fully aware of who will be ultimately responsible for the contract that they may enter into as a result of responding to the advertisement. Even if the aim of an advertisement is only to raise awareness, we believe that the underlying intent of the advertiser is likely to be to promote the sale of some good or service, and thus should have little reason to want to conceal their identity.

Also, we feel that it would not be easy to distinguish between adverts which seek to raise awareness and those where “there is a direct attempt to persuade someone to enter into a contract”. Difficulties in defining the distinction between the two types of advertising could lead to problems in enforcing the requirements of the Act.

The Office of Fair Trading has issued guidelines on non-status lending which state that, for secured lending to non-status borrowers, all adverts should indicate the name of the lender or broker who has placed it, together with the name of any parent company also active in the market. Also, the position for credit advertisements is that the name of the trader is required information in an intermediate or full category advert, but not in a simple advert – the trader can include its name but this is not a requirement.

We would point out that the ASA does not deal with all printed advertising. They have no responsibility for point of sale material or for Internet advertising.

South East Trading Standards Authorities (67)

Yes.

BBC (68)

No. We think such a requirement would be difficult to apply in practice (see paragraph 8).

The Committee of Scottish Clearing Bankers (69)

Yes.

Question 5: Do you agree that the Companies Act should make clear that the requirements which apply to physical documents apply equally to equivalent electronic communications? If so can such communications be more closely defined?

Respondent (doc number) Comments
<p>F A G Kay (1)</p> <p>I agree.</p> <p>I do not think this is a situation requiring more precise definition – what is required here is the broad brush approach. I suggest the Companies Act should make it clear that the requirements which apply to physical documents apply equally to electronic communications of whatever nature, and to any communications transmitted in the future by any means not yet devised. (One shelf company purveyor used to have a clause in its memorandum or articles covering “means not yet devised” - it may have been to do with meetings of directors by telephone etc - and perhaps London Law could help on this.)</p>
<p>Buddenbrook Consultancy (2)</p> <p>I understood that the Registrar had taken legal advice which was that the existing requirements DO already apply to electronic communications (fax, e-mail and websites where there is an invitation to trade) although very few companies seem to have realised this (although the number is growing). The law should be clarified to show that it does apply to these categories of communications.</p>
<p>B Strand (3)</p> <p>Yes including those on the internet.</p>
<p>R G Curtis (4)</p> <p>Yes. Any document that would require this information in the physical form should have it in electronic form. There could be an exception for documents accessed via a web-address if it is accessed via a home page or an interim page which clearly identifies the principal etc. I suggest documents promoted as being accessible from a web address which enters a document directly should include this information.</p>
<p>York Place Company Services Ltd (5)</p> <p>We agree that electronic transmissions should be subject to the same ruling as hard copy correspondence.</p>
<p>MSP Secretaries Ltd (6)</p> <p>There is a very real need to make it clear that e-mail, faxes and any other forms of communication using words should have the same requirements as their equivalent written counterparts. Any two commercial lawyers when asked give different answers about the current law. With trading taking place electronically it is vital that one is clear concerning with whom one is dealing.</p>
<p>Bonnier plc (7)</p> <p>The internet and electronic commerce have brought a new environment for documents, where it is no longer easy to agree the meaning of “document”. Documents may appear momentarily on-screen and disappear, never to exist in material form, so there is <u>no evidence of the document</u> created.</p>

Documents may consist of numerous data components from various sources drawn together by the user, making it impossible to decide whether the result is a document of one or another or indeed any company which therefore gave rise to obligations upon any of them under the legislation

Where a document is compiled by the user from resource made available by the company, the company may yet never become aware of its existence. Similarly, where information is passed through portals and re-branded or co-branded, or is over-written or overlaid by other party advertisers or associated with other party material, by screen prompts, tool tips or hyperlinks then the company has lost control of "its" document, indeed the concept of a "document" has lost much of its worth.

Accordingly, any extension into this medium of the requirement to publish names and addresses can only sensibly be aimed at a document or set of text(s) or images under the direct control of the company; that is to say, the content and the site-specific functionalities supporting the creation, publication or use of the content lie entirely or almost entirely under the company's ownership and control. This light-handed approach to this new medium should describe a company's "own" web-site(s) and direct output (e.g. an insurance or mortgage quotation from a finance company's own web-site could fall within the legislation BUT an announcement or hyperlink posted on a portal or other service aggregator's site should be considered beyond the company's control and exempt. It is unavoidable that company's will co-brand their announcements and share documents, products or sites, perhaps for moments at a time in ways that Company Law simply can not seek to describe or control. Whether the company has control over the presentation or wording of a document hosted and even drafted elsewhere will depend on individual circumstances.

Of course the definition suggested above, when looked at closely, may appear somewhat circular, because the obligation to publish the correct name will be expressed as applying, essentially, to sites/texts/images which are branded completely or almost completely in the company's own name – but there is enough in the concept to permit us to say that, in such a case, the company's name should be easily available in its correct form from the site.

It should be borne in mind here that companies whose overseas web-sites are available to make purchases from here are effectively trading in the UK. Any legislation which inhibits what companies wish to do in this medium places them at a disadvantage against overseas competition or ultimately tempts our sites to move. Great caution is needed to avoid over-regulating any aspect of business on the internet. Branding and user-friendly appearance are huge drivers of business decisions.

There is in addition an important further hurdle. The distinction between Trading Documents v. Published Works has become blurred. The internet represents a fusion, among other themes, of "advertising products", "posting letters" and "making contracts" but also "publishing books /images/ music/ speech/data etc". Although Section 349 extends the requirement to "official publications", this was presumably aimed at the sort of product brochures and price lists which all companies produce rather than the books, magazines and records of commercial publishers. A commercial publication traditionally has been seen as a separate matter - something having its own character, at a distance from the other documents described in the Act - as the province of copyright law, it being a matter for the owner of the rights and the publisher to negotiate how (or even whether) to attribute the rights. Much internet content, often hybrid compilations, is subject to copyright or database right over which the various parties contributing data or platforms from which the information is sold will have negotiated issues of branding,

copyright attribution, use of trade marks, layout and detailed designs for the appearance and “look and feel” of screen-shots and output, terms and conditions of access by users and so on. It is a sophisticated industry and any legislation which takes too crude or general an approach to publishing over the internet, without recognising and thinking through each distinct activity, may damage an important aspect of business growth on this medium. This strengthens the case for explicitly addressing but carefully limiting the application of S349 in the electronic environment, for fear of impinging too greatly on developments in business practice which need to be nurtured.

There are many more grey areas on the horizon. What is the logical distinction between a company’s representative leaving a spoken message on one’s mobile telephone and leaving a written message on one’s WAP phone or PDA? But the latter presumably falls within the target range of the Companies Act. But if a messaging service provider leaves a written record of a spoken communication from the company, perhaps using speech recognition software or triggered responses activated by pushing buttons on a phone, perhaps the message again has fallen outside the purview of the Companies Act. Increasingly, employees occasionally work from home, they generate and send written messages from home on their home fax or e-mail. We have become less formal. If these technologies and working practices are to be subject to rigorous restraints and penalties it can only be resented by all concerned, it will inhibit the way people wish to work and do business, it will damage the economy.

P Dunbavin (8)

YES. A document is a document regardless of media and if an exception is created then fraud will migrate to use that exception. The term ‘all documents and communications’ includes electronic and physical as long as it is not further qualified.

William Davis Ltd (9)

I agree that electronic communications should carry the same obligations as physical documents, but I am not qualified to suggest a definition.

D L Lupton (10)

Yes. Not sure.

K S V Thorogood (11)

Yes, they can be defined by consideration of the means of communication - which includes within the term 'electronic' all media employing digital and analogue transmissions whether by hard wiring or other electromagnetic radiation transference. The Institution of Electrical Engineers' Public Affairs Group can provide guidance here as to which of their Professional Groups is able to furnish execution.

William Sturges & Co (12)

The requirement should apply to all business documents or electronic communications.

R J Steer (13)

5. Yes.

5a. Electronic communications should be made clear and the onus must be on the company to do so. I would agree that the act should apply regardless of the method of delivery.

G L B Pitt OBE (14)

(a) Yes.

(b) Not knowledgeable enough to comment in detail but power should be taken to extend the provision by Statutory Instrument (perhaps subject to affirmative resolution) in order to cover new technological developments.

P Lipscombe (15)

5a Yes.

5b Yes

G Murray (17)

Yes, internet communications should apply. Perhaps a reference to the 'Internet or any other electronic means' would be sufficient but I expect a lawyer will be able to extend this to a few paragraphs!

J Brady (18)

Yes, the emphasis should be on "equivalent". The definition of "communication" could be "which includes ... etc".

Findlay Durham & Brodie Ltd (20)

We believe it should do but do not feel qualified to say how such communications should be more closely defined.

J Bingley (21)

Yes. No suggestions on definition apart from equivalent.

Macmillan Publishers Ltd (23)

This poses companies with a number of practical difficulties. For example, many larger companies may have more than one trading entity but their electronic communications may be run from just one file server. You therefore have to include the details of each and every company that could possibly be involved in the Email as you cannot trust users to include the correct details. This would seem to me to be as confusing as including no details whatsoever.

I wonder if it is possible to say that any Email that is intended by the sender to form the basis of a contract must include certain company details. This would then leave it open for companies to include on the bottom of their Emails a statement that states that there is no intention for any Emails to form the basis of a contract. This will perhaps clarify matters for everybody concerned.

As to web sites, I believe that every home page should contain the company details including registered office and company number of every company that is covered by the site. It is practically impossible with many sites to identify what company you are dealing with and I feel that if you are able to order any goods from the site this information should be available. Details of the company should also be included on any electronic order form.

S Carmichael (24)

I definitely agree that the requirements relating to company names and related matters should apply to electronic communications.

R Flavell (25)

Yes.

KPMG (26)

Yes. The form of documents, i.e. physical or electronic, does not reduce the importance of customers, suppliers and the public being made aware of with whom they are dealing

and other corporate details, as appropriate.

It would appear sensible that the requirements apply to electronic communications that have the same legal nature and effect as those physical documents included in section 349 Companies Act 1985. However, if there was evidence that customers, suppliers or the public were being inadequately protected, for example where contractual arrangements were being effected by documents not falling within this section, we would support the extension of the requirements to include such documents.

H W Fisher & Co (27)

The Companies Act requirements applying to physical documents should also apply to their electronic equivalents. The definition of equivalent electronic communications is difficult to define and even more difficult to "police". However wherever the company is communicating directly with third parties and effectively utilising its limited liability status, these requirements should be applied.

Experian ltd (29)

We agree strongly on the need to apply the law to electronic trading – given the cost to business, we feel that at least a static page carrying relevant particulars could be a minimum (but cheap) requirement.

H W Higginson (30)

The Companies Act should provide that requirements which apply to physical documents apply also to electronic communications where that is appropriate. I cannot suggest how they could be defined.

The Institute of Chartered Accountants in England & Wales (31)

Yes. The definition of 'electronic communication' Act 2000 might be used

The Institute of Chartered Secretaries and Administrators (32)

Yes. For the moment it would be fairly simple to cover communications sent by fax, e-mail, text messages or posted on a web site. Facility should be allowed for the Secretary of State, or perhaps the Companies Commission, to add to the list quickly and easily should it become necessary. The use of telephone is a bit more difficult but any call that seeks to solicit business or make a commitment or undertaking should clearly identify the organisation that it originates from.

Also, in covering email:

We were quite surprised that, whilst the document referred to electronic communications it did not mention any need to disclose the company's details on its web-site. Rightly or wrongly, we did not interpret "electronic communications" as including this medium.

We are concerned to have recently come across web-sites that give no indication who is behind them. As we mentioned in a previous submission to the CLR we believe every web-site should identify the country, and therefore the legal system, in which it originates. As far as Corporate web-sites are concerned they should also be required to clearly show the Trading Name of the organisation and if different the Corporate Name, the registration number, place of registration and the registered office address. A web-site is as much a means of communication as a piece of letterhead or Order form, especially if on line trading is involved.

London Society of Chartered Accountants (35)

Yes. Electronic communications and documents should have the same meanings as provided in s15 of the Electronic Communications Act 2000. The Companies Act requirement should apply to any equivalent that has the same purported functionality as the physical document to which the present legislation applies. The necessity to keep updating the legislation for further technological advances should be avoided by giving the definition enough breadth.

Manches (36)

We agree that the Companies Act should clearly state that the same requirements apply to electronic communications.

The Companies Act Electronic Communications Order 2000 gives companies increasing powers to use electronic mediums. The best practice statements accompanying these contain many safeguards to ensure that such mediums are reliable and clearly state the intention of the communication. In light of this, it surely makes sense to clearly incorporate the relatively basic requirements that already exist for physical documents.

We believe the definition of electronic communications should be adopted from the Companies Act Electronic Communications Order 2000. To use a different definition would only cause potential confusion in an area which has only just begun to be regulated with regard to companies. Such electronic mediums are going to be more and more important to businesses, and it is vital their regulation is tackled in a cohesive manner.

The pace of development and change in the world of electronic communications also makes it necessary to define them in a broad manner, so that constant amendment is not required to prevent new mediums "slipping through the net". Once again, these requirements do not seem particularly onerous, simply the basic information most companies would give as a matter of course.

H L Miller & Co (38)

Disclosure rules cannot apply practically to electronic communication as they can emanate from anywhere in the world even if the company does trade in the UK and is subject to the jurisdiction of its laws.

National Association of Pension Funds (40)

Yes. The NAPF has long supported the growth in electronic communication believing in its virtues of speed and cost saving. However, it is essential that no less standards should apply in terms of the information required to be provided about a company. Whilst, at the present time, email or fax are the most common examples of electronic communication it is important that any definition should encompass all types of future electronic communication and, as these may not be envisaged at the present time, should be sufficiently widely drawn to encompass without question such new developments. Alternatively, it would be possible to add new electronic formats by means of statutory instrument from time to time.

Institute of Credit Management (41)

The institute agrees that requirements which apply to physical documents should also apply to equivalent electronic communications.

Wales Council for Voluntary Action (42)

By whatever means are needed, it should be clear that the requirements applying to physical documents should apply equally to equivalent electronic communications. In attempting to define such communications, there is a danger that soon a new type of communication could appear that could be used by a company to circumvent the requirements. Therefore the emphasis should be on the nature of the information in the documents, as now, communicated by any means.

C Perkin (43)

I believe that the requirements of the Companies Act should also apply to equivalent electronic communications, and in this regard the definition of 'electronic communication' contained in section 15(1) of the Electronic Communications Act 2000 might be used as a starting point.

The Abbey National Group (45)

We agree. Electronic communication should include websites and all emails sent 'in the course of business' by any corporate entity.

A Kaye (46)

Yes, equivalent electronic communications such as emails and web sites should all be required to disclose the same information as paper correspondence, at least when issued and made available to the public (as opposed to those expressed to be just for internal use). There should be penalties for non-compliance. Although there may be practical difficulties in implementing it, this should also apply to non-UK companies selling into the UK.

Reed Executive plc (48)

We agree that such clarification would be helpful. We suggest that the list of documents/media which must display a company's name be expanded to include e-mails to non-associated companies or persons (which if in physical form would have been produced on company headed paper, as opposed to an internal memorandum) and a company's website.

