



CORPORATE TRANSPARENCY AND REGISTER REFORM: IMPLEMENTING THE BAN ON CORPORATE DIRECTORS

Issued 26 February 2021

ICAEW welcomes the opportunity to comment on the consultation on *Corporate transparency and register reform: implementing the ban on corporate directors* published by Department for Business Energy and Industrial Strategy on 9 December 2020, a copy of which is available from this [link](#).

We broadly support the proposals. They strike a good balance between improving the quality or accessibility of information on the register to deter criminal use whilst allowing business some flexibility to use corporate directors for legitimate purposes.

We are concerned that the controls on use by UK companies of non-UK corporate directors may not be as robust as those applying to UK corporate directors even though these types of arrangement are associated with higher risk of criminal use. We understand that BEIS is considering how equivalent controls could be implemented.

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This response of 26 February 2021 is made by ICAEW's **Business Law Department** and reflects consultation with its Company Law Panel and Economic Crime Sub-Committee and other ICAEW expert groups.

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KEY POINTS

1. We agree that the proposed approach strikes a reasonable balance (and is preferable to a ban with lists of exceptions based on size or type of company).
2. We agree with the proposal for a one-off ID verification of a corporate director, but only where there will be ongoing ID verification by CH of the directors (and equivalents) of in-scope corporate directors.
3. We believe that the scope of permitted corporate directors should be:
 - UK companies with natural person directors whose ID has been verified;
 - UK LLPs with designated member ID-verification; and
 - Other UK corporate bodies if it is established that their use is necessary or desirable and they are not considered to be high risk in terms of abuse for criminal purposes.
4. Use of non-UK companies as corporate directors of UK companies is associated with higher risk and we are concerned that the proposed controls are not as robust in that context as Companies House is likely to have less control over ID verification and related matters.
5. We agree that the restriction on use of corporate directors by companies should also apply (with appropriate modifications) to LLPs.

ANSWERS TO SPECIFIC QUESTIONS

The principles

Question 1. In your view, will the proposed ‘principles’ based exception deliver a pragmatic balance between improving corporate transparency and providing companies adequate scope to realise the legitimate benefits of the use of corporate directors?

6. Yes, we agree that the proposal represents a pragmatic balance, our main reservation relating to its application to non-UK corporate directors.

The Scope

Question 2. Bearing in mind the transparency objective, is the scope of the exception proportionate and reasonable?

7. We believe that the proposal is proportionate and reasonable so far as it applies to UK companies acting as directors of UK companies.

Question 3. Assuming that ID verification will form a fundamental element of the corporate director regime, what do you see as the arguments for and against allowing LPs and LLPs be appointed as corporate directors? If they are to be allowed, how should the principle of natural person directors apply within these partnership models?

8. We agree that LLPs should be permitted to act as corporate directors of UK companies subject to a proportionate identity verification regime.
9. We believe that it would be proportionate to require the designated members (as opposed to all members) of an LLP acting as a corporate director to be natural persons whose identity has been verified.
10. An English Limited Partnership does not have a separate corporate personality, but the potential impact of the proposals on arrangements using this form of business should be considered (as the General Partner is often a company, which may have a corporate director). Scottish Limited Partnerships are legal persons and have been associated with risk

of criminal use so it will be important that equivalent controls apply to them acting as corporate directors.

11. If other types of UK entity (eg, companies incorporated by Royal Charter and governmental bodies) act as directors of UK companies, consideration should be given as to whether their use should also be permitted and on what basis. It may be appropriate to apply a risk-based approach to this to ensure that the regulation remains proportionate.
12. The use of non-UK entities as corporate directors of UK companies is associated with high risk of economic crime and it will be important for government to assess how widely these entities are used (and why) and put in place equivalent safeguards to those proposed for UK entities if they are to be permitted.
13. We believe that any exemption should be limited to jurisdictions prescribed as having equivalent ID standards as the UK and whose natural directors' details are maintained in an easily accessible and publicly available register. We suggest that this information should be available from the Companies House website, or at least that links be provided by Companies House, so that disclosure is, in practical terms, as close to that provided for UK corporate directors as possible.
14. If the non-UK jurisdiction permits its companies to have corporate directors then additional controls would be necessary to prevent the non-UK corporate director of a UK company from itself having a corporate director. A self-certification by the UK company is not as robust as the proposed verification ID regime that will apply to UK companies and it may be that Companies House will need to monitor the directorships of the non-UK corporate director on a continuous basis, perhaps through direct links with relevant registers, to address this concern.

Compliance and Reporting

Question 4. Do these reporting requirements appear proportionate and reasonable?

15. The consultation says that a purported appointment by a company of a corporate director not permitted by the rules would be 'unlawful and, therefore, ineffective'. We assume that this is not intended to affect s161 of the Companies Act concerning validity of acts of a director (whose appointment was defective), but it would be helpful to clarify this.
16. We understand that these reforms will be implemented along with the proposed reforms requiring ID verification of all directors. They envisaged that the Companies House register would become the definitive record of director appointments (in lieu of the register kept by companies). As noted in our response to the *Powers of the Registrar* consultation, we do not support this approach. We are also unclear how it would apply in this context – why would Companies House register (or allow continued registration of) a corporate director in breach of the rules and how would users be able to rely upon the register entries if the appointment is in fact ineffective?
17. If the regime (and this principle) is extended to LLPs, additional matters may need to be considered to ensure that there are no unintended consequences (eg that the timing of changes in individuals' income entitlements and tax positions is not affected).
18. If the proposal is extended to appointments of corporate directors made before the new law is implemented, it will be important for there to be a reasonable transition period for relevant arrangements to be changed.

Impacts

Question 5. Does the Impact Assessment provide a reasonable assessment of the costs and benefits of the prohibition and possible exceptions? In particular:

- ***Do you have any evidence as to why companies have reduced their use of corporate directors since the primary legislation was passed?***
- ***Do you have any evidence on what might be the costs to companies from the proposed restrictions on corporate directors?***

19. We have received feedback from members working in the pensions sector that the proposals will involve costs for that sector that have not been identified in the impact assessment, including costs that might be prompted by the investment managers whose products are structured as LLPs. We believe it would be prudent for BEIS to consider potential implications for this sector further.

Potential for Extending Corporate Director Principles

Question 6. What are your views on applying the proposed Corporate Director principles more broadly to a) LLPs, and b) LPs, and how would you envisage ID verification operating in those contexts?

20. We agree that the principles should broadly speaking be extended to LLPs in the interests of consistency of treatment of entities easily created by registration under enabling statute. We think that applying the natural persons test to designated members of LLPs is generally proportionate.
21. As noted above, we think that it would, in principle, be appropriate to apply equivalent controls to Scottish Limited Partnerships as they have legal personality and thus are capable of holding a directorship (unlike an English limited partnership, which does not) but the potential impact should be assessed to ensure that any measures are proportionate.
22. Government might consider whether, and if so, how, the regime should apply in relation to other types of UK entity which use corporate directors or which act as corporate directors (eg Royal Charter companies and trusts). We suggest that its approach in this context should be balanced and pragmatic, having regard to the risks of use for economic crime and the nature of the entities involved.