Dear Sirs

Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business

I attach our comments on the above discussion paper ("DP").

EY supports the UK Government's commitment to increasing corporate transparency and the international work and EU work that is taking place in this regard.

We therefore welcome the publication of this DP and are pleased to have an opportunity to contribute to this important debate.

As regards the proposals set out in the DP, in summary:

- We believe that the proposal for a register of beneficial owners could, subject to the detailed comments in the Appendix, result in more effective financial crime compliance (including, for example, anti-money laundering, anti-terrorism and financial sanctions compliance) and more effective enforcement of financial crime (including fraud and tax evasion).

- A register of beneficial owners could also, if appropriately designed and implemented, bring benefits to companies themselves. Clarity around who ultimately owns a company's shares should help to make meeting regulatory and legislative requirements (e.g. requests for information as part of the customer due diligence process (CDD)) more effective and efficient.

- In addition to introducing a register, it is also essential, in our view, that Companies House introduces validation checks/controls on the information submitted. There would also need to be enforced penalties for mis-reporting.

- We support the proposals in respect of bearer shares.

- We believe that greater transparency should be applied to both nominee and corporate directors (in respect of the latter, this may be a better solution than abolition). Greater transparency of corporate control should help ensure that all individuals who are responsible for running companies are clearly identifiable and, in the event that a company is investigated and misconduct identified, could be effectively sanctioned.
• We support a number of the proposals in Part B of the DP, e.g. giving sectoral regulators the power to apply to court for a disqualification order where the misconduct is of general concern rather than a sector-specific issue.

• Whilst we recognise the policy objectives, we do have concerns regarding some of the other proposals (e.g. amending the Companies Act 2006 (“CA06”) duties of directors to create a primary duty to promote financial stability over the interests of shareholders) and believe that adequate powers exist under extant legislation/regulation to address the concerns identified.

• It will be important to ensure, in so far as possible, that the final UK Government policy is designed to fit with – and not be super equivalent to - international and EU regulatory and legislative initiatives, e.g. the Fourth Anti-Money Laundering Directive (4AMLD).

We hope that our comments will be helpful. Should you wish to discuss our response in more detail, relevant subject matter experts are available to meet with you. Please do not hesitate to contact me.

Yours faithfully

Andrew Hobbs
Associate Partner, Corporate Governance & Public Policy
For and on behalf of Ernst & Young LLP

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Appendix A - Responses to specific questions

Part A – Enhancing the transparency of UK company ownership

Beneficial ownership and a central registry

Q1. The proposed definition of beneficial ownership and its application in respect of information to be held by a central registry?

We agree that the definition of beneficial ownership should be consistent with extant Anti-Money Laundering legislation and international guidance (i.e. from the Financial Action Task Force (FATF)) and concur with the proposed definition in the DP and its application in respect of information to be held by a central registry.

However, we believe that more thought will be needed with respect to consolidated holdings / cumulative interests (as discussed in paragraph 2.20 of the DP). We suggest that the drafting is aligned to include those identified as “close associates” in Schedule 2 to the Money Laundering Regulations 2007 (“ML Regulations”).

In addition, we believe that precise definitions of beneficial ownership of blocks of shares would be required in order to make any reporting requirement meaningful. Different classes of shares with different voting rights attached will also need to be taken into account.

Q2. The types of company and legal entity that should be in scope of the registry?

Subject to our comments below, we believe that the register should include all entities within the remit of Companies House (including private limited companies, limited liability partnerships and limited partnerships).

Q3. Whether there should be exemptions for certain types of company? If so, which?

In principle, the use of exemptions should be kept to a minimum to prevent avoidance. However, we agree that, given the disclosure requirements for listed companies (which are recognised in Regulation 13 of the ML Regulations and the proposal for 4AMLD), there could be an exemption for listed companies if the disclosure requirements ensure adequate transparency of beneficial ownership. In addition, there could, arguably, also be an exemption for wholly owned subsidiaries if the parent company reports on their behalf.

Any exemptions might, however, need to be revisited depending on the final requirements for disclosure of beneficial ownership in 4AMLD.

Q4. Extending Part 22 of the Companies Act 2006 to all companies as an aide to beneficial ownership identification by the company?