The Law Society of Scotland (49)

Yes.

No. The Committee believes this might be unnecessarily restrictive. The Committee also believes that further consideration should be given to interactive advertising.

The Institute of Chartered Accountants of Scotland (50)

We do consider it an anomaly that a letter has to have details on it but an e-mail serving the same purpose does not. Perhaps legislation does need amendment but care should be taken in the definition of what communications require the information i.e. there has to be close definition, but we appreciate that this may not be easy.

The Law Society (52)

This question has been the subject of conflicting guidance from the DTI and other bodies. In particular, the increasing use of e-mails in business (as distinct from personal) communications has led to confusion as to whether the requirements of the Act and of the Business Names Act apply to such communications, and so to further confusion as to whether other requirements (such as the requirement of regulatory bodies under the Financial Services Act 1985 for an authorised person to state the source of its authorisation) apply to them.

A pattern of good practice seems to have emerged whereby business e-mails contain the information needed to comply with the above requirements and non-business e-mails do not. We suggest that this should be endorsed by the new legislation. Relevant definitions could perhaps be imported from the Electronic Communications Act.

We consider that websites relating to a company should include its full corporate name but should not be required to include any of the other information required in business letters.

Jafco Tools Ltd (54)

I strongly support the need for the Companies' Act to make clear that the requirement for physical documents to apply equally to electronic communications. Whilst specific

reference could be made to Fax, E-Mail, and Web sites, wording should be sufficiently robust to embrace future developments in trading communications.

Danziger plc (56)

Yes. We would define "electronic communication" as "any communication that is transmitted between computers or is capable of being transmitted between computers, whether connected in any network or not, directly in digital form or indirectly by being recorded on digital recording media, and that is readily capable of being produced or reproduced in physical form, by way of printing or any other means".

International Underwriting Association (58)

As an Association one of our objectives is the promotion of e-commerce policies. As such we strongly support the proposal to apply any requirements for physical documents to electronic documents. To do otherwise, we believe, would fail to recognise the significant advances in technology made in recent years and the advantages of using electronic commerce. We submit that standardisation and harmonisation of recommendations would be forward thinking and advantageous.

Consumer Credit Trade Association (59) (Questions 5 & 6)

At present sections 349 and 351 of the Companies Act 1985 requires that all business letters and company correspondence contain details of the company's full name together with its registered office address, registration number. While the 1985 Act does not include a definition of "business letter" or "correspondence", it has been widely accepted that e-mails amount to correspondence. Therefore all documents including e-mails should contain details of the company's registered name (if different from their trading name) and the company's registered office and any address for service (if different from the registered office address). This information should also be included in a company's web site and be included in all company correspondence, and in particular formal documents such as contracts.

CCTA agree that an unlisted public limited company should include a statement on all business letters and correspondence to the effect that it is not listed on any stock exchange and not just limited to the fact that it is not recognised. If the company is listed then the information should include details of where it is listed.

With regard to fuller particulars:, below is a list of the information that company's should be required to include in business letters and communications (including both correspondence and advertisements):

?? Details of the company's registered address;

?? the registered number;

?? whether the company is registered in England / Wales or elsewhere;

?? the company trading name (if applicable);

?? address of service of documents (if applicable);

?? the telephone number; and

?? details of the company's web site and e-mail address if available / applicable

J Jasper (60)

Yes

J M Swallow (61)

Sort of but it will be hard work

The Association of Chartered Certified Accountants (62)

The growth of electronic communication means that all letters, orders and other communications may be and are now sent via electronic means and not solely in hard copy format. Applying the rules in s349 and s351 to documents in electronic format would therefore amount to bringing the legislation up to date, mirroring the developments which have already occurred under the Electronic Communications Act. Given that electronic media merely offer an alternative means of presenting a

document, our view is that there need not be separate provision for e-documents. If, however, the consensus of opinion was that express reference was needed in order to remove any doubt as to the application of the disclosure rules to e-documents, we would support the introduction of a specific reference to such documents.

M Hardy (63)

Yes. "Communication" should include any matter in which the company's name or trading style appears.

Association of International Accountants (64)

- (i) Yes.
- (ii) Internet, Teletex, Fax.

Office of Fair Trading (66)

The Companies Act should definitely make clear that the requirements that apply to physical documents apply equally to equivalent electronic communications. With more and more business being conducted electronically, it would make a mockery of the Act if its requirements didn't impact upon what is nowadays a substantial part of most companies' activities. It is our view that there should be no distinction between paper or electronic transactions.

All e-mails, whether solicited or unsolicited, should be subject to the requirements of the Act, together with all advertisements and communications that are transacted over the Internet.

South East Trading Standards Authorities (67)

5a. Yes.

5b. Along the lines contained in the Distance Selling Regs "...documents by means of which, without the simultaneous presence of the supplier and consumer may be used for the conclusion of a contract between those parties.."

BBC (68)

5a. Yes.

5b. They should include at least the electronic equivalent of a business letter or notice (which was not an advertisement) and an order form, although we can envisage some difficulty in defining and/or identifying the electronic equivalent of, for example, a business letter in the context of a company's website. There may also be difficulties in including business e-mails which due to their informality have more of the character of a telephone call.

The Committee of Scottish Clearing Bankers (69)

Yes, the communications which should be covered should be any form of communication used to promote the goods, services, image of a company/business.

Question 6: On which documents do you consider that companies need to include only their name, and on which documents should they also have to include fuller particulars? What should these “fuller particulars” be?

Respondent (doc number)	Comments
F A G Kay (1)	<p>I do not believe there are any documents on which a company should only give their name. Behind the Companies Act requirement there is an EC directive requiring a company to give its name, country of registration and registration number. Also, the Companies Act requires every company to state the address of its registered office. These basic requirements are sufficient to meet the need for “fuller (or fullest) particulars” I very much agree with the suggestions made in paragraph 21 of the letter under reply. Many people mistakenly think a public limited company is a company listed on the Stock Exchange. The suggestion that such companies should include a statement (immediately after or below the company name, I suggest) that it is not listed on a recognised stock exchange can only be for the benefit of the public. I think we could go the whole hog and require a listed plc to include a similar statement to the effect that it is listed on a recognised stock exchange.</p> <p>I do not see that the introduction of such a requirement would be unduly onerous - there is a precedent at s.351 (1) (c) CA 85. If a company uses printed letterheads it requires the insertion of but one further line of type the next time a printing order is placed. If (as many do) the company uses its computers to produce a template for a letter heading the cost is negligible.</p> <p>In my view, there are other documents in which “fuller particulars” should be given. These include all newspaper advertising, mail order catalogues, holiday brochures, leaflets, etc; in fact every form of communication with the public (including radio and television if possible.)</p>
Buddenbrook Consultancy (2)	<p>In the interests of simplicity I would strongly recommend that having clarified the communications on which disclosure is required that all communications should have the same requirements - allowing a variation will lead to confusion and a lack of compliance. The standard information should be 'Name, registered office, country of registration and registered number,'</p>
B Strand (3)	<p>Name, home address, postcode, tel no, fax, email, website.</p>
R G Curtis (4)	<p>I see no reason to change the current position. I see no real benefit or cost saving from de-regulation in this area.</p>
York Place Company Services Ltd (5)	<p>All documents used by company to enter into contracts or give advice should have fuller particulars. Invoices need to show accounts location for payment purposes if other than the registered office.</p>

VAT number on invoices and order forms.

With compliment slips should be classed as business letters. Quotations for work to be carried out should be obliged to comply within business letters category.

MSP Secretaries Ltd (6)

Fuller particulars should be those currently required on letters. These should be on any document used in a commercial transaction ranging from an invitation to place an order through to the invoice. Generic advertising would not be included in the definition.

Bonnier plc (7)

There is no need for fuller particulars to appear anywhere. The company's name, country of registration, registration number and an address are the most that is needed on any document. A member of the public may discover what he requires from Companies House and the many publishers of business information.

A requirement that a PLC which is not listed should make a statement to that effect seems intended to cancel a possibly false good impression, but in fact goes beyond that, because it creates a poor impression. A member of the public may well assume a PLC company to be listed, but it is not clear that any such misconception has any practical consequence. It would be wrong to assume listing confers any guarantee of long-term survival, product quality, prompt payment of debts, attentiveness to complaints or any other matter. If a member of the public has come to this assumption, their ignorance is no fault of the Companies Acts. My company, Bonnier plc, is not listed but it is part of a Europe-wide group with over 8500 employees and turnover in excess of one billion pounds: probably the largest business in Scandinavia.

P Dunbavin (8)

All documents and advertisements that induce entry into a contract, or request of a brochure that does so (as the fraudulent offer might use a different company on the brochure) should contain full service address. Awareness advertising need only use the trading name and company number.

William Davis Ltd (9)

It is difficult to give a comprehensive answer but it would seem that letterheads and any documents that may lead to the formulation of a contract, or the contract itself, should have full particulars.

D L Lupton (10)

Full details (including registered number, registered office, a relevant telephone and fax number and e-mail address) should be on all printed documentation.

K S V Thorogood (11)

Documents considered to be viable for 'name only':

business cards and similar paperwork.

Documents on which 'fuller particulars' are seen as necessary:

all other documents not falling within the 'name only'. Category.

'Fuller particulars' considered to include:

registered offices, including those outside the U.K.,

registration identity and number,

auditors and solicitors names and addresses,

tax and VAT authority addresses,

chairman and chief executive name(s) plus chief engineer, (or other similar

technical/scientific category),
bankers names and addresses - and this means all bankers and fund holders or
debt providers,
number of times of registration that have occurred utilising the same company or
trading name, with the Registrar empowered to police the provision of such data.

William Sturges & Co (12)

The registered companies should include not only their name, but their registration number. So long as the name and the registration number of registered companies is disclosed it is always possible to get full particulars of the company by a search at Registry - the number should, of course, disclose by code to which register the search should be addressed.

R J Steer (13)

6: letters not of a financial matter or contracts

6a: all financial matters and contracts and any business dealings with other companies

G L B Pitt OBE (14)

No detailed comment but I think the telephone number and fax number (and anything else of this sort) where held should be included in at least all major documents such as published accounts. I needed the other day to contact Uniq PLC about a capital gains tax point and its interim report included neither its address nor telephone number. I think this was wrong. I agree with paragraph 21(ii) and would certainly not object to the "statement!" mentioned in (i). Is not such a statement good consumer protection? I decided the other day not to take up an offer of Loan Notes, in part because they would not be listed on the Stock Exchange and so would be less marketable.

P Lipscombe (15)

No need to change the existing regulations.

G Murray (17)

My view is that for this purpose, fuller particulars means - the company's full name, its registered address (for service of documents etc.), its business trading address (both addresses to be full postal addresses), and in each case its telephone number and (if available) telefax number and web site and e-mail addresses, the company registration number and where registered (London, Cardiff, Edinburgh...), VAT No. (if registered), the name of the company secretary and his/her location. These full particulars should be included in all offers, invoices, statements, quotations/estimates, purchase orders, contracts, guarantees, writs, summons and the like. Any other letterheadings or memorandum sent outside the business should state the full name of the company and its business address and telephone number.

J Brady (18)

Letterheads and contract documents should show details in full. On other documents, the name and the Reg. Office should suffice.

Findlay Durham & Brodie Ltd (20)

Full particulars should be shown on all letterheads, orders, invoices, quotations and similar documents. The only items that should just have, perhaps, the name should be those used once business has been transacted such as delivery notes.

J Bingley (21)

As with Q4, business letters, order forms and any other documents inviting contractual obligation should enable the correspondent to identify the party, which means the correct company name, number and country of registration at a minimum. The current requirement to provide also the registered address is not generally onerous. It is indeed sensible to make clear which address is registered and which is for response to the document concerned. I see no reason to add to regulation by requiring unquoted public companies to make a statement to that effect.

Macmillan Publishers Ltd (23)

My belief on this matter is that documents which should include full company details are letterheads, invoices and order forms. I do not see the necessity of a cheque including the full company name or details. I have few dealings with other types of document so I am unsure about what should or should not include details but perhaps anything that is intended to form a contract should include full company particulars.

The full company particulars should not have to include where the company is registered. This information is freely available from Companies House and I do not feel it adds anything to the process. Thus the information covered should be full company name, registered office and registered number.

S Carmichael (24)

The requirement, under the Companies Act 1985 for a company to be required to state its place of registration in certain documents is not really appropriate in this country. The position is obviously different in European countries.

In my limited experience I agree that the term "Bill of Parcels" appears to have fallen out of use.

In my opinion it was unfortunate that the Companies Act 1985 permitted companies complying with certain criteria to describe themselves as public limited companies even though they were unlisted. Amongst other things this has led to certain requirements contained in "The Blue Book" being applied to unlisted companies when common sense suggests that they should apply only to listed companies. Company law should revert to the concept that a public company is a company whose shares or other securities are quoted on a stock exchange.

R Flavell (25)

In general I concur with the views set out in your paragraph 21.

KPMG (26)

In general, we do not see a need to alter the existing requirements of the Companies Act 1985. The consultation document sets out two suggestions which would increase the required disclosures in business letters and order forms. We agree that it would be desirable to identify the registered office where more than one address is included, in order to clarify where information such as the register of directors' interests and register of members may be inspected.

We are unconvinced of the need to include a statement to the effect that an unlisted public company is not listed on a recognised stock exchange. Knowledge of the corporate name and registered number should be sufficient to allow any party dealing with the company to establish its "status" and carry out any necessary investigative procedures. However, if there is evidence to support the need for such a statement we do not believe that the requirement would be unduly onerous.

H W Fisher & Co (27)

It is obviously far too onerous on a corporate entity to include all the details apart from the corporate name on every document issued by the company. The fuller particulars should be disclosed in any contract, letter or other document which might be presumed by the recipient to be a formal communication, invitation, contract or agreement of any nature between the corporate entity and the third party. The fuller particulars to be included should be the registered number, the registered office and the country of incorporation. These fuller particulars are sufficient to enable certain checks to be undertaken by third parties prior to dealing with the corporate entity.

Charities Commission (28)

As indicated above [see general], some charitable companies are subject to further "fuller particulars" disclosure requirements than are prescribed by section 351. Assuming no change in the "special" ultra vires regime, these additional requirements will need to be preserved. The range of documents referred to in section 68 of the 1993 Act should be made the same as in any revised version of section 349, subject to the point that we would want the status disclosure obligation to continue to apply additionally to land transfer documents, as it does at present.

Experian ltd (29)

Please see above comments on web. Company name and trading styles should be on all official correspondence and cheques.

H W Higginson (30)

A company should be required to state its name in business letters, orders for goods or services, bills of exchange, promissory notes, endorsements, cheques, invoices, receipts and letters of credit. As regards "fuller particulars", the present requirements should remain. I do not agree the suggestion that an unlisted public company should be required to state that it is not listed on a recognised stock exchange. The requirement in section 351 to state the address of the registered office is not, in my opinion, satisfied by stating an address without saying that it is the registered office. I see no need to provide that it shall be made clear.

The Institute of Chartered Secretaries and Administrators (32)

As with Q4 above, business letters, Order forms, invoices, cheques and any other documents inviting, or which might lead to contractual obligation should enable the correspondent to identify the party involved, which means the correct name, number and country of registration at a minimum. If it is a company trading under another name then the corporate name should be supplemented by a “Trading as...” statement. If it is an oversea company operating through a branch in this country it should also provide the registered service address. The greatest confusion seems to arise with such as compliment slips and business cards, this could do with some clarification.

