

The Fraud Advisory Panel

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Company Law Reform
Corporate Law & Governance Directorate
Department of Trade & Industry
5th Floor
1 Victoria Street
London
SE1H OET

BY EMAIL: companylawreform@dti.gsi.gov.uk

Dear Sir / Madam

Response and Comments of the Fraud Advisory Panel to the Department of Trade & Industry Consultation Paper "Company Law Reform"

I am responding, on behalf of the Fraud Advisory Panel to the White Paper on Company Law Reform.

The Panel, which is an independent body of volunteers drawn from the public and private sectors, works to raise awareness of the immense social and economic damage that is caused by fraud and to develop effective remedies.

The Panel –

- Originates proposals to reform the law and public policy on fraud
- Develops proposals to enhance the investigation and prosecution of fraud
- Advises business as a whole on fraud prevention, detection and reporting
- Assists in improving fraud-related education and training in business and the professions, and amongst the general public
- Establishes a more accurate picture of the extent, causes and nature of fraud

Members of the Fraud Advisory Panel include representatives from the law and accountancy professions, industry associations, financial institutions, government agencies, law enforcement, regulatory authorities and academia. The Panel works to encourage a truly multi-disciplinary perspective on fraud. No other organisation has such a range and depth of

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knowledge, both of the problem and of the means to combat it. The Panel was established in 1998 through a public spirited initiative by the Institute of Chartered Accountants in England and Wales. Today, it is a registered charity and company limited by guarantee. The Panel is funded by subscription, donation and sponsorship.

Our concern is principally with the issues raised at paragraphs 4.9 and 5 of the White Paper. The Panel has for some time expressed anxiety that it is too easy for fraudsters to steal the identity of incorporated undertakings in order to commit offences of deception. We therefore welcome the suggestion in Paragraph 4.9, of a new offence of knowingly or recklessly delivering to Companies House material which is misleading, false or deceptive in a material particular, which will be helpful in addressing this abuse. Coupled with the recent initiative, "Proof", the password protected on-line system for companies to alter their details on the Register, together with the notification system recently introduced by Companies House to alert registered companies if an attempt is made to alter registered details, the initiative will go far to ensure that as far as possible it will be impossible for unauthorised people to "steal" corporate identities by altering registered details held at Companies House. We also welcome the increase in the penalty for offences under Section 458 (fraudulent trading) to 10 years, bringing it into line with theft and deception offences under the Theft Acts. We note that the Fraud Bill, currently going through the House of Lords, will extend the provisions of Section 458 to sole traders and other unincorporated undertakings.

However, while we understand the rationale for making it easier to set up a limited liability company (Section 5 of the White Paper), we are concerned that the veil of limited liability is one which is only too easily assumed by those who set up companies with the dishonest intention of defrauding the public. We would therefore urge the DTI to take this opportunity to consider the introduction of a licensing system for company directors, to ensure that only those who are honest and solvent and whose previous businesses were wound up having discharged any outstanding liabilities, are allowed to become directors of limited liability companies. At the same time, we urge the DTI to consider introducing prudential controls on the formation and running of limited liability companies, on the lines adopted in the Isle of Man and in the Channel Islands, by introducing a system of licensing company formation agents. The rationale behind this is to encourage sound and prudently managed business, to deter fraud and money laundering and to ensure that client companies are properly and competently administered. It seems to us to be inconsistent and irrational that those who form and run investment companies are subject to pre-authorisation vetting and close supervision by the FSA, whereas those who run trading companies not subject to control under FiSMA are not subject to any form of scrutiny or control until they have behaved dishonestly or recklessly and the public interest is harmed. The regulatory regime for companies in the financial services sector has proved to be effective and successful since 1988 in preventing the use of authorised undertakings for the commission of offences of

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dishonesty; not so limited liability trading companies, which are frequently the subject of criminal investigation and prosecution for offences of dishonesty in relation to the general public. We therefore recommend that the DTI gives consideration to introducing a modified regulatory regime to ensure that, as far as possible, the dishonest and the recklessly improvident are prevented from forming and running limited liability companies.

Rosalind Wright
Chairman