Yes. We believe it would be helpful to give all companies the right to issue s.793 CA06 notices to investigate the identity of any person they know, or suspect, is, or was at any time in the preceding three years, interested in their shares (e.g. to investigate the identity of the beneficial owner of shares that are held via a nominee).
However, it will be important to be proportionate if any s.808 CA06 obligations (and the related criminal offence) are also extended to private or other, non-public, companies.

Q5. Placing a requirement on the company to identify the beneficial ownership of blocks of shares representing more than 25% of the voting rights or shares in the company; or which would give the beneficial owner equivalent control over the company in any other way?

Requiring companies to identify their beneficial owners is consistent with FATF Recommendation 24 and the EU Commission’s proposal for 4AML (Article 29 of which would require Member States to ensure “that corporate or legal entities established within their territory obtain and hold adequate, accurate and current information on their beneficial ownership”).

However, given that owners of shares could be nominees and/or blocks of shares could, unbeknown to a company, be operated together, we believe that the requirement should be drafted so as to require a company to take “reasonable steps” to identify its beneficiaries and to report the information of which it is aware (or could reasonably be expected to be aware).

Q6. Placing a requirement on beneficial owners to disclose their beneficial ownership of the company to the company?

In addition to placing a “reasonable steps” requirement on companies, we agree that, for the reasons discussed above and to avoid disproportionate cost for companies, there should also be a requirement on beneficial owners to declare their interests and provide evidence of their background and status. Such a requirement would place the onus on beneficial owners to disclose arrangements that are not transparent to companies (e.g. blocks of shares operated together).

Beneficial owners should also be required to disclose the ownership structures through which they hold their investments of over 25% in UK companies, particularly given the importance of identifying the ultimate beneficial owner.

Q7. Whether there are additional or other requirements we could apply to ensure that information on all companies’ beneficial ownership is obtained? If so, what?

As companies can be misused, to facilitate financial crime, on an international/cross-border basis, we believe that the Government will need to consider how the measures could be drafted so as to address situations in which information relating to UK companies within the scope of the register is held outside the UK (e.g. where the ultimate beneficial owner is a non-UK resident and refuses to provide information).

Q8. Requiring the trustee(s) of express trusts to be disclosed as the beneficial owner of a company?

Given the complexities, the proposals relating to trustees and trusts warrant careful consideration by lawyers specialising in Trust Law. However, if the trustees of an express trust are beneficial owners of a company, it would seem appropriate that they be disclosed as such.

Q9. Whether it would be appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?

Article 30 of the Commission’s proposal for 4AML would require Member States to ensure “that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust.”
Given the complex interaction with Trust Law, we believe that requiring the disclosure of the beneficiaries of a trust, in addition to the trustees, could risk complicating these reforms. However, although this is a question best addressed by lawyers specialising in Trust law, it would seem to us that requiring trustees to hold the necessary information, as per the 4AMLD proposal, would enable enquiries to be made of them if/when necessary.

Q10. **Extending the investigative powers in the Companies Act 1985 to specified law enforcement and tax authorities?**
   We agree.

Q11. **Using the requirements that apply in respect of a company’s legal owners as the model for beneficial ownership information to be provided to the company and the registry?**
   We agree.

Q12. **If not, what additional or other information we might require? How?**
   See response to Q11 above.

Q13. **Whether there is a need to introduce additional or other measures to ensure the accuracy of the beneficial ownership information that is filed with Companies House and retained on the register? If so, what?**
   We believe that this is an opportunity for Companies House to introduce validation checks on information that is filed with it. Although such measures would involve additional cost, they would help to identify – on a proactive basis and at an early stage - poor quality information, non-compliance and potential malpractice.

More generally, in our experience search automation at Companies House is fairly basic. A codified database of information that is automatically searchable for changes (e.g. automation of change of beneficial ownership trigger event) would have a significant benefit for regulated firms. In our view, the design of the "register" will be essential to the effectiveness of the proposals for firms in the regulated sector and companies entering into business relationships with these firms.

Q14. **To what extent would the benefits of these measures outweigh the costs and other impacts?**
   It would be helpful if Companies House could provide a cost benefit analysis on introducing data validity checks.

Q15. **Whether companies should be required to update beneficial ownership information at fixed intervals or as the information changes?**
   Whilst an annual return process, similar to that for UK companies, may be easiest to manage for some companies, to maximise the benefit of the information held on the register (e.g. for law enforcement and regulated firms) and to avoid the costs of having to confirm all beneficial owners on an annual basis, companies should also be required to update the information when they are put on notice of a change (either as a result of a notification from a beneficial owner - see the response to Q16 below - or through information that has otherwise come to the company's attention).
Q16. Whether beneficial owners should be required to disclose changes in beneficial ownership information proactively to the company?
Yes: see response to Q6 above.