London Society of Chartered Accountants (35)

We consider that companies should include their names and “fuller particulars” on all documents (other than those that are defunct e.g. bills of parcel) that are currently required to bear their names and that this should apply to their electronic equivalents. We can see no reason for reducing the list of documents other than to update it for those that are clearly redundant.

We consider that “fuller particulars” should embrace both the suggestions referred to in paragraph 21. We do not accept the Steering Group’s reason for rejecting the proposal about unlisted public companies. In our experience, public companies are frequently formed by entrepreneurs in preference to private companies with the express intent to benefit from the “halo” effect that the suffix confers in the mind of the public because of the mistaken view that a public company is always a listed company.

Perhaps the Steering Group’s dismissal of the proposal as onerous is due to the proposed solution being tackled in the wrong way. It would be worth exploring to see if there are fewer listed public limited companies (which is our belief) than unlisted public limited companies. If this is the case, the cheaper option would be to require listed public companies to disclose this fact rather than unlisted companies to state that they are not listed. Indeed, to simplify the requirement, we can see a case that a company that lists on recognised stock exchange should re-register as a “listed public limited company” or “LPLC”. Re-registration would merely be the act of conferring the right to use the word “listed” in the company’s name.

An example of another “fuller particular” relates to elective subsidiaries. In our response to the Steering Group’s consultation paper No.8 “*Completing the Structure*”, we recommended in answer to question 10.1(xvi) that it would be a preferable and more straightforward for elective subsidiaries to include some relevant words in their name or appended thereto to indicate their elective status. We continue to believe that this is the right mechanism to ensure appropriate awareness of such companies’ status. In this case such fuller particulars should be included on all documents including their electronic equivalents.

We recommend that the Steering Group should consider the merits of requiring agency companies to disclose on all correspondence the corporate and trading names of their principal.

Manches (36)

Question 5 illustrates the burgeoning range of communications a company may now send. In light of this, the list of documents that currently require the company’s name does seem outdated.

We believe that a better solution would be to have a broad definition, for example, all

documents produced for or sent by and on behalf of the company. Of course, it can be argued that this will create arguments over interpretation, but it is to be hoped that any such arguments would lead to companies taking a “better safe than sorry” approach.

With regard to the documents requiring “fuller particulars”, here a list of the documents included does seem more practical, to prevent this becoming too onerous. The current definition does seem fairly sensible and we are not aware of any difficulties having arisen as a result of it.

With regard to what such “fuller particulars” should include, we agree that it is sensible to insist that, where more than one address is included, it is made clear which is the registered office. This is not requiring any further information, just clarifying details that already have to be included.

As to the question of whether an unlisted public limited company should have to include a statement that it is not listed on a recognised stock exchange, we believe that this is a good idea. All too often companies adopt plc status to give the impression of a certain status which is not always accurate.

H L Miller & Co (38)

There is no reason why anything more than a company’s name, trading address and telephone (and fax and e-mail address) should appear on any documents. Other relevant information will be a matter of public record which is now easily accessible.

National Association of Pension Funds (40)

The NAPF considers that full particulars should be on letters and order forms as at the present time. There may, however, be an argument for not requiring the inclusion of the registered office. Registered offices can be changed and this does sometimes lead to unnecessary reprinting of a considerable number of documents. It is for this reason that it is strongly suggested that the inclusion of the registered company number would be sufficient since this does not change and would enable identification of the company at its latest registered address.

Institute of Credit Management (41)

The Institute agrees with the conclusions in paragraphs 19, 21, 21 (i) and (ii) and that existing rules in relation to documentation should also apply.

Wales Council for Voluntary Action (42)

Particulars should be included as now.
Clause 21 (i) is not applicable to the voluntary sector.
Clause 21 (ii) is considered a sensible approach.

C Perkin (43)

Companies should continue to include their corporate name on the documents listed in section 349(1) although it is questionable whether ‘bills of parcels’ should remain. It is a term that is hardly used, if at all, nowadays. Moreover, there should be greater alignment between the documents spelt out in the section and those referred to in section 351. For instance, both the company’s name and the address of its registered office should appear in *its notices and official publications*. Still further, with the increasing use which is made of the Internet for business purposes the time has now arrived when consideration should be given to requiring companies to include their website address on the business letters, notices and official publications.

The Abbey National Group (45)

If there is a distinction between documents that have a 'simple' corporate name or documents with 'fuller' particulars, then it is essential to agree the purpose of the documents. Are they simple 'awareness' documents such as a business card, or a

telephone directory entry or a 'trading document' such as a contract or promoting a specific product.

Accordingly, the company should disclose its corporate name and 'fuller' particulars on its website, invoices, order forms, contracts, business correspondence (including emails) and shareholder communications that it issues. In any event, all product-led advertising should include at least the corporate name and address as outlined in Answer to Question 4 above.

'Fuller particulars' should include company name, registration number (or where an overseas company, its country of registration), registered office/service address, AND OPTIONAL – website/email address (or relevant internationally recognised web-categorisation - i.e. Financial Institutions would be "fin.org").

We also refer to our reply to Question 9 below.

A Kaye (46)

All companies should include their registered number as well as their name in all circumstances, including legal documents. Only in this way can one be sure of the entity concerned.

I would favour a listing requirement that all listed companies must state the market(s) on which they are listed, with the presumption that the absence of any such statement means that they are not listed. The registered office should always be stated to be such.

Reed Executive plc (48)

We agree that a company's fuller particulars should be included in its business letters and order forms. In addition, we consider that such particulars should be included in a company's invoices (including demands for payment), since these are transactional documents of the same importance as order forms. A potential grey area is a company's website which may contain a facility to order goods or engage in any other form of commercial transaction: in this case, the website should display the fuller particulars. We also agree that there should be an extra requirement to make clear which is the registered office if more than one address appears on a relevant document.

The Law Society of Scotland (49)

The Committee considers that the current range of particulars (apart from the need to clarify the detail) is adequate.

The Committee does not consider the inclusion of "fuller particulars" in documentation to be necessary.

The Institute of Chartered Accountants of Scotland (50)

We would not extend the fuller particulars beyond the business letter and order form (including the equivalent electronic versions). We would agree to the registered office being identified.

We certainly think that any requirement to state that a plc is not listed would be a nonsense. The confusion over plcs is one arising from the introduction of the term "public limited company". It seemed obvious at the time of the change that the sensible thing would be to apply it to quoted companies only. If there is considered to be confusion, it is the plc definition which requires changing. In any event given that the purpose of providing particulars is to identify a company and its address, whether a company is listed or not does seem relevant. There are large unlisted companies and very small listed companies in existence: consequently size is not revealed by the term "Plc".

Lloyds TSB plc (51)

We see no need to change the existing Companies Act requirements.

The Law Society (52)

We agree that the existing requirements for a company to include its name on specified documents should be retained but that the list of documents should be updated (e.g., by the deletion of "bills of parcels"). See our introductory comments as to what constitutes a company's "name" for these purposes. We have considered whether the requirement should extend to contracts entered into by the company (which would be in accordance with best modern practice) but have decided that this would be unacceptable as increasing the regulatory burden on companies.

We consider the existing requirements to include fuller particulars in business letters (as to what these include, see above) and order forms of the company should be preserved. As to what those fuller particulars should be, we consider that it would be contrary to the Government's stated aims (to reduce the regulatory burden on business) to extend the requirements beyond the existing ones. For example, we would not support a requirement to state the company's VAT registration number (if it had one) in business letters and order forms (but we would not suggest that it should be prevented from doing so). We agree that the proposal to require unlisted public companies to state that their securities are not listed on a recognised stock exchange would be unduly onerous.

However, we are concerned that deregulation of the type referred to in our response to Question 1 could adversely affect the ability of those who do business with a company (especially as consumers) to identify the company with which they are dealing: it is not uncommon for transactions to be entered into (in particular, those involving credit cards and other electronic point-of-sale (EPOS) means of payment) by consumers without their knowing the full corporate name of the company with which the transaction is entered into - the name on the receipt generated by the EPOS machine may be a trading name which bears no relation to the name which eventually appears on the statement received by the purchaser some weeks later, thus causing confusion. Consideration should therefore be given to extending the list of documents on which the full name of the company should be shown (and, arguably, its registration number and registered office) to include invoices and receipts so as to overcome this problem. We acknowledge, however, that this would involve costs to industry by requiring EPOS machines and other systems to be altered.

In the Committee's response to the Company Law Review's Consultation Document Number 8 ("Completing the Structure") the Committee recommended (in its response to Question 10.1(xv)) that notice of a group election should be included in the elective subsidiary's business letters, order forms and contracts while the election is in effect.

It would be helpful to make it clear that a company complied with the requirement to state its registered office if it did so without identifying it as such: we support the suggestion that, if a company shows two addresses, it must make clear which is the registered office.

The new legislation should make it clear that its requirements are without prejudice to the requirements of other enactments (such as the requirement of the Charities Act 1993 that a company which is a registered charity but does not include the words "charity" or "charitable" in its name must state in its business letters that it is a registered charity, and its registration number).

Jafco Tools Ltd (54)

I concur that the requirement for companies to include not only their names, but also fuller particulars, in those documents which support the contractual process. The

registered office should be specifically identified. I see no reason for a statement that a company is "not listed" to be mandatory. (Equally, there is nothing to prevent plc's from stating that they are listed!).

Danziger plc (56)

We think that the name and "fuller particulars" should be required to appear on all company documents. The "fuller particulars" should be the full name of the company and its main business address; we do not think that the inclusion of the address of the registered office or the registration number of the company should be required.

International Underwriting Association (58)

We agree with the proposals to maintain the current requirements in relation to business letters and order forms. We would welcome the inclusion of details that increase clarity and openness of company details especially when corresponding with clients and the public. Clarity on where a company's registered office is represents a good example of this.

Consumer Credit Trade Association (59) (Questions 5 & 6)

At present sections 349 and 351 of the Companies Act 1985 requires that all business letters and company correspondence contain details of the company's full name together with its registered office address, registration number. While the 1985 Act does not include a definition of "business letter" or "correspondence", it has been widely accepted that e-mails amount to correspondence. Therefore all documents including e-mails should contain details of the company's registered name (if different from their trading name) and the company's registered office and any address for service (if different from the registered office address). This information should also be included in a company's web site and be included in all company correspondence, and in particular formal documents such as contracts.

CCTA agree that an unlisted public limited company should include a statement on all business letters and correspondence to the effect that it is not listed on any stock exchange and not just limited to the fact that it is not recognised. If the company is listed then the information should include details of where it is listed.

With regard to fuller particulars:, below is a list of the information that company's should be required to included in business letters and communications (including both correspondence and advertisements):

- ?? Details of the company's registered address;
- ?? the registered number;
- ?? whether the company is registered in England / Wales or elsewhere;
- ?? the company trading name (if applicable);
- ?? address of service of documents (if applicable);
- ?? the telephone number; and
- ?? details of the company's web site and e-mail address if available / applicable.

J Jasper (60)

Companies should include their full name, company number and address of registered office on all correspondence, invoices, purchase orders.

ACCA (62)

We suggest that 'fuller particulars' should appear on business letters, orders and

invoices. 'Fuller particulars' should amount to details of the company's registered number and registered office, as well as the company's name.

M Hardy (63)

Companies should never be allowed to disclose just their name.

Their country of registration, and registered number. Appropriate address(es) should be voluntary but encouraged as best practice.

Association of International Accountants (64)

We consider that in the interest of maximum transparency that full name and address, and telephone, fax and e-mail details should be included appropriately on all documents in the public domain.

Office of Fair Trading (66)

In order that the consumer is fully aware of whom they are dealing with, all documents connected with any potential contract with the company should carry details of any holding company or controller. Any documents connected with the advertising of a product or service could just carry the name of the company itself.

BBC (68)

We would not support any proposal to extend the existing categories of document in which companies are required to provide "fuller particulars". See our comments in paragraph 10.

The Committee of Scottish Clearing Bankers (69)

The company's name alone should appear on items such as cheques, Bills of Exchange and promissory notes. Fuller particulars of the company should appear on business letters, order forms, invoices, notices, official publications. The fuller particulars should include those particulars presently required under Section 351 of the Companies Act 1985.

Question 7: Do you agree that the Companies Act should prohibit the use of “public limited company”, “limited” and their Welsh equivalents except as part of a company’s registered name so that it should no longer be possible to include such a suffix in a trading name other than the company’s own corporate name?

Respondent (doc number)
Comments
<p>F A G Kay (1)</p> <p>I agree entirely that the Companies Act should specifically prohibit the use of “public limited company”, “limited”, or their Welsh equivalents - <u>or any abbreviations thereof</u> -except as <u>the last words</u> of a company’s registered name.</p> <p>Regarding the “so that it should no longer be possible to include such a suffix in a trading name other than the company’s own corporate name” I have doubts if this is really legally possible under existing legislation.</p> <p>Referring first to the “other than the company’s own corporate name” I cannot see the purpose of a company having a business name which is identical to its own corporate name. There could be a business name of, say, “G E C plc and Partners” which would not cause any problem. But Tom Jones and G E C plc might be confusing - so switch it round to G E C plc and Tom Jones and all is well.</p> <p>Estates and General Investments plc can trade as Estates and General Investments (without the plc) and that would be a business name of the plc. But if Estates and General Investments plc trades as Estates and General Investments plc it is trading in its own name and not under a business name.</p> <p>I have always assumed it was illegal to use the word “limited” as the last word of a name if it did not relate to an incorporated company registered at Companies House. But Section 34 of the 1985 Act appears to say that if an individual or a partnership trades or carries on business under a name or title (registered or otherwise) of which “limited” is the last word they are liable to a fine but if an incorporated company does precisely the same thing it is OK My mind boggles.</p> <p>I suspect this is just due to a bit of poor drafting - due no doubt to extreme pressure from the political overlords. It is noticeable that the standard of drafting went into decline from the 1980 Companies Act onwards - it was only in the 1980 or 1981 Acts that the term “shareholder” appeared when what was really meant was “member”.</p> <p>If section 34 had begun with the words “Unless duly incorporated with limited liability, a person.... etc etc” it would make more sense and exclude the notion that an incorporated company can use a business name different to its registered name with the suffix limited.</p> <p>My attempt to find a definition of “person” in the Companies Act did not meet with success and so I presume this appears in the Interpretation Act and means an individual, partnership or incorporated company.</p> <p>I question, therefore, whether, at present, a company called ABC Ltd may (legally) trade under the name XYZ Ltd even though it meets the requirements to reveal its corporate identity.</p> <p>It may be that when the 1985 RBNA was brought into force on 1st July, 1985, the Secretary of State failed to exclude under s.2 (1)(b) of the RBNA the use of the words</p>

“limited, public limited company or their abbreviations or equivalents in Welsh” as the last words in a business name - but that would not necessarily make it legal for ABC Ltd to use the business name of XYZ Ltd.

Although it can be argued there appears to be no specific prohibition in the RBN Act against ABC Ltd trading as XYZ Ltd, I feel that the “domino effect” of other legislation elsewhere will prevent this.