Q17. The appropriate timeframes for notification of changes to the company or Companies House?
Whilst private companies are best placed to comment on appropriate timeframes, the notification process, per se, could be modelled on the major shareholding notification requirements for listed companies.

Q18. The broad possible costs and benefits of a policy change to the annual return.
It would be helpful if more detail on the annual return reforms could be provided.

Q19. Whether information in the registry should be made available publically. Why? Why not?
Whilst there is an argument that full transparency necessitates open access to the register, making the register information available publically, without restriction, raises legitimate data privacy issues (particularly since targeting of directors and owners of companies has occurred in the past e.g. by activists and fraudsters).

Hence, we believe that information on the register should be available publically but only to third parties with a legitimate need to know (including regulated firms carrying out CDD under the ML Regulations).

Since many regulated firms currently request appropriately certified structure charts from their potential customers as evidence of beneficial ownerships, using the register to lodge and provide such information could bring cost and efficiency benefits to UK business. Therefore, we would recommend data-sharing along the lines of CIFAS (i.e. approved participants can access rather than general public availability).

Q20. If not, whether the information should be accessible to regulated entities? Why? Why not?
Yes. As noted above, the information should be accessible to individuals performing specific roles in regulated firms, which would also enable them to check and validate it.

Q21. Whether a framework of exemptions should be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?
As a starting point we believe that a uniform level of granularity should apply to all individuals connected with companies - whether as directors or beneficial owners – and exemptions should be minimised to prevent avoidance.

Making the register available to approved participants only should also lessen the level of protection needed in respect of beneficial owners for whom publication could result in personal risk.

Q22. The broad possible costs and benefits of a policy change to the registers of members?
It would be helpful to have additional information.
Q23. Whether beneficial ownership information held by the company should be made publicly available? How?

Article 29 of the proposal for 4AMLD would require information on beneficial owners be accessible “in a timely manner by competent authorities and by obliged entities.” We are not convinced that the UK requirements should go further by making the information generally available on request because of the data privacy issues we describe in response to Q19 above.

Q24. Should any framework of exemptions in relation to information held by the registry also apply to information held by the company?

Provided access is limited as discussed in response to Q23 above, we are not convinced that there is a need to extend exemptions to information on the beneficial owners held by companies themselves.

Q25. The costs and benefits of this policy change for companies, beneficial owners, regulated entities and other organisations.

Given the limited information available at this stage, it is difficult to estimate costs. However, if the register can negate the current need for corporate entities to provide appropriately certified structure charts to regulated firms as evidence of beneficial ownership, the cost savings could potentially further reduce the cost to UK business assumed in paragraph 4.19 of the DP.

Q26. In particular:

- The link between the proposals and crime reduction
- The link between the proposals and the incentives to invest
- The numbers of companies affected
- The amount of time it would take to obtain, collate and report data on beneficial ownership – for both simple and more complex ownership structures
- Costs to the regulated entities
- The changes which regulated entities might make to their actions
- The number of beneficial owners
- The degree of publicity and guidance required
- Likely compliance
- Potential unintended consequences
- The varying impacts of alternative options

We believe that the proposal for a register of beneficial owners could, in principle, result in more effective enforcement of financial crime (including fraud and tax evasion).

As regards regulated firms’ CDD obligations under Regulation 5 of the ML Regulations, a central registry could, if appropriately designed and implemented, be advantageous for many reasons. For example:

- A register could create one ‘port of call’ for companies to check ultimate beneficial ownership during CDD and for anti-terrorism and financial sanctions compliance.
- Having ready access to the ultimate beneficial owner and ownership structures could help to ensure that all relevant parties connected with a company are screened effectively and facilitate faster identification of risks and issues.
- Costs could be reduced, both for companies seeking to open accounts or enter into other business relationships – who may need to provide less information – and for regulated
companies (particularly if ultimate beneficial ownership information is not readily available currently or if the structures are complex).

- It can be difficult for regulated firms to understand some companies’ ownership structures, which increases the time spent on investigations. Therefore a central registry could reduce this time significantly.
- Lastly, but not least in terms of importance, such a registry could enhance the effectiveness (if entries on the registry are adequately validated) of regulated firms’ financial crime compliance (including, for example, anti-money laundering, anti-terrorism and financial sanctions compliance).