If ABC Ltd was not an incorporated company someone would be doing a naughty pretending it was, and therefore be guilty of a crime.

If XYZ Ltd was an incorporated company then ABC Ltd could hardly be trading in that name without being guilty of passing off - at the least. That would be the equivalent of GEC plc trading as The Bank of Scotland plc. Another naughty.

But if XYZ Ltd was not an incorporated company then ABC Ltd is claiming to be trading in the name of a registered company which does not exist. Say, GEC plc trading as Barclays Bankers plc. That, I feel, also would fall foul of the law.

In my time, I have registered a few hundred business names for client companies but I have never come across a business name with limited as its last word. In fact, I am quite sure that if an attempt had been made to register such a name at the old Business Names Registry it would have been rejected out of hand.

Consequently, I have always accepted that the thing about business names is that the words Limited, Ltd, plc or public limited company (or their Welsh equivalents) are not and cannot be the last word or words in the name.

But what matters is what has been passed into law - not what may have been intended - and obviously I have been too selective in my interpretation of the RBNA. While I still believe that business names with “limited” as the last word in the name were never intended and should be prohibited, I salute the person who read the regulations carefully enough to reveal what appears to be a gaping hole in the regulations.

This loophole appears tailor made for “phoenix” companies. In my experience the usual procedure is that ABC Ltd goes into liquidation at 4pm on a Friday evening and at 7 am the following Monday the same business operation carries on but under the name of a new company named, for example, XYZ Ltd which uses the business name of ABC.

But what could happen, it seems, is that ABC Ltd goes into liquidation and on the following Monday the new company XYZ Ltd starts trading using the business name ABC Ltd - which is much better for the purposes of camouflage.

So in theory XYZ Ltd could trade under the business name of ABC Ltd while the original ABC Ltd was in liquidation. Somehow I do not think this has ever been the intention. But even then there would be problems banking cheques made out to the business name of ABC Ltd.

It used to be and I assume it still is a banking rule that cheques payable to a limited company can only be paid into the account of that limited company. Except in exceptional circumstances (and for small amounts) cheques made payable to a limited company and endorsed over generally or specifically to another limited company would not be accepted by a bank for collection.

The reason is that it is not in the ordinary course of business for cheques made payable to one limited company to be paid into the account of another limited company - and if this is done and things go wrong then the collecting banker is left holding the baby.

If XYZ Ltd attempted to pay into its bank account cheques made payable to ABC Ltd the directors of XYZ Ltd would be asked by the bank why this was happening. The

bank would probably also ask to see the Certificate of Incorporation of ABC Ltd and would make a search at Companies House to discover that ABC Ltd was in liquidation. (This incidentally is a good example of the value to the public of the records maintained at Companies House - a simple search and all kinds of nasties crawl out of the woodwork.)

The local bank would then probably get on to their Head Office Inspection Branch who might have a friendly word with their police liaison officer at which point the bubble would well and truly burst.

Directors and their professional advisers are not fools and this sort of thing might happen once or twice, but the dangers of such a scenario would soon get around and then no one would want to play that game any more.

Far better that XYZ Ltd simply adopts the business name of ABC without the "limited" - then cheques made payable to ABC can properly be accepted into the account of XYZ Ltd for collection and everything is kosher.

Buddenbrook Consultancy (2)

I totally agree with this suggestion but would go further and require unlisted PLCs to have a different 'initials' to listed PLCs or to state clearly on all communications as set out above that they are Unlisted. There is no doubt that the PLC requirements (the £50,000 share capital, 25% paid up which a) I understand from the Registrar that some unlisted PLCs try to circumvent by providing 'promises to pay' rather than actually paying the amount and b) are totally inadequate capital levels) are deliberately used by unlisted PLCs to imply (with some success) to the uninformed that they are more substantial than they are and 'equal' to the largest publicly quoted UK companies. Surely to allow such a situation to continue negates the concept of company control transparency and compliance.

B Strand (3)

PLC or Ltd as appropriate to be used on every "published external item mentioned in general comments above [i.e. letterheads, invoices, compliment slips, quotations, price, lists, delivery notes, purchase orders, contracts, invoices, statements, receipts, faxes, email, website home/index page, adverts, flyers, tv adverts]. If a charity the charity number in addition.

R G Curtis (4)

Yes.

York Place Company Services Ltd (5)

We agree. Trading names if different from corporate name should not be permitted to use 'limited' after the name.

MSP Secretaries Ltd (6)

I entirely agree and had no idea that it was considered possible at present.

Bonnier plc (7)

"PLC", "Limited" etc. should only ever be applied to a company's full correct name in its official stationery. However, within the text of a letter a company should be free to reduce down its name for ease of expression. So, if a letter heading states "A Brilliant Company Limited" in full, it causes no harm if it then goes on to call itself "ABC Ltd" within the text of the message. The point is not simply the name stated but whether in

the context it is liable to cause confusion.

P Dunbavin (8)

YES. Fraudulent offers, particularly some offers that take up-front fees from customers do use 'plc' to create the impression that the company is large and stable (i.e. that there will always be capital to claim in the event of a legal action).

William Davis Ltd (9)

Broadly I agree, but many groups have fully constituted and separate limited liability companies within their structure, in which case there can be no objection.

D L Lupton (10)

Yes.

K S V Thorogood (11)

I am not qualified to answer this question, but my opinion in terms of 'phoenix' companies is that if by agreement such companies are encouraged, then such a suffix should be promoted rather than prohibited.

William Sturges & Co (12)

Yes, but this does not deal with the question of the treatment of unregistered companies and, indeed, distinguish companies which do and do not have limited liability. However, if it is compulsory always to include the company registration number as well as the name, it may not matter that some of these particular words are used in conjunction with the name of the proprietor of the trade name.

R J Steer (13)

Yes.

P Lipscombe (15)

Yes.

G Murray (17)

Yes, the use of PLC and ltd should be strictly for companies registered as such and no others.

J Brady (18)

Yes, very definitely.

Findlay Durham & Brodie Ltd (20)

Yes, this would go some way in removing the problem mentioned in my opening remarks.

J Bingley (21)

Agreed.

Macmillan Publishers Ltd (23)

Yes. I do not see why any company should trade under a name which includes the words public limited company or limited company other than its own registered name.

R Flavell (25)

Yes.

KPMG (26)

Yes. It is highly undesirable (and surprising) that the law permits a company to, for example, adopt a trading name that includes the term “public limited company” when the company is in fact a “limited” company. This flexibility may be used to mislead customers, suppliers or the public, by implying that the company has a “higher status” or a level of paid up share capital in excess of that which actually exists.

H W Fisher & Co (27)

It is agreed that the use of the term “public limited company” and “limited” and their Welsh equivalent should be denied to any corporate entity or any use of a corporate entity’s name apart from on formal documentation.

Experian Ltd (29)

We agree with the proposal in Question 7.

H W Higginson (30)

I agree that the Act should prohibit the use of “public limited company”, “limited” and their Welsh equivalents except as part of a company’s registered name.

The Institute of Chartered Accountants in England & Wales (31)

Yes.

The Institute of Chartered Secretaries & Administrators (32)

Agreed. This was an obvious oversight which should be corrected.

London Society of Chartered Accountants (35)

Yes.

Manches, (36)

We agree with this suggestion as it seems to distinguish that which is the Company’s registered name from its trading names. However it is important to draw attention to the limited liability status of a business entity. This emphasises the need for clarity between the use of a trading name and the corporate name.

H L Miller & Co (38)

We agree the use of “plc” and “Ltd” should be restricted to being part of a Company’s registered corporate name.

National Association of Pension Funds (40)

Yes. [The NAPF had assumed that section 34 of Companies Act 1985 already prohibits this. Presumably, this is not considered to be the case, thus the NAPF supports blocking this loophole. Are ‘plc’ and ‘PLC’ being misused/abused?]

Institute of Credit Management (41)

The Institute agrees with this proposal to obviate the use of misleading trading names.

Wales Council for Voluntary Action (42)

Yes – to avoid a misleading situation.

C Perkin (43)

I support the suggestion that companies should not be permitted to include ‘public limited company’, ‘limited’ and their Welsh equivalents as part of their trade names. These suffixes have a particular meaning in the company context and therefore can be

<p>confusing or misleading to third parties. Their use should be confined to the corporate name.</p>
<p>The Abbey National Group (45) Yes, as this aids transparency and removes confusion.</p>
<p>A Kaye (46) “Plc”, “Limited” and so on should only be allowed as part of the registered name.</p>
<p>Reed Executive PLC (48) We agree that this prohibition would simplify this area. In the alternative, the problem of misleading names could be addressed by a company which uses a trading name being required to state that fact as well as stating its corporate name.</p>
<p>The Law Society of Scotland (49) Yes.</p>
<p>The Institute of Chartered Accountants of Scotland (50) We were unaware that a company could adopt a trading name with 'Ltd' or 'plc' in it which was not their actual name. If it is indeed the case, we agree that it should be prohibited.</p>
<p>Lloyds TSB Group plc (51) Yes.</p>
<p>The Law Society (52) We have raised with the DTI in the past the anomaly that the Act and the Business Names Act do not prevent a company whose name is "ABC Limited" from having "XYZ Limited" as its business name, and we support the prohibition referred to.</p>
<p>Jafco Tools Ltd (54) I strongly support the view that the use of "public limited company" or "limited" should be prohibited, unless part of the company's registered name, and then only in that specific context.</p>
<p>Danziger plc (56) Yes.</p>
<p>International Underwriting Association (58) We agree that the Companies Act should prohibit the use of ‘public limited company’, ‘limited’ and their Welsh equivalent except as part of a company’s registered name. Without such provision, the possibility of misleading the public would be increased. The IUA feels this prohibition is a practical step that seeks to lessen complications between company and customer.</p>
<p>Consumer Credit Trade Association (59) Company’s should be required to make it clear if the name used is in fact a trading name only as it is essential to ensure that the parties to a contract are clear as to whom they are trading with. The consultation paper states that at present a company called ABC Ltd may trade under the name XYZ Ltd provided it meets the requirements to reveal its corporate identity. This appears to conflict with the provisions of section 25 of the 1985 Act, which provides that “[i]f any person trades or carries on business under a name or title of which “limited” ...is the last word, that person, unless duly incorporated with limited liability, is liable to a fine...”. If this results in a company being permitted to used the word “limited” after its trading name then the provisions of this section should be amended to ensure that the word limited may only be when the registered name is used.</p>

J Jasper (60)

Yes. If I see a company name as XY Ltd I assume that it is a limited company registered at Companies House and if this is not the case then it is very misleading. So this should not be allowed.

J M Swallow (61)

Agree entirely.

Association of Chartered Certified Accountants (62)

We agree that it would be misleading for a company to adopt a business name that included a corporate suffix, and would support a prohibition on such use. More generally, we suggest that there should be greater co-ordination between the rules on corporate names and business names. Currently, a company may be expressly precluded, under the rules of the Companies Act, from using a particular corporate name, but may be able freely to use that same name (minus the standard suffix) as a business name. The safeguards that the Companies Act rules are intended to provide may thus be easily evaded.

M Hardy (63)

Yes.

Association of International Accountants (64)

Yes.

Office of Fair Trading (66)

This usage should most certainly be prohibited. Under the Consumer Credit Act 1974 the Director General has a duty to ensure that anyone licensed to carry on a consumer credit business does not use a trading name that is "misleading or otherwise undesirable". A consumer could easily be misled by a business passing itself off as a limited company when it is in reality a partnership or a sole trader.

South East Trading Standards Authorities (67)

Yes.

BBC (68)

Yes.

The Committee of Scottish Clearing Bankers (69)

Yes.

Question 8: Do you agree that, in the event of breach of any of the requirements for trading disclosure, liability should fall upon the company and any “officer in default” (noting that there is a separate proposal for a definition of “officer” similar to but narrower than that in the Australian Corporations Law)?

Respondent (doc number)
Comments
<p>F A G Kay (1)</p> <p>I am not so sure about liability falling upon the company - the company, as such, can hardly do anything to prevent any breach of the requirements.</p> <p>Such liability should fall upon the officers of the company because they are the only persons in a position to comply with the regulations.</p> <p>Some of the definitions in the Australian Corporations Law seem to me to be a bit daft. For example, a person who makes, or participates in making, decisions that affect the whole or substantially the whole or a substantial part of the business of the corporation. That means that a general manager would automatically be deemed to be a director - or anyone who submitted a recommendation to the board concerning any major aspect. Following this line of reasoning, if the Prime Minister consults his Cabinet then every member of the cabinet becomes a prime minister. Or if the Pope consults with his Cardinals then all the Cardinals also become Pope. Directors are encouraged to consult with trade unions - as the outcome of such discussions can affect the company substantially will the trade union officials be deemed to be directors?</p> <p>The next one is a person who has the capacity to affect significantly the corporation’s financial standing. Banks definitely have this ability. A living example is Hertford Live Services which just last week escaped winding up by the skin of its teeth when the Royal Bank of Scotland called in its loans.</p> <p>A director is a director because he has been appointed to that office. He has the right to attend board meetings and to vote thereat. You can get someone not a director attempting to exert influence on one or more directors - but in the end it is up to the director who has the vote.</p> <p>The Memoirs of Woodrow Wyatt will show that he spent much of his life trying to influence people, either to back a particular political party, to get someone an honour or award or to appoint someone to public office. If Lord Wyatt could have assumed office because of his influence he would have been Prime Minister, Foreign Secretary, Home Secretary and the head of two newspaper empires - all at the same time.</p>
<p>Buddenbrook Consultancy (2)</p> <p>I would suggest placing the liability on the ‘officer’ and not on the company.</p>
<p>B Strand (3)</p> <p>Fall upon each and every director jointly and severally as a personal liability.</p>
<p>R G Curtis (4)</p> <p>In principle yes. However, I think that consideration should be given to placing liability on the Directors. This is because the status and authority of a secretary and other senior managers’ etc vary from business to business. If the liability expressly vests in a director then the requirement is more likely to be taken seriously.</p>

York Place Company Services Ltd (5)

We agree.

MSP Secretaries Ltd (6)

This appears to be another reason why a company should have a company secretary. I consider that the liability should only fall upon an officer if the omission was deliberate.

Bonnier plc (7)

Penalties should fall upon those persons who were in a position to prevent the offence or harm. This is different from the person nominally charged with responsibility because, in a vast number of cases, directors delegate legal obligations to managers without conferring upon them sufficient power or resources and without ensuring they have the flow of information which they need to fulfil the task. Legislation of this kind therefore achieves little more than having some already over-worked employee designated as the official scapegoat.

Before extending the range of offences or obligations on companies urgent consideration should be given to introducing protective provisions, applicable to all employees responsible for any statutory obligations, under which an employee may "whistle blow" and obtain an order requiring his company to provide adequate resources to ensure compliance and protecting the employee from reprisals at work or sacking following his application.

It is not helpful to extend responsibility to a wide number of employees, because this destabilises the working environment. Every-one who has a legal responsibility will believe they have a legal right to make a decision, resulting in a talking shop, not only on the activity in question but as to who does or does not have an obligation under the Act. Presumably they and their successors (marketing staff do not typically stay long with one company) will want internal training courses to learn about their responsibilities. The effect on company profits and efficiency can be imagined. One central, consistent and informed, managerial decision-maker is the best solution. In other words, a single, newly empowered, scapegoat

P Dunbavin (8)

YES. The act should make clear that any claim made in the name of the company implies the responsible 'officer' as defined; and that the officer's responsibility does not cease after the company is closed down. Enforcement of a claim must proceed against the 'officer' if the company resources are exhausted or transferred, to prohibit any possibility of evasion.