**Bearer shares**

**Q27. Prohibiting the issue of new bearer shares.**

We agree. As a way of making anti-money laundering, financial sanctions and financial crime compliance more effective, there are benefits to companies having clarity around who ultimately owns their shares.

Indeed, the Joint Money Laundering Steering Group Guidance (paragraph 5.3.162) currently recommends a process for regulated firms within scope of the Guidance which is tantamount to requiring the creation of a share registry where securities are held in bearer share form. It would seem to us that the proposals in this DP are a legal codification of this recommendation.

**Q28. Whether individuals should be given a set period of time to convert existing bearer shares to ordinary registered shares? How long?**

Some organisations legitimately have to separate themselves, as a corporate structure, from an entity. This is achieved in a number of ways, not least by the creation of entities “owned” by charitable institutions with control residing with the owners of debt associated with the entity. Transitional arrangements will be needed to ensure such arrangements can be unwound and replaced. It occurs to us that two years might be an appropriate period, although the precise period would need to be discussed with the companies that are impacted.

However, a wider and more challenging issue is how organisations will be able to maintain legal distance but with greater transparency.

**Q29. Whether there are additional or other measures that we might take?**

We have no comments at this time.

**Q30. The costs and benefits of this policy change.**

Whilst further thought will need to be given to the costs of the proposed changes (informed by submissions from companies that are impacted), the benefit would be the elimination of a form of shareholding that (as recognised by the G8) can be misused and may obstruct transparency.
Nominee directors

Q31. Whether we should more widely communicate the application of directors’ statutory duties to all company directors and whether we should – alternatively or in addition – require nominee directors to disclose their nominee status and the name of the beneficial owner on whose behalf they have been appointed? Why? Why not? If yes, should that disclosure be made available on the public record?

Yes, nominee directors should be required to disclose, on the public record, on whose behalf they have been appointed.

Requiring nominee directors to give full details of the ultimate beneficial owner on whose behalf they are acting would help to ensure that the correct individuals/companies are screened appropriately for the purposes of anti-money laundering, anti-terrorism and financial sanctions compliance.

Greater transparency of corporate control should also help ensure that all individuals who are responsible for running companies are clearly identifiable and, in the event that a company is investigated, could be sanctioned.

Q32. Whether we should make it an offence for a director to legally divest themselves of the power to run the company. Why? Why not?

Yes, we believe that an explicit offence would be appropriate.

Q33. Whether there are additional or other measures that we might take?

We have no comments at this time.

Q34. The costs and benefits of this policy change.

Whilst further thought will need to be given to the costs of the proposed changes (informed by submissions from companies that are impacted), the benefits could include an improvement in transparency in relation to the control of companies.

Corporate directors

Q35. Whether we should prohibit UK companies from appointing corporate directors. Why? Why not?

No. We understand that corporate directors can perform a valid function (e.g. in groups of private companies corporate directors may be used for administration efficiency) and the fact that they are already registered at Companies House provides some transparency and lowers the risk in relation to them.

Hence, if the case is not made to prohibit the use of corporate directors, we believe that greater transparency in the annual return should be required when a company has a corporate director e.g. linked companies house records or a separate section on the corporate directors’ own beneficial ownership chain.
Q36. If yes, what transitional arrangements might be appropriate?
   See response to Q35 above.

Q37. Whether there are additional or other measures that we might take?
   We have no comments at this time.

Q38. The costs and benefits of this policy change.
   See response to Q35 above.

Part B Increasing Trust in UK business

Clarifying the responsibilities of directors

Q39. The merits of strengthening responsibilities of banking directors by amending the
directors’ duties in the CA06 to create a primary duty to promote financial stability over the
ingterests of shareholders. This should be considered in the context of the banking
regulation reforms the Government has already committed to and the further economy-
wide measures set out in the rest of this paper.

We consider that the current duties placed on directors by the CA06 – supplemented by directors’
responsibilities under financial services regulation (which will be strengthened following the
Parliamentary Commission on Banking Standards’ recommendations) – are sufficient to cover the
concerns relating to the banking sector. Hence, we believe that the response should not be to
legislate to impose a sector specific duty in the CA06 but rather to focus on enforcement of the
existing duties by sectoral regulators. Indeed, we are not convinced that a director’s duty to
shareholders could be in conflict with a duty to promote financial stability (it is difficult to see how
financial instability would ever be in in the best interests of shareholders). In addition, it seems to
us that it would be hard to define a duty to promote financial stability.

Changing the CA06 duties of directors in relation to one sector is also likely to have unintended
consequences. For example, changing directors duties such that a board's primary concern is not
its shareholders (as is currently legally required) but a national interest relating to financial
stability, could have an impact on investment in the sector and lead to a reduction in the number
of individuals willing to take up directorships in the sector (thereby shrinking the talent pool). Such
a change in the banking sector would also set an unfortunate precedent, opening the door for
further amendments to the CA06 to introduce specific directors’ duties in relation to other sectors
(for the reasons discussed above, we do not think that this should be the response).

Allowing sectoral regulators to disqualify

Q40. Whether, in certain circumstances, directors barred or prohibited from senior positions in
key sectors should be considered for disqualification from acting as directors of any CA06
company?

We agree. The sanction to disqualify generally (in cases where alleged misconduct is of wider
concern rather than a sectoral issue), should be available by giving sectoral regulators power to
apply to court for a disqualification order. Any directors subject to such a disqualification should, however, be able to apply to court for permission to act as a director of a “non-sectoral” company

Q41. Which sectoral regulators should have the ability to make an application to the Court for a disqualification order, or to accept a disqualification undertaking from a director?

Other respondents are better placed to answer this question.

Q42. The potential costs and benefits of this proposal.

Benefits would include enhanced policing of corporate management and improved standards. Costs would include training of sectoral regulations; additional resources may well be required in order to bring proceedings.

Factors to be taken into account

Q43. Whether Schedule 1 to the CDDA should be amended to provide that any breach of sectoral regulations is a matter of unfitness that may be taken into account by the court in disqualification proceedings?

Yes, we support this proposal although we believe that there needs to be some element of proportionality.

Q44. Whether Schedule 1 to the CDDA should be amended to provide that ‘wider social impact’ is a matter to be taken into account by the courts in disqualification proceedings?

No. Whilst we recognise the policy objective, we do not believe that it would be possible to draft a definition which would be sufficiently precise to allow such a provision to work in practice.

Q45. How wider social impact should be defined and whether a materiality test should be applied?

See response to Q44 above.

Q46. Whether, where unfitness meriting disqualification has been found against a director of a company that dealt with high volume deposits or otherwise vulnerable creditors, two tariffs of disqualification should be handed down (or agreed by way of undertaking):

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

Whilst we recognise the policy objective, we have concerns about including this level of detail in tariffs (and about the ability to draft a precise definition of “vulnerable creditors”). It is important, however that courts are able to assess the facts in every case and apply appropriate sanctions.
Q47. Whether Schedule 1 to the CDDA should be amended to provide that failure to pay particular regard to the protection of deposits, pre-payments or otherwise vulnerable creditors once a company has become insolvent is a matter to be taken into account by the court when deciding whether a director is unfit and should be disqualified (or by the Secretary of State in deciding whether to accept a disqualification undertaking)?

Under paragraph 7 of Schedule 1 to the Companies Directors Disqualification Act 1986, misconduct in relation to goods and services paid for in whole or in part (which extends to deposits) can be taken into account by the court. As it appears that the proposed change would be a requirement “to pay particular regard” to deposits etc., we are not sure what it would add in practice. In addition, and as referred to above, we have concerns about the ability to draft a precise definition of “vulnerable creditors”.

Q48. What account the court (and the Secretary of State when deciding whether to take action) should take of the track record of the director (including the number of failures a director has been involved in) when deciding whether or not to disqualify an individual and for how long?

The court can currently take into account a director's previous failures if there is evidence of misconduct. This should continue to be the case, with no imposition of any artificial limits by which unfitness is automatically assumed simply on an arbitrary number of failures (which might discourage entrepreneurial spirit, where businesses can legitimately and honestly fail).

Q49. Whether there should be a certain number of failures beyond which the presumption is that a director is unfit and should be disqualified. If so, what should that number be?

No: see response to Q48 above. We believe that there needs to be evidence of misconduct, not simply failure.

Improving financial redress

Q50. How frequently the possibility of bringing wrongful and fraudulent trading claims arise, are pursued and what value the existing civil remedies for wrongful and fraudulent trading provide?