William Davis Ltd (9)

Yes.

D L Lupton (10)

Yes.

K S V Thorogood (11)

I agree to the proposal and note the qualification in respect of the "officer" definition.

William Sturges & Co (12)

This issue of liability for holding out needs further study. Where a trade name is used and the identity of the limited company proprietor not disclosed, then the liability should be that of the shareholders. They are the ultimate proprietors of the business and it is they who have offended by using a trade name that does not disclose that the proprietor

has limited liability. The positions of directors should follow the principle that applies in bills of exchange where if a director signs an incorrect name he himself may be held personally liable on the bill. Criminal liability generally speaking serves no useful purpose, because all it does is to create the expense of criminal trials and disable still further the offenders from making restitution to those who are damaged. It may be that if the directors and shareholders do not make restitution then they should be liable to criminal prosecution, but not otherwise.

R J Steer (13)

While I agree that in the event of a breach of any of the requirements for trading disclosures, liability should fall upon the company and any "Officer in Default". I am worried about the use of the word "officer". I would prefer Senior Management/Director or someone at Managerial Level. Lower level staff are generally not privileged to such information but I can only talk about large companies, not small or private ones.

G L B Pitt OBE (14)

Yes. However, paragraph 24 seems to relate to a narrower set of circumstances and here I suspect that in large organisations it may be possible for quite senior people to sign cheques who are in the know but who are not officers. In these limited circumstances it could be provided that liability should attach to "any officer in default and to any person signing a cheque who knew at the time of signing that it would not be honoured." However, if in doubt, stick to "officer [as defined generally] in default".

P Lipscombe (15)

But why narrower than the Australian definition?

G Murray (17)

Yes, liability should fall on the "officers" of the company. The officers should be defined as ... the directors (all kinds), company secretary, auditor, liquidator, administrator (or the like). One further thought is that the annual audit could include a check that the standard stationery and computer software, etc. complies with the disclosure requirements. This would not be entirely fool proof but would give some back up to the Companies Act.

J Brady (18)

Yes.

Findlay Durham & Brodie Ltd (20)

Yes.

J Bingley (21)

Agreed.

Industry Canada (22)

There is no specific liability provisions in the CBCA for a breach of the requirements for trading disclosure. However, where a company commits an offence, liability is usually limited to directors or officers of the corporation. The definition of "officer" would be restricted to senior level positions of authority.

Macmillan Publishers Ltd (23)

The constant move towards making individuals liable for the actions and defaults of the company is very detrimental to the long term viability and health of company life in the UK. Once a company gets over a certain size it becomes very difficult for any officer to maintain control of what is included in all documents. To make an individual liable in these circumstances is quite wrong. Likewise for a very small company, the directors may "be running the business" and almost certainly will not be lawyers, company secretaries or be qualified in these areas. To make them personally liable if they mess up seems to me to be quite wrong. Unless failure to comply amounts to negligence there should be no action against the individual.

S Carmichael (24)

Since I was a student the definition of an "officer" seems to have caused difficulty. One solution might be to discontinue the use of the term entirely.

There is evidence that the title "director" is no longer restricted to people whose details are filed at Companies House. For example, I have encountered the title "director of the construction division" which has been bestowed on a manager in order to give him greater status and authority. In my opinion this is to be deplored since it is potentially misleading to the outside world.

R Flavell (25)

Yes.

KPMG (26)

Yes. Liability for breach of any of the requirements for trading disclosures should not fall on junior employees where they are merely responsible for implementing policy set by the "officers" of the company. Liability should rest with the company and any officer of the company who has accepted responsibility for setting policy in this area. If it is unclear who amongst the officers of the company has such responsibility, liability should rest with the board, including shadow directors, as a whole.

H W Fisher & Co (27)

It is agreed that only breach of the requirements for trading disclosure should involve liability falling upon the corporate entity and any officer in default (following the Australian Corporations Law definitions).

Charity Commission (28)

It follows from comments made above that, in the case of charitable companies, in our view, any penalty should be applied only to the officer of the company responsible for the default, and not to the company itself.

Experian Ltd (29)

We agree that those responsible for running the business are ultimately responsible. It is the directors/proprietors of the company who must set the standards and ultimately they do dictate what practices are adopted. To make employees below this level criminally liable would be unfair in our opinion, as in reality, they may have no influence on such matters.

H W Higginson (30)

I agree that, in the event of a breach of a trading disclosure requirement, liability should

fall upon the company and “any officer in default”.

The Institute of Chartered Secretaries and Administrators (32)

Agreed although there should perhaps be a differentiation between oversight and deliberation default.

London Society of Chartered Accountants (35)

Yes, although it is not clear from the consultation paper how the Steering Group proposes to narrow the Australian definition.

We note that under the Australian definition an officer is a person “who has the capacity to affect significantly the corporation’s financial standing”. This seems to suggest that all dealers in derivative financial instruments or other financial instruments or commodities would be deemed to be officers of their companies, if one looks to the example of Nick Leeson and Barings.

Manches (36)

While a limited company is a separate legal entity, it is the company’s officers who (subject to statutory requirements) control its formation, objects, actions, etc. We believe that any “officer in default” should be liable. Without the prospect of fines and other sanctions affecting them personally, there is far less incentive for them to comply with the requirements for trading disclosures.

Therefore, the question remaining is what the definition of an “officer” should be. We agree that the Australian definition is more comprehensive than the current concept. It will only be in relatively rare cases that this difference will impact on who is penalised, but it might serve to keep the disclosure requirements in the minds of a broad range of people. That said, where the officers are limited to the directors and company secretary it would be incumbent on them to assume correct procedures are in place. An alternative might be to provide for all serving directors to be liable unless they can prove absence at the relevant time.

Further email: I think that the company should also be liable. My focus was on the fact that the officers should be accountable as well so that they cannot hide behind the corporate veil.

H L Miller & Co (38)

We agree that liabilities for trading disclosure liability should be restricted to the Company and any “officers” in default.

National Association of Pension Funds (40)

Yes.

Institute of Credit Management (41)

The Institute agrees that this is necessary to ensure that companies comply with the trading disclosure requirements.

Wales Council for Voluntary Action (42)

Yes – criminal responsibility and civil liability should only fall on those on whom the responsibilities relating to trading disclosures lie.

C Perkin (43)

I support the view expressed in the Paper that liability for breach of disclosure requirements relating to corporate documents be confined to 'officers in default'. Those who assume a senior managerial position within a company should familiarise themselves with their responsibilities and liabilities under companies legislation. On the other hand, it is unreasonable, and unrealistic, to expect employees to do the same.

The Abbey National Group (45)

Whilst agreeing with this in principle, we consider it is more important there is a clear definition of trading disclosure which the company must follow. If so, the imposition of a sanction on the "officer" and company would be fair.

A Kaye (46)

Penalties should be limited to the company and its directors. It would be invidious and impractical to target others, particularly as in large organisations a wide range of personnel may be involved in the production of stationery and in the formatting of electronic communications and only the directors can be said to have total control.

Reed Executive plc (48)

We agree that only the company and its officers should be liable.

The Law Society of Scotland (49)

The Committee believes that the directors, shadow directors and office holders under the Insolvency Act should be held liable if personally in default. However, the Committee is sceptical that this serves a practical purpose, given the limited record of enforcement. The Committee also feels that the proposal to define "officer" along the lines of the Australian Corporations Law model is an unnecessary complication and should not be proceeded with.

The Institute of Chartered Accountants of Scotland (50)

We agree that there should be civil sanctions if a company is in breach of the requirements, and that liability should only fall upon the company and any "officer".

Lloyds TSB Group plc (51)

Yes.

The Law Society (52)

We deal with part of this question, and outline the difficulties which we have with the Australian Corporations Law definition of "officer", in our responses to Questions 13.19 and 13.20 of Consultation Document Number 8.

In relation to the part of the question which relates to the identity of the person on whom liability should fall (for example, for signing a cheque which does not show the name of the company), we agree that this may lead to liability being incurred by relatively junior employees of a company who are not "officers" of it but consider that it would be more appropriate for liability to fall (jointly and severally) on the officers of the company who are in default rather than on the officers generally, while acknowledging the difficulty of distinguishing between officers who might be said to be "in default" and the other officers of the company (a difficulty encountered in other sections of the Act).

Jafco Tools Ltd (54)

On the subject of personal liability:-

a) I do not support the view that signatories to cheques are personally liable, if their signing is within their actual authority (since their assignment to this task was on the authority of directors).

b) I have some sympathy for the very wide net implied by the wording of "officer" under Australian Corporation Law. In essence, the ability to determine a course of action, rather than advise, or merely influence the outcome, is of more relevance than an appointment as an officer, and thus should bear at least equal responsibility with such officers.

Danziger plc (56)

Yes.

International Underwriting Association (58)

We agree in principle that, in relation to trading disclosures, liability should fall on the company and any officer in default. However, we hold concerns that 'officer' should be clearly defined to avoid more junior members of a company being held accountable. Also, in practice the company may pay any fine an officer incurs or he/she will have relevant insurance. This means that some of the effectiveness of the penalty may be lost. However, as it acts as a deterrent to bad practice we would support officer in default liability.

Consumer Credit Trade Association (59)

With regard to the definition of "officer" within the 1985 Act, it is suggested that it should be limited to senior personnel. The argument for this change, namely that junior employees should not be held personally liable for signing documents or cheques which do not conform to trading disclosure requirements. The consultation paper proposes the adoption of an amended Australian Corporations Law definition of officer. CCTA supports this proposal. Another option is to consider the definitions of "officer" and "manager" as contained within the Building Societies Act 1986. If suitable, this definition would provide a definition that has existed and been used as part of English and Welsh law for some time.

J Jasper (60)

Yes.

J M Swallow (61)

No, only the Directors, and 'shadows'. It's not fair on senior staff as they do what they're told.

Association of Chartered Certified Accountants (62)

We agree that the current basis of liability, which extends to 'any person' (who is in default), is too broad. The scope of liability should be restricted to officers who are in default.

M Hardy (63)

Yes, and upon any agent. Agent to include any person who is the direct landlord, or agent, of the company in relation to any premises (real or virtual) where an offence is committed.

Association of International Accountants (64)

Yes.

Office of Fair Trading (66)

We agree that liability in the event of breach of any of the requirements for trading disclosure should fall upon both the company and any "officer in default". If the separate proposal to define "officer" as in the Australian Corporations Law were effected, then this definition would seem to cover all and only those individuals who

would be responsible for the company's actions that caused the breach. By defining "officer" more narrowly, there will also be less scope for junior employees to be made scapegoats in the event of such a breach.

South East Trading Standards Authorities (67)

Yes.

BBC (68)

Yes. (see paragraph 12)

The Committee of Scottish Clearing Bankers (69)

Yes.

Question 9: Should there be a civil sanction, comparable to that provided by the Business Names Act 1985, if a company is in breach of the requirements to include information in documents?

Respondent (doc number) Comments
F A G Kay (1) Yes.
Buddenbrook Consultancy (2) Yes.
B Strand (3) Yes, published breaches on a DTI website with trading licences/planning permissions, government subventions/contracts suspended if not remedied within six weeks.
R G Curtis (4) Yes.
York Place Services Ltd (5) Yes.
MSP Secretaries Ltd (6) A civil sanction, as long as it is additional to a criminal one, is always a useful addition.
Bonnier plc (7) This question does not seem to address a significant real-world need. It is difficult to imagine circumstances in which a person would suffer loss because the company's name or address were incorrectly stated in business documents, which would not be fraudulent or otherwise already capable of remedy from existing law as to mistake, misrepresentation etc. The Companies Acts should not attempt more than absolutely necessary to regulate the formation and enforcement of contracts, which is an area of law more than adequately provided for. It would be bad law making to intrude into an established body of law with only a limited agenda, a narrow perspective and without consideration of how such a change impacts on the legal principles at work in other contracts or elsewhere in the legal system.
P Dunbavin (8) YES. A parallel civil sanction is essential, otherwise it would create the absurdity that an offender may be fined or penalised, yet the victim who is actually damaged by the failure would have no avenue for recompense. A fraudster will simply budget a single fine as a fixed cost of their scheme, whereas the prospect of being sued by every victim is a real deterrent.
William Davis Ltd (9) Yes.
D L Lupton (10) Yes, but only after a considerable lead time, to allow time to use up existing documentation, order new documentation and generally familiarise with new legislation.
K S V Thorogood (11) In my opinion a serious sanction should be enacted to discourage such breaches.
William Sturges & Co (12) It is first essential to clear what are the requirements which apply to all three categories of company. Individuals (or the corporation, where it is appropriate) should be liable to third parties who have been damaged and the sanction should be making restitution.

G L B Pitt OBE (14)
Yes.
P Lipscombe (15)
Yes.
G Murray (17)
Yes, there should be no difference between the business names and company names requirements.
J Brady (18)
Yes.
Findlay Durham & Brodie Ltd (20)
Yes.
J Bingley (21)
Agreed.
Industry Canada (22)
There are no such sanctions in the CBCA. However, provincial legislation pertaining to the registration of names and company information provide similar sanctions and it appears to be quite effective (for example, see Section 100, An Act Respecting the Legal Publicity of Sole Proprietorships, Partnerships and Legal Persons, Province of Quebec).
Macmillan Publishers Ltd (23)
This would seem a reasonable course of action.
R Flavell (25)
Yes.
KPMG (26)
Yes.
H W Fisher & Co (27)
It is considered entirely appropriate that there should be a civil sanction and that it should be rigorously enforced by the Registrar of Companies or the appropriate authority.
Experian Ltd (29)
We agree there should be a civil sanction if a company is in breach of its obligation to include information in documents.
H W Higginson (30)
I do not agree that there should be a civil sanction comparable to that provided by section 5 of the Business Names Act 1985.
Institute of Chartered Secretaries & Administrators (32)
A civil sanction, as long as it is additional to a criminal one, would be a useful addition.
London Society of Chartered Accountants (35)
Yes.
Manches (36)
We agree that there should be a civil sanction against the company, rendering contracts

unenforceable if financial loss is suffered through the company's failure to include the relevant trading disclosures in a document.

It can be argued that, if any loss is suffered through this omission, there is already the contractual remedy of misrepresentation to rely upon. The company and its officers will also suffer penalties as a result. To make the company doubly liable could be seen as overly protective, diminishing the maxim "caveat emptor" to an unacceptable extent.

However, to prove misrepresentation by reliance on an omission is difficult. Also, some unscrupulous companies may be happy to bear a penalty if their business remains unaffected, making affecting their trade a much more effective remedy.

If we are to expect the public to protect themselves, we must furnish them with sufficient knowledge for them to do this. Strongly enforcing the requirements on trading disclosures with both civil and criminal sanctions is the best way to ensure this.

H L Miller & Co (38)

We agree that a civil sanction should be available to a person suffering actual ascertainable liquidated damages for a breach of disclosure requirements.

National Association of Pension Funds (40)

Yes.