We are not able to comment on the extent to which the current regime is working, as many such actions may be settled privately without coming to court.

Q51. Whether, if liquidators were able to sell or assign wrongful and fraudulent trading actions, more actions would be taken? If so, how many more?

We do not agree that liquidators and administrators should be allowed to sell/assign such rights of actions. In our view this could bring the risk of speculative or opportunistic claims being taken forward.

Under the current regime, liquidators do have adequate access to litigation funders, but these are subject to considerable scrutiny by counsel to determine the merits before proceeding. These are not the same type of claims that have been brought in other areas, against which the Government has sought to take action with the Jackson reforms.
Q52. To what extent creditors would benefit from this proposal?
   See response to Q51 above.

Q53. What practical difficulties might prevent third parties pursuing claims and how these might be overcome?
   See response to Q51 above.

Q54. Whether safeguards would need to be introduced to prevent certain parties acquiring such a claim? If so, who should they apply to and what form they should take?
   See response to Q51 above.

Q55. Whether this proposal would improve confidence in the insolvency regime?
   See response to Q51 above.

Q56. The benefits of giving courts the power to make compensatory awards against directors?
   We are not convinced that this power is necessary per se, as we believe that sufficient rights of action exist under the current insolvency regime.
   However, we do think that it would be helpful to have such a scheme available where a court makes a disqualification order against a director of a company that has not entered a formal insolvency process (particularly if sectoral regulators are given the power discussed in Q40 above).

Q57. The potential costs and drawbacks of this proposal?
   See response to Q56 above.

Q58. Who should receive any monies recovered by action: should it be creditors generally or left to the court to determine?
   See response to Q56 above.

Q59. Whether the IS (acting on behalf of the Secretary of State) should be able to request and agree a compensation award from a director when it accepts an undertaking from the director not to act in the management of a company for a certain number of years?
   See response to Q56 above.

Q60. Whether this proposal would improve confidence in the insolvency regime?
   See response to Q56 above.
Time limit

Q61. Whether the period within which disqualification proceedings under section 6 of the CDDA must be instituted should be extended beyond two years?

No, we believe that the current period of two years should be maintained but the Secretary of State should be given the power to apply to court to seek an extension to the period. We believe that an application for an extension, for up to one further year, should be made before the 2 year deadline expires.

Q62. If yes, should that period be five years, some other period, or no limit at all?

See response to Q61 above

Q63. How many directors are likely to be affected?

Based on our experience, we believe that about 20 directors are likely to be affected in any given year.

Educating directors

Q64. Whether, if some form of director education were to be introduced, it would increase trust in the enforcement regime?

No, we do not believe that director education would, per se, increase trust in the enforcement regime.

However, where a disqualification has arisen because of failings which do not involve dishonesty, we recognise that it could, potentially, be in the public interest to rehabilitate rather than just punish. That said, we are unsure who would fund such an initiative.

Q65. What form the training should take and who should provide it?

See response to Q64 above.

Q66. What would be the likely cost of such training?

See response to Q64 above.

Q67. Whether successfully completing any such training should enable a reduced period of disqualification; or should be a pre-condition for any disqualified director wishing to seek leave of the court to run a company whilst disqualified?

See response to Q64 above.

Q68. Whether there would be value in offering such training to all directors of failed companies – irrespective of whether they were disqualified - having regard to the fact that the director would need to cover the cost?

See response to Q64 above.
Overseas restrictions

Q69. Whether regulations should be made using the powers in Part 40 of the CA06 to prevent persons who are subject to foreign restrictions (which fetter their freedoms to act in connection with the affairs of a company) being able to be directors or act in the management of companies in the UK?

Yes. We believe that this makes sense in principle, although given that the regulations could be difficult to enforce, thought would need to be given to the process around them.

Q70. If yes, should the foreign restrictions be made to apply automatically in the UK, or should they require the Secretary of State to make an application to a court?

In our view the Secretary of State should make an application to court.

Q71. If not, should a person subject to foreign restrictions be obliged to notify the Registrar of Companies if they act in the promotion, formation or management of a company in the UK?

Yes.

Q72. Whether the Secretary of State should have the power to bring disqualification proceedings against a person on the sole basis that that person has been convicted of a criminal offence overseas in connection with management of a company or business overseas?

We believe that this would depend on the nature of the offence, but for serious offences the Secretary of State should be given such a power.