Institute of Credit Management (41)

The Institute supports this proposal as outlined in paragraph 25.

Wales Council for Voluntary Action (42)

Yes – it is sensible and appropriate for someone who has suffered loss through a breach of trading disclosures, to be able to obtain some reparation.

C Perkin (43)

Whilst I support the continuation of civil liability - it provides a strong incentive for compliance - I have a major reservation about its application. Subject to a few exceptions, the courts have taken a literal, rather than purposive, approach to the interpretation of section 349 with the result that, regardless of whether the claimant in question was prejudiced by the incorrect corporate name on the document, it can still proceed against the person responsible for the error where the company fails to discharge its obligation.

Therefore the provision adds another defendant, which, admittedly, can be most beneficial where the company is experiencing financial difficulties or has gone into liquidation, and the officer or agent in question is in a position to pay. On the other hand, it takes no account of the fact that the claimant may have had previous dealings with the company and knows that its members possess limited liability and, furthermore, was not confused about the company's identity. It is difficult to justify allowing a claim in these circumstances whilst at the same time denying one by a person who had the misfortune to receive a document drafted by an efficient officer and which contained the correct corporate name! It is therefore suggested that a sanction similar to that contained in section 5 of the Business Names Act 1985 should be substituted for the current sanction or, alternatively, claimants should be required to show that they were induced to take the document by the incorrect name of the company contained therein.

Perhaps I may be allowed to make two further suggestions relating to section 349. First, subsections (1)(c) and (4) refer to 'orders for money or goods'. It is suggested that they

should be amended to include 'services'. This omission was highlighted in *East Midlands Electricity Board v Grantham* (1980) CLY 271 where an action against a corporate officer/agent failed because the order was for the supply of electricity, which was held to be a service and not a good; had the order been for *gas* the outcome might have been different, as happened under the New Zealand equivalent of section 349(4) in *Hutt Valley Energy Board v Hayman* (1988). And secondly, it is suggested that, rather than continue to look to the courts each time for a decision on the matter, the statute should list those words which can be lawfully abbreviated when it comes to disclosure of the corporate name. The list would confirm existing decisions e.g., 'Ltd' for 'Limited', 'Co' for 'Company' and the symbol '&' for 'and', as well as include others such as 'Corp' for 'Corporation' and 'Inc' for 'Incorporated'.

The Abbey National Group (45)

We do not consider this to be appropriate. We view this as an unnecessary addition to the sanctions mentioned in Question 8.

We also consider it will be difficult to prove what loss has been directly suffered by omission of a corporate requirement. It would be extremely harsh on a company to lose entire payment for provision of goods or services. Equally if there was electronic communication without encryption then it is recognised that transmission can often be distorted so an omission could occur without intervention by the Company.

Perhaps there needs to be consideration of 'prescribed particulars' and 'prescribed documents' before such a civil sanction could be imposed. For example, the Consumer Credit Act regulates certain prescribed information.

A Kaye (46)

I agree.

Reed Executive plc (48)

We think it is desirable to have consistency between the Business Names Act and the Companies Act and, accordingly, we agree that there should be such an equivalent civil sanction.

The Law Society of Scotland (49)

Yes.

Institute of Chartered Accountants of Scotland (50)

We agree that there should be civil sanctions if a company is in breach of the requirements, and that liability should only fall upon the company and any "officer".

Lloyds TSB PLC (51)

Yes.

The Law Society (52)

Paragraph 25 of the Paper suggests that the creation of such a civil sanction would ensure that if someone has suffered financial loss in connection with a business contract, by reason of the breach of the requirement to include its corporate name and service address (for the reasons given above, we do not agree that it should have to show its service address) in a document, the court would be able to dismiss legal proceedings brought by the company to enforce the contract. In principle, we support this suggestion, but we consider that the legislation should make it clear that the burden of proof is on the other party to show that he has suffered financial loss and that this was caused by the company's failure to comply with the requirements. We do have concerns, however, about the uncertainty that potential invalidity may cause, given the length of time which may elapse between the entering into of the contract and the decision of the court as to its enforceability.

Jafco Tools Ltd (54)

I agree that there should be a civil sanction, comparable to that provided by the

Business Names Act 1985, if a company is in breach of the requirements to include information in documents.

Danziger plc (56)

Yes.

International Underwriting Association (58)

We concur with the view that it would be desirable to have a civil sanction in place to address situations where a party suffers financial loss as a result of the company's breach of the requirement to include its corporate name and service address. We feel this is an equitable progression that seeks to offer a party full redress for breaches by the company.

Consumer Credit Trade Association (59)

The consultation paper proposes that the penalties contained within the Companies Act 1985 for a breach of trading disclosure requirements, should be brought into line with the provisions of the Business Names Act. While the principle of consistency through all legislation affecting company / business names is welcomed, consideration needs to be given as to whether the penalty provisions in the Business Names Act are in fact appropriate and proportional. In particular the Business Names Act provides that if a person has suffered financial loss in connection with a business contract, by reason of the company's breach of the requirement to include its corporate name and service address in a document, the court would be able to dismiss the legal proceedings brought by the company to enforce the contract, if it felt that it would be just and equitable. It is important to ensure that companies are not penalised for genuine mistakes and errors.

In addition to the above, any amendments to the current requirements must take into account existing similar provisions that are contained in other legislative instruments. For example, the Consumer Credit (Agreements) Regulations ("Agreements Regulations") currently requires the credit granter (who may be a registered company) to include its full name in the agreement. Failure to comply with this will result in the agreement being unenforceable without a court order. Therefore an application would be required under section 127 of the consumer Credit Act 1974 by the credit granter if it wished to enforce the agreement terms. Under section 127 the courts are granted with limited discretion to permit the credit granter to enforce the agreement or to the reduction of any debts outstanding to compensate the debtor for any loss suffered as a result of the fact that the agreement does not comply with the requirements as to form and content as set out in the Agreements Regulations.

Any proposals relating to the courts powers to set aside an agreement must take into account parallel provisions contained within other legislative instruments to ensure that the proposed provisions do not overlap or conflict with existing legislation.

J Jasper (60)

Yes.

J M Swallow (61)

Yes.

Association of Chartered Certified Accountants (62)

We do not believe that a case has been made to add a provision such as that contained in s5 of the Business Names Act to those already contained in the Companies Act.

M Hardy (63)

NO. It has been widely accepted by all, including regulatory bodies, that criminal

sanctions are the only feasible means of ensuring compliance with company law. Both common and criminal law already provide remedies for improperly obtaining an advantage by deceit.

Association of International Accountants (64)

Yes.

Office of Fair Trading (66)

It would certainly benefit the consumer if there were a similar civil sanction available under the Companies Act as there is under section 5 of the Business Names Act. Not only would it enable consumers to obtain redress where they have suffered materially, but such a sanction would also act as a deterrent to businesses tempted to try to mislead consumers by failing to disclose their name or identity.

South East Trading Standards Authorities (67)

Yes.

BBC (68)

Yes.

The Committee of Scottish Clearing Bankers (69)

Yes.

Question 10: Should any type of company be exempt from all or any of these requirements relating to the publication of its name, its service address, its fuller particulars, or directors' names? If so, which types of company should be exempt from what requirements?

Respondent (doc number)
Comments
<p>F A G Kay (1)</p> <p>Presumably this question refers to both an incorporated company and to a firm (be it a sole trader or a partnership) using a trading name. In my view the current regulations are quite adequate in respect of these matters, subject to:</p> <p>?? the service address being stated to be such</p> <p>?? the registered office address being stated to be such and quoted in addition to the name, registration number and country of registration.</p> <p>?? in the case of a sole trader using a business name his/her/the incorporated company name should be clearly stated as the Proprietor.</p> <p>?? in the case of a partnership using a business name the names of the partners should be clearly stated as the Principals</p> <p>The requirements for the use of business names are not onerous and I cannot think of any reason why any type of company should be exempt from any of the requirements. If a requirement is without exemptions then it is far more simple. Exemptions create problems, as in s.34 CA 1985</p>
<p>Buddenbrook Consultancy (2)</p> <p>No - the fewer exemptions and exclusions there are the better. These simply introduce uncertainty and confusion. The lack of awareness of company law requirements is poor and the simpler the whole area of compliance can be made the better.</p>
<p>B Strand (3)</p> <p>NO exceptions at all whether plc, Ltd company or Charity company or any one who operates under a name other than their own first/surname.</p>
<p>R G Curtis (4)</p> <p>I see no reason for an exemption, unless that right is acquired by some process of application ... say via local trading standards officers, so that it can be withdrawn if it is abused.</p>
<p>York Place Company Services Ltd (5)</p> <p>No.</p>
<p>MSP Secretaries Ltd (6)</p> <p>I see no reason why any company should be exempted from the current regime. The subject of directors names is currently in the news but this does not effect letterheads etc as there is no requirement for the directors' names being included.</p>
<p>Bonnier plc (7)</p> <p>No. See the answer to question 6 above. Every company should be obliged to publish its correct name in the circumstances described, but if it is licensed to dispense with</p>

Limited from its name, it should be free to do so.

P Dunbavin (8)

There should be no exceptions. However, if some directors have a legitimate reason for secrecy, such as threat of violence or terrorist threats, then they could display a designated contact address at Companies House at which the service address could be obtained, i.e. "Company details withheld. You may obtain these from...".

William Davis Ltd (9)

There may be a case for exempting small companies which trade under the name of the principal shareholders, which would mainly be former partnerships of a small business becoming private limited companies. However, in the course of time these businesses change and may lose such exemption.

D L Lupton (10)

No.

K S V Thorogood (11)

No type of company should be exempt. Provision of such 'exemptions' would inevitably produce situations where the issues become blurred and the 'exemption' open to interpretation on a company-by-company basis - with precedents being set in law and the whole sorry round repeated yet again.

William Sturges & Co (12)

The law to be effective must be simple and direct. Any individuals or group of individuals trading in a business name must comply with the obligations to disclose their identity and address at which the service can be made upon them effectively in the jurisdiction. In relation to all corporations that these should be under an obligation at the very least to disclose their identity and, in particular, the registration number. As has been noted above, companies should also disclose their VAT registration number where they have one and charities should disclose their charity number. It should not be necessary to insist that all the material should appear in the same size as the text of the communication (including, where it appears, the business name). It should be sufficient that there should appear the name of the proprietor or proprietors and the company number where it is registered in legible text. A key issue is whether in relation to unincorporated firms, companies or associations, there should be a central electronic register of business names. A charge could go to the Registrar to cover the cost of maintaining the register whenever a "hit" is made. As electronic traffic increases, it is important that there should be a simple method of being able to check business name registration and identify from the register the true proprietor.

G L B Pitt OBE (14)

I cannot think of any type of company which should be exempt but my knowledge of companies which are not listed PLCs is very limited. My instinct is however that, if it is to someone's advantage to found a company, then that someone should accept any attendant disadvantages of this manner of proceeding, in other words the totality of the "requirements" envisaged in the paper - this presumably implies no exemptions whatever.

P Lipscombe (15)

No.

G Murray (17)

In my view there should be no exemption. It is vital that everyone receiving a communication from any company, however large or small, should be aware of the basic information about the company.

J Brady (18)

As ever, if a business wishes to have the privilege of limited liability then it should be prepared to comply.

Top Pay Research Group (19)

We, like other businesses, have been alarmed by the targeting of individual directors at Huntingdon Life Sciences and their supplier companies.

Because of the success of this campaign in raising the profile of a single interest pressure group, this situation is bound to be repeated. We think directors and their families are entitled to protection and would suggest the following formula:

(1) Any director using an alias must make it clear they are doing so. We suggest that any company listing directors without naming them should use the expression 'A N Other' so it is quite clear that this is a 'nom de plume'.

(2) A majority of directors, including the chairman, must be listed by name. Only a minority can use an alias.

(3) The company would need to get a general power to use this system from its shareholders at an AGM. This permission would need to be renewed every three years.

(4) Having received shareholder permission, a company would then need the authority of either the London Stock Exchange for quoted groups or the DTI for unquoted groups to use directors' aliases.

Findlay Durham & Brodie Ltd (20)

It is essential that whatever company you are dealing with should be identifiable. The listing of directors' names is virtually now unused and, perhaps, this requirement should be removed.

J Bingley (21)

I see no reason for exemptions. Even in the case of guarantee companies and charitable companies, those dealing with a company need to be able to identify the entity with which they are dealing.

Industry Canada (22)

Under the CBCA, disclosure of directors' names is limited with respect to non-public companies, to the articles of the corporation and the registry maintained by the Corporations Directorate.

Macmillan Publishers Ltd (23)

My view is that any company is dormant within the meaning of the Companies Act should be exempt from all requirements with the exception of those of including them on company letterhead. They should not, if they are dormant, be issuing any sort of order forms or similar and so I do not see that this would particularly disadvantage others.

R Flavell (25)

No.

KPMG (26)

No. Regardless of the type of company, it remains important that customers, suppliers and the public are aware of with whom they are dealing and are provided with appropriate corporate particulars to assist in their protection. We see no basis for exempting any type of company (including charities) from the requirements.

H W Fisher & Co (27)

Only those corporate entities which have specific dispensation from the Registrar of companies should be excluded from the requirements by exemption. It is considered perhaps that certain categories of corporate entities such as insurance companies should be covered by separate and more appropriate tailor made rules and regulations and therefore could be exempted from the standard regulations.

Charities Commission (28)

There seems to be no particular reason for continuing to draw a distinction as regards section 348, or any equivalent provision, between charitable companies which do, and those which do not, have the word "Limited" as part of their name. If there is a basis at all for making a distinction here, it should be between commercial and non-commercial bodies.

The only companies which are now not affected by section 349 are non-commercial, non-charitable companies which do not use the word "Limited" in their names. You may want to consider the policy basis for this distinction. It also seems rather curious that, whilst they need not state their name in business letters, they must record the fact that they are limited companies.

Experian Ltd (29)

We do not believe any limited company should be excluded. We also believe that private companies/partnerships should follow the same rules should their turnover be greater than the limit set for VAT registration.

H W Higginson (30)

The present exemption in section 30(7) should continue. I agree that the appropriate

parts of the Act should apply to unregistered companies.

The Institute of Chartered Secretaries & Administrators (32)

We see no need for exemptions, even unregistered companies should be required to comply. The principle remains that those dealing with the organisation should be able to identify just who and what they are dealing with. This has always proved to be a confusing area and we suggest that the principles be stated in the Companies Act and the detailed application be covered by Best Practice Guidance from the Companies Commission. This would enable queries to be rapidly resolved in a practical manner as and when they arise.

Labour Finance & Industry Group (33)

“Yes, but only if Flat Management Companies, whose ownership is limited to lessees of the flats in the building of which the company is the freeholder, are exempted.”

London Society of Chartered Accountants (35)

We consider that no type of company should be exempted.

Manches (36)

All limited companies provide their owners with limited liability. The above requirements are largely in place to alert the public to this fact. Therefore, we do not believe any companies should be exempt from the above requirements.

H L Miller & Co (38)

We believe that Companies should be exempt from publishing details of shareholders, directors and secretary and even trading addresses when they are or may be subject to harassment or terroristic activities or when national security demands it.

The problems of Huntingdon Life Sciences Ltd is an illustration of a case in point.

National Association of Pension Funds (40)

The NAPF does not favour any company exemptions. Nonetheless, the NAPF is conscious of recent developments concerning highly active single-issue groups who have sought to target directors and officers of companies they consider are transgressing. The NAPF would not wish to be seen to exposing such directors to personal risk and suggests that consideration be given to a position for such companies where such details can be requested directly from the company where bona fide reasons exist. Nonetheless, this is clearly a difficult issue and it probably needs greater consideration than the present study has afforded it. The essential point is, now that there are corporate directors, a business or service address is what the process of law requires. This could be supported by a requirement on the company to provide home addresses only in the event of wilful default (e.g. choosing to ignore personal fines or claims at the business address).

Institute of Credit Management (41)

The Institute considers that an unlimited company should carry no greater burden than under the Business Names Act as its members do not enjoy the benefit of limited liability. Companies limited by guarantee should not have special exemption except in respect of the word "limited" as permitted by section 30 of the Companies Act 1985.

Wales Council for Voluntary Action (42)

There appears to be no reason for any type of company to be exempt. WCVA is a company limited by guarantee, as are a number of its members. On the basis of WCVA's current understanding of the law, and its interpretation of the consultation document, it

would appear sensible for the requirements to apply to all companies.

C Perkin (43)

I agree with the sentiment expressed in para 9.18 of *Completing the Structure* (November 2000), that the position of unregistered companies is anomalous, and would support any proposal to make them subject to the same trading disclosure requirements as registered companies. In this regard, persons investing in or dealing with companies are deserving of the same protection irrespective of whether the companies are registered or unregistered.

On the other hand, I favour the continuation of special treatment afforded to private companies under section 30 unless, that is, *there is empirical evidence that the exemption from using the suffix 'limited' has financially prejudiced creditors and other parties in their dealings with these companies*. Unregistered companies that engage in non-commercial activities should also qualify for the exemption.

The Abbey National Group (45)

We do not think any company should be exempt.

A Kaye (46)

There should be no exemptions.

As a further point, limited partnerships are becoming quite common and there are practical difficulties in listing out the names of all partners either in name plates or in correspondence. I would suggest it be made explicit that at least in these cases it be sufficient just to display and record the name of the partnership, subject to provision of further information on request.

Reed Executive plc (48)

As stated above, we see no need for a requirement for any company to display a service address.

The Law Society of Scotland (49)

The Committee believes that no one should be exempt from these requirements. The Committee also believes that any existing exemptions should be removed.

The Institute of Chartered Accountants of Scotland (50)

We believe there are no good reasons for exempting any categories of company.

Lloyds TSB plc (51)

No. Existing exemptions are confusing.

The Law Society (52)

The Committee addressed this issue generally in its response to Question 9.1 of Consultation Paper Number 8. Service address apart (as to which, see above), we see no cogent reason why the requirements should not apply to unregistered companies. In particular, we consider that the anomaly identified in Note 13 to the Paper should be removed.

Jafco Tools Ltd (54)

I find it difficult to envisage any valid reason why a company should be incorporated, and yet would seek to conceal that fact.

Danziger plc (56)

No.

International Underwriting Association (58)

One of IUA's long standing objectives is the harmonisation of legislation, the creation of a level playing field in the marketplace. As such we support, wherever possible, standard rules applying to all companies. There seems to be no compelling reason for those companies currently exempt by Section 718(2) of the Companies Act 1985 to remain exempt in the area of trading disclosures. A greater degree of uniformity would be welcomed as it raises business practices and consumer confidence.

J Jasper (60)

No, except for signs at the registered office address, as I mentioned at the top. In

general I feel that there should be no other exemptions as there are certain privileges of businesses operating as limited companies but it is necessary for those dealing with them to know who the directors are, what the full company name is, what the address of the registered office is and if necessary find further details of shareholders and accounts, etc, from Companies House.

J M Swallow (61)

No, none if you want to be a limited company than use the Rules as written not some chopped down version to allow dodgy goings-on.

The Association of Chartered Certified Accountants (62)

No.

M Hardy (63)

No. The essence of the Companies Act (s) legislation is that it creates new classes of legal personae, and it is essential to keep the same disclosures for any entity created by a single act. The public has the right to be able to readily identify, at all times and without further enquiry, the legal person with which it is dealing.

Association of International Accountants (64)

No.

Office of Fair Trading (66)

We cannot see why any company would need to conceal its true identity. From the consumer's point of view it is important that in dealing with any business they are fully aware of the name and status of that business and know where to address any enquiries or claims for redress. From our experience, most traders who do not disclose their true identity do so for reasons that are rarely beneficial to consumers.

South East Trading Standards Authorities (67)

No.

BBC (68)

In principle we think that the requirements should apply to all companies although it may be necessary to modify them in some cases.

The Committee of Scottish Clearing Bankers (69)

No. All companies should be required to publish the same particulars so that any parties dealing with them have the information available immediately notwithstanding what type of business they carry on or where they are incorporated.

General Comments

Respondent (doc number) Comments
<p>B Strand (3)</p> <p>To protect the general public and ensure fair competition they (the public)/consumer should be able to easily identify who owns the company /businesses from whom they are purchasing the product/service, not least in the event of dealing with after sale problems service etc. Each such company/business offering a service/product for a price to display the underlying owning (holding) company name, their head office address, tel/fax/email no on all documents they publish externally in regard to themselves and each their branches i.e. on letterheads, invoices, compliment slips, quotations, price lists, delivery notes, purchase orders, and contracts, invoice, statements, receipts, faxes, email, website home/index page, adverts, flyers, tv adverts.</p>
<p>Bonnier plc (7)</p> <p>The proposals for new law making might cut across a number of areas of law or public policy – copyright, contract and e-commerce – in ways which are insensitive to knock-on consequences elsewhere: it would be as well to exercise some caution in extending any Companies legislation into such areas from a purely companies view-point.</p> <p>The expression “official publication” in Section 349 needs some up-to-date definition. Firstly, because life is less formal than it used to be and we draw a distinction between communications intended to be formal and those intended not to be formal. E-mail, though written, is not treated as formal, although a word document laid out in classic letter format and attached to an e-mail is. It may reasonably be argued that any names/addresses regime should apply only to “formal” publications. Secondly, because there are certain materials whose printed and spoken representation is regarded as interchangeable, the written form not being regarded as an essential feature of the message. Thirdly, because commercial publications created for sale are different from other written material produced by companies.</p> <p>Any extension to cover electronic documents, if we must have it, needs to target just one or two discrete and easy to describe situations and not be too ambitious. Standardised legal vocabulary, views of reasonableness or the intention of the parties etc have not yet caught up with many of the applications on e-mail and e-commerce, so even a limited stab at this area could become either very verbose and quickly dated or superficial and too open to interpretation. Perhaps it is premature to revise the legislation here at all, because we are all still learning our new two-tier standard etiquette for messages and the technologies that create and carry them.</p> <p>We should concentrate on ensuring that companies can be identified from the formal, written material they produce. Identification is all that is needed. The “fuller” the information they are asked to provide, the harder it will be implement within the documents and media people wish to do business with. People do not have the time or patience to be confronted with over-informative material they do not immediately need. It should be available if they want it. But elsewhere. We must avoid bringing into business any more of the ponderous government health-warnings, the “your home may be at risk if you do not keep up the repayments” sort of message which so damages the vitality of otherwise stimulating material. If you have only a company’s name, registration number and country of incorporation, all else can discovered elsewhere</p>

quickly and cheaply.

K S V Thorogood (11)

"...my comments stem from the necessity to curb the abuses incurred by 'phoenix' companies. . . "

William Sturges & Co (12)

There is insufficient recognition of the factor that the word "company" may refer to a partnership. It was Lord Justice Lindley in R -v- Registrar of Joint Stock Companies 1891 2 Q B 598 at page 610 "I understand by a company - an unincorporated company – some association of members, the shares of which are transferable. As distinct from a partnership I know of nothing except the transferability of shares". It was to obviate the problem that the Australian law introduced the concept of preceding the word "company" by "proprietary" with an express condition that no company should use this word as part of its name if it did not fulfil the requirements of the Australian Companies Acts have to be fulfilled by proprietary companies.

At one time under English law anyone who carried on a business other than in his own name was required to fill particulars of identity with the Business Names Registry, but this was abolished. The proposition justifying the abolition was that anyone who carried on business other than in his own name was required to disclose his identity as proprietor (or in the case of partnerships as joint proprietors) on all business paperwork. In recent times the problem has begun to develop that business is done without paper. On the other hand it has become the practice for incorporated companies to be required to display their registration number and if registered for VAT, their VAT registration number. Charities are required to disclose their Charity number. It would seem to follow, therefore, that the question of identity has been sufficiently circumscribed.

As the paper notes problems, in practice, arise in relation to the display of the name of a company at street level. The real problem is the requirement for identification of proprietor not just for businesses carried on by limited companies or companies incorporated without limited liability, but for companies that are not incorporated at all. It is submitted that whatever are the prescribed practices, these should be the same for all three categories if the public is not to be misled or opportunities created for rogues to do mischief This is particularly the case in relation to advertising where, apart from anything else, there is the problem of the phoenix traders and also the problem of imaging where it does not suit for one reason or another the advertiser to be fully identified. This also has implications where there is political advertising by single issue organisations.

It is submitted that clear new regulations should be adopted and these need to apply to the three categories noted above and no distinction as to requirements for disclosure should be made where communication is other than by paper. Equivalents must be achieved.

.....

My overall recommendation is that the legal requirement for registration of business names should be reinstated as a protection to the public which will be of particular advantage of verification with electronic commerce. It would undoubtedly facilitate collection by Customs and Excise and the Inland Revenue of taxation, because it would enable the Inland Revenue to pursue the shareholders and proprietors of a company where trade names are used and true identities are cloaked. Far too often the Inland Revenue and the Customs and Excise can be frustrated because they may only be able to pursue directors of a limited company who are not persons of real substance. The shareholder or shareholders who should carry responsibility should not go unscathed as at present do the undisclosed principals on the unincorporated company or firm.

Findlay Durham & Brodie Ltd (20)

. . . we have now been concerned about the failure of businesses to be clear as to their identity. In particular we find that there is a lack of information on orders and there

appears to be a movement towards both large and small groups of companies using registered limited companies as trading names but not actually making this clear as the orders are issued as if the trading company stands alone. In some cases, reference is made as to being part of a group but in most cases it is very unclear as to who the legal entity is that is placing the order. From reading your paper, it would appear that legislation is in place for this to be made clear but it does not appear to be complied with.

Macmillan Publishers Ltd (23)

My view is that any company is dormant within the meaning of the Companies Act should be exempt from all requirements with the exception of those of including them on company letterhead. They should not, if they are dormant, be issuing any sort of order forms or similar and so I do not see that this would particularly disadvantage others.

KPMG (26)

No. Regardless of the type of company, it remains important that customers, suppliers and the public are aware of with whom they are dealing and are provided with appropriate corporate particulars to assist in their protection. We see no basis for exempting any type of company (including charities) from the requirements.

Charities Commission (28)

This paper seems to have been prepared without regard to the provisions of Part VIII Charities Act 1993. The exemption in section 30(7) of the 1985 Act - referred to in paragraph 13 and footnote 14 - applies to any company which is exempt from the requirement to include the word "Limited" in its name and which does not in fact use the word "Limited" in its name. By no means all charitable and other non-commercial companies take advantage of the exemption.

The exemption seems to cover both the obligation in section 348 and the obligation in section 349. But charitable companies which do not include the word "Limited" in their names cannot use the exemption in relation to the obligation in section 349 - see section 67 of the 1993 Act. Accordingly the section 30(7) exemption only applies here to non-charitable, non-commercial companies which do not use the word "Limited" in their names.

Section 68 of the 1993 Act imposes additional disclosure obligations on any charitable company which does not include the word "charity" or "charitable" in its name. These require an explicit disclosure of charitable status in a similar, though not precisely the same, range of documents as is stated in section 349(1). The reason for these additional disclosures is connected with the operation of the "special" ultra vires regime for charitable companies which is set out in section 65(1) to (3) of the 1993 Act.

D Cummins (34)

More prominence should be given to reducing red tape and you should be rigorous in eliminating current disclosures that produce less benefit for UK plcs than they cost UK plc to produce.

London Society of Chartered Accountants (35)

In our deliberations, we were struck by the similarity of purpose of the Business Names Act 1985 and that part of the Companies Act 1985 dealing with company names. Surely there is a better solution than having two separate pieces of legislation dealing with similar and overlapping aspects of business life? We therefore suggest that the provisions of the Companies Act that are the subject of this consultation exercise should

be transferred to the Business Names Act where they can be suitably amalgamated to remove unnecessary duplication and differences in language and style in describing essentially the same prohibition or requirement. Naturally, there should be adequate signposts in the Companies Act to the Business Names Act to ensure that companies do not overlook the requirements.

Wales Council for Voluntary Action (42)

WCVA welcomes the proposal to simplify, clarify and update the current requirements regarding disclosure of details of companies. Overall, the points in the document and the implied proposals are not found to be contentious; rather, they do indeed appear to seek clarification and the updating of the current requirements

The Abbey National Group (45)

Although in relative terms, trading disclosure is a minor part of the company law review, Abbey National considers the opportunity should be taken to simplify and clarify the law, having regard to recent developments in business trading practices and the evolving use of electronic communications.

The opportunity should also be taken to clarify meanings of 'service address' as the address for formal service of legal and regulatory documents on the Company. Certain Court proceedings can be served at 'places of business' which can often cause logistical issues for companies.

H Gold (47)

In relation to the paper by the Steering Group, I am broadly in agreement with its views and do not wish to comment on the specific questions that it raises.

The Law Society (52)

The Paper does not address the central question of what is a company's "name". Section 2(1)(a) of the Companies Act 1985 ("Act") states that the memorandum of association of every company must state (*inter alia*) its name. Section 25 of the Act states that the name of a public company must end with the words "public limited company" (or its Welsh equivalent) and that the name of a company limited by shares or by guarantee (not being a public company) must have "limited" (or its Welsh equivalent) as its last word (unless exempted under section 30 of the Act). Section 27 of the Act specifies various alternatives, including "Ltd" for "limited" and "p.l.c." for "public limited company".

However, the Registrar of Companies has adopted the practice of printing certificates of incorporation (whether original or on change of name) using upper case characters only, so that "limited" appears as "LIMITED" and "p.l.c." appears as "PLC". This causes confusion.

Furthermore, companies conventionally display their names as "Ltd", "PLC", "Plc" or "plc", none of which accord with the strict requirements of the Act.

The legality of each of these forms of a company's name needs to be confirmed, bearing in mind the consequences of failure to show the company's name correctly (especially on its cheques).

A second (unrelated) anomaly which often causes difficulty in practice arises from the combined effect of sections 2(1)(a), 2(7), 28 and 18(2) of the Act: the first states that the memorandum of a company must state its name; the second prohibits a company from altering the conditions contained in its memorandum except in the case, in the mode and to the extent, for which express provision is made by the Act; the third permits a company, by special resolution, to change its name (but without reference to any consequential change to its memorandum); and the fourth requires a company which is

required to send to the Registrar of Companies any document making or evidencing an alteration in the company's memorandum or articles to send with it a printed copy of the memorandum or articles as altered.

One confusion which this causes in practice is as to whether, following a change of name of the company, it is required to send to the Registrar of Companies a printed copy of its memorandum of association showing the new name; practice varies on this point and the position should be clarified.

A further confusion which this causes in practice is as to whether, when re-printing its memorandum of association, a company which has changed its name should (1) show its current name in the text of the memorandum and set out a history of its previous names in a footnote to the text; or (2) show its original name in the text and set out a history of its subsequent names in a footnote to the text; again, practice varies on this point and the position should be clarified.

International Underwriting Association (58)

In conclusion we find many of the comments and proposals to be sensible and pragmatic in nature. We support the general objectives to maintain openness and transparency in the company/customer relationship and the extension of trading disclosure requirements to all companies. Clarification for companies and relaxation of some of the more onerous requirements are to be welcomed. Therefore, to a large degree, we would endorse the comments and proposals contained in the consultative document.

J M Swallow (61)

I have read your document raising various issues in this review process, and have the following comments.

?? Para 15. display of company name. I agree, although my qualification is that Company literature and communications should always clearly carry the principal address by which a company wishes to be known.

?? I also increasingly feel that all business premises should be required to clearly identify their address, as this is often a source of confusion, especially in High Streets where one has offices above shops with semi-hidden doorways, and often not even a letterbox – one should be certain that delivery is to the correct address for notices!

?? Para 19 Name to appear.... Your premise is laudable but I am afraid the 'chips' are way ahead of you. There is no way at this stage to introduce the formality of letters into emails. If this were a real desire the only way would be if you persuaded the software writers of the world to all change the way their software is written. I rarely receive properly formatted emails from SME size businesses, and in fact am happy with internet informality

?? Para 21. The forms to be filled in do not need much detail about the company BUT it is most important to be clear what the identity being contracted with/committed to is - e.g. name, number, telephone, fax and email.

?? It is important to get away from the silly financial services act format where too much information is insisted upon resulting in adverts half-full of 'small print' which of course is then ignored - so only insist on what is important!

?? fuller particulars = name of co, registered number, address, telephone, fax and email

?? companies should only be permitted to trade under their registered name unless

given permission by the Registrar to use another e.g. for publicity/trade mark purposes.

M Hardy (63)

You will no doubt be aware of the Parliamentary Question asked at my request in order to clarify the present law, and which may be found in Hansard for January 10th 2000 but which I now set out for ease of reference.

Companies Act 1985: Definition of "Registered Office"

The Earl of Dundonald asked Her Majesty's Government:

Whether the obligations imposed by Section 348(1) of the Companies Act 1985 extend to the registered office, being "an office", of a company as required in accordance with Section 287 of the same Act; whether the position is unaltered if the company is dormant or otherwise not trading; and whether, given that Section 744 of the same Act defines "place of business" as including a share transfer or share register office, the obligations imposed by Section 348 extend to such premises. [HL267]

The Minister for Science, Department of Trade and Industry (Lord Sainsbury of Turville):

A company is required to have its name outside its registered office, whether or not it is trading, and any other office or place in which its business is carried on, including share transfer or share registration offices if there are such places. The Section 744 definition of "place of business" relates to overseas companies and is not relevant to the Section 348 requirement.

You will also no doubt already be aware of my formal complaints, inter alia on the very matters now raised in the paper, last year to the Secretary of State for Trade and Industry in relation to non-compliance with the existing disclosures by one of the largest UK firms of Company Incorporation agents, and that the Secretary of State delegated investigation of the matter to the Registrar of Companies. Since making the complaint no response other than an acknowledgement has been received, whilst the many thousands of offences continue unabated to this day.

The fundamental problem with law making is that there is no point making any laws unless it is not only intended that they be complied with, but that compliance is actually procured. This is ever more so with the integration of EEC directives into domestic law. At the time of writing, and by way of example only, my research has shown that none of the following entities comply with Section 348 of the Companies Act 1985 for either their own subsidiary or their client companies:

Solicitors: Herbert Smith
DJ Freeman

Accountants: Ernst & Young
PricewaterhouseCoopers

Company Formation Agents: Jordans
OCRA
First Class Company Services

Regulatory bodies: Institute of Chartered Accountants in England & Wales
Institute of Chartered Secretaries.

A total of more than 8,000 companies

Matters are made worse by those Company Incorporation agents who “encourage” their clients to purchase brass name plates, but then fail to provide such signage to those who avail themselves of the “Registered Office Services”, and by implication warranted compliance with the requirements of the Company law.

It would also seem clear from Lord Sainsbury’s answer that none of the companies listed on the Stock Exchange who use, for example IRG Capita, as share registration agents are in compliance with the legal requirements for disclosure at such agents premises (Beckenham in IRG’s case).

So I suggest that the first thing that The Company Law Review Steering Group should be doing is to go back to basics and ask themselves whether any disclosure requirements are required at all not least if Government, delegated regulatory bodies and major service providers are just going to blithely ignore the requirements anyway? In addition the employers or firms of many members of the Steering Group are undoubtedly similarly breaking the same laws, and although I have deliberately avoided making physical verification it might be appropriate for those members to consider their own latent exposure to criminal prosecution.

It is my own opinion that whilst the advantages afforded by Limited Liability status have probably been the single most important development permitting economic development, and will continue to be so; strict compliance with basic disclosures of identity is a pre-requisite for consumer and general public confidence in such artificial personae.

Given the plethora of jurisdictions in which companies can now be incorporated with identical names and suffixes or prefixes, and the development of “virtual” environments, it is my submission that there is no excuse why a company should not be required to disclose basic identification data (name, place of incorporation and registered number) each and every time its name is used. What use is it to just require the name alone if the entity could be from anywhere from Malta to the Virgin Islands let alone three different parts of the UK? Similarly a trading name must enable all to immediately identify the legal persona, be it individual or corporate, using that name.

Besides specific responses to the direct questions asked by the Steering Group, I would like to raise the following matters:

I am concerned that the Steering Group has misunderstood the concept of a “service address”. The new “CPR” Rules of the Supreme Court make provision that legal service may be effected at any place with a real connection with the business. Surely a sensible approach in this day and age, which will inevitably lead to service by e-mail in due course. A different definition of “service address” within any revision to company law will only cause confusion and create opportunities for obfuscation by the unscrupulous.

The Steering Group seems to think that the disclosure requirements for affixing company names to the outside of premises might not be clear-cut in the case of skyscrapers and directors operating from home. That is clearly an unsustainable

perspective.

If directors choose to operate from their prestigious home addresses, then there is a small price to pay. The fact that wives might object to a company name being affixed alongside the wisteria is no reason for an exemption; the choice of business location is entirely voluntary.

As for skyscrapers, every building has a door way at ground level and simple but visible disclosure of all “occupants” is but a moment’s work. The only people with a problem are those, for example, who purport to offer compliant Registered Office services for more than 3000 companies from inappropriate premises above shops on the main shopping streets in central London where there isn’t enough room to sign even there own business let alone their clients. In such cases it is incumbent upon them to operate from premises suitable to the services they are offering. If the premises are not suitable, then they must move to premises that will afford compliance facilities.

Whilst I can see some sense in the argument that affixing to the outside of premises is outdated, the problem is that with so many buildings having strict security measures preventing access by those without passes or “after hours”, there is an absolute need if internal signage is to be permitted, for it to be “clearly legible from the outside”.

The British Telecom display of all the companies using its head office as the Registered Office does not comply with present law but does offer a model for “easily visible”. The Jordan’s brass plate of “see the lists inside” is wholly inappropriate not least as, upon inspection, the lists have been shown to be either non-existent or inaccurate.

In my submission the law must continue to provide that, whether in or out of office hours, any person must be able to see signage from the outside as to who is “resident” or carrying on business from a building. There is also a reasonable argument that the place and registered number of incorporation should be displayed alongside the name.

It seems to me that within the fees, along with the Certificate of Incorporation, Companies House should perhaps be required to make an initial supply of “ideal” disclosure such as self adhering plastic for window display such as we all use for the Road Fund license for our cars. These don’t need to be large “bumper stickers”, but merely to afford guidance to compliance with the “legibility” requirements if applied to an external window no more than 1.83 metres from the ground, for example.

So far as disclosures on websites is concerned, disclosure of basic identifying information should, if it is not already, be mandatory and intermediaries (such as ISP’s and other “hosts”) made liable as agents in the case of non-compliance. This should be so whether or not the site is used for direct sales.

I trust my comments are of some use in the Steering Group’s deliberations.

In the meantime it would be nice if the Secretary of State would at least try and procure compliance with the law by others, so that new entrants to the market are not placed at a competitive disadvantage contrary to the provisions of both Domestic and European Competition law, as a result of what might otherwise be construed as possible “collusion” by Government Departments, solicitors, registered auditors and others to deliberately misapply existing law.

Office of Fair Trading (66)

As the Office of Fair Trading is primarily concerned with the protection of the interests of the UK consumer, our response will focus more upon the benefits or potential detriment to

consumers rather than the impact upon companies themselves.

As regulators we are often concerned with those businesses which seek to evade their responsibilities and make it difficult rather than easy for their customers to make contact with them to complain about goods or services that are not provided or are less than adequate. We are keen to see effective regulation of the use of corporate and trading names as their misuse can easily mislead consumers.

We therefore see great scope for using these legislative requirements to increase the transparency of businesses in their dealings with consumers. We would also welcome an increase in awareness amongst businesses and consumers of the legislative requirements of both the Companies Act 1985 and the Business Names Act 1985. For example, the civil sanction available under section 5 of the Business Names Act could be of benefit to consumers who may have suffered materially as a result of being misled about the identity of a business.

Also, we would be interested in any information that you have on levels of compliance and how enforcement is encouraged. In particular, we would like to know how many prosecutions there are each year and how many contracts are nullified as a result of non-compliance.

BBC (68)

Our attached response sets out our main comments on the issues and proposals raised in the paper together with our detailed comments on the specific questions posed.

Although the trading disclosures provisions of the Companies Act 1985 do not apply to the BBC, (because it is a chartered corporation), it is nevertheless the Corporation's policy to comply with those provisions so far as possible. One difficulty is that the Corporation normally operates under the initials "BBC" rather than its full corporate name. Under the current legislation this would attract the provisions of the Business Names Act 1985, including the requirement to display its full corporate name and service address in any premises where its business is carried on. This would be quite onerous given the number of properties in which the Corporation carries on business (522). More importantly it is questionable whether it is more in the public interest to use the BBC's technical legal name (which is less known here, and abroad) than its world famous brand name. The proposals outlined in the consultation paper would help to reduce this burden, and we agree that the coverage and details of the controls under the two Acts should be revised to ensure there are no anomalies. An alternative approach would be to make provision to enable the Corporation to carry on business under both its full name and its initials.

Overview of proposals

Background

1. We agree with what is said in the consultation paper about the rationale for trading disclosures. Registration as a company creates a separate legal entity and in many cases limits the liability of its members. It is therefore right in principle that a registered company should be obliged to disclose its name and other relevant particulars to members of the public and anyone having dealings with it. However the costs of compliance can be high, so it is important to ensure that the disclosure requirements are proportionate to third parties' reasonable need for the information.

2. In our view the Companies legislation should lay down minimum disclosure requirements for all registered companies but that any more stringent requirements which may be necessary for companies engaging in particular activities should be set out in separate legislation dealing with those activities, for example consumer protection legislation (including e-commerce) and financial services.

Display at Premises

3. We consider that the rationale of these provisions is to assist those serving documents on the company and entering into official correspondence with it. We would therefore favour preserving the rule that a company's registered office and any additional service addresses should be sufficiently identified.
4. We are less persuaded of the case for requiring a company to display its name at other premises where it keeps documents for inspection. In many cases such premises would be offices of solicitors or accountants which are themselves clearly signposted. We do not think it would be appropriate to require these professional advisers to display what may be a long list of client companies for whom they are holding documents available for inspection.
5. The current requirement for a company to display its name outside every office or place where its business is carried on is unduly onerous in our view. While there may be a case for retaining the requirement for companies which deal directly with the public we see no reason to apply it to those which only supply goods or services to other companies, or to premises which are closed to the public. Typically service companies carry on business across the group of which they are members and may have "offices" in several buildings. We consider that no useful purpose is served by requiring them to display their names outside each such place of business. Australian company legislation¹ provides that a company must display its name "at every place at which the company carries on business and that is open to the public". This seems to us the right approach, although we think there should be a requirement for a degree of permanence about the "place", so that a business carried on from temporary premises such as an exhibition site or film location is not caught by the requirement. We agree that the display should be "in a prominent position so that it may easily be read".
6. We do not consider that a company trading under a name which is not its corporate name should be required to display its service address as well as its corporate name.
7. The consultation document rightly draws attention to the difficulties some companies may have in displaying their names outside certain types of building. We agree that external display should not be mandatory provided the company's name can be easily read by members of the public, for example in the foyer of a building. We also think that the legislation should be framed so as to permit electronic display of names on computer screens or similar devices. This would help reduce compliance costs in cases where there are frequent changes to a long list of companies having their registered office at a particular building. Electronic display of company names would also promote accurate, efficient and timely compliance

¹ Company Law Review Act 1988, Section 144

with trading disclosure requirements.

Name to appear in correspondence, etc.

8. We agree that this requirement should be retained and that the list of documents on which a company's name must appear should be brought up to date. In our view the obligation should extend to business letters, notices and other official publications of the company (other than sales advertisements), and the instruments mentioned in section 349 (b) and (c) of the Act so far as they are in current use. We would extend the obligation to written contracts and possibly to any other document issued by a company that evidenced or created a legal obligation of the company². This requirement would be consistent with the underlying rationale for trading disclosures and might reduce the need to identify and list in the legislation document types which over time become obsolete or inaccurate. These obligations should apply irrespective of the medium (fax, e-mail etc.) through which the letter or other business document is transmitted.
9. We would not include sales advertisements (of any kind) within the definition. We doubt whether it would be practical to attempt to distinguish between advertisements which seek to raise awareness and those which are designed directly to persuade someone to enter into a contract, although if an advertisement contained an order form inviting members of the public to send for goods or services we think that the company should be required to state its name on the form.
10. We agree that a company should include "fuller particulars" in business letters and order forms but would not wish to see the requirement extended to other documents in this legislation. We think the suggestion that the registered office should be identified to avoid confusion between addresses is helpful .

Misleading names

11. We agree that the inclusion of "public limited company", "limited" and their Welsh equivalents should not be permitted as part of a trading name which differs from a company's corporate name.

Penalties

12. In our experience even fairly senior employees may be unclear as to the legal entity for which they are acting, particularly where several related business are trading from the same premises, or where the same activities are carried on for both a subsidiary and a holding company. Accordingly we do not consider it would be appropriate for them to be made personally liable for cheques etc. dishonoured by the company concerned. We agree that both civil and criminal liability should fall only on the directors and officers of the company but do not think that "officer" should be defined so widely as to include a person who simply participates in making a decision which affects a substantial part of the business of the company. We tend to agree that any office holder who is to be penalised should be

² See s. 25(1) Companies Act 1993 (NZ)

“responsible” in a real sense for the act or default in question .

13. We agree that where a person suffers financial loss as a result of a company’s failure to include its corporate name and service address in a document a court should have a discretion to dismiss proceedings brought by the company to enforce the contract.