

Response to Corporate Transparency and Register Reform: Consultation on implementing the ban on corporate directors (January 2021)

This response has been prepared by Mrs Donna McKenzie Skene and Dr Alisdair MacPherson, acting as a working group of the Centre for Commercial Law at the University of Aberdeen.

General Comments

Having responded to the consultation on corporate transparency and register reform in 2019, we welcome the opportunity to respond to this and the two other related consultations. We are generally in favour of the proposals contained in these consultations but have some reservations regarding some aspects of the proposals.

Responses to Questions

We would respond to the specific consultation questions as follows.

The Principles

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?

Yes. We consider that a principles-based approach is preferable to a list-based approach to exceptions. We note that the proposed approach requires that natural person directors should be subject to identity verification prior to the appointment of the corporate director. For the avoidance of doubt, we consider that the same should apply to any future replacement natural directors of the corporate director.

The Scope

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

Yes.

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?

We consider that if there is appropriate identity verification, there is no reason why LLPs and LPs should not be permitted to be appointed as corporate directors. If this were not permitted, it would impact detrimentally on choice of business structure if an entity intended to be able to act as a corporate director could not be in those forms. This is particularly the case in relation to LLPs, which are akin to companies in terms of having limited liability and corresponding publicity requirements. We also wonder whether there is even an argument for permitting Scottish partnerships to act as “corporate directors” since they have separate legal personality, albeit that they are not registered with Companies House. We consider that the principle of identity verification could be adapted to these models by requiring identity verification for all members/partners or perhaps, in the context of LLPs, the designated member only.

Compliance and Reporting

4. Do these reporting requirements appear proportionate and reasonable?

Yes. Since the use of corporate directors will be an exception, it seems reasonable to impose the relevant requirements on those who wish to use them.

Impacts

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

While we are not in a position to comment in detail from practical experience, it seems to provide a reasonable assessment.

In particular:

- **Do you have any evidence as to why companies have reduced their use of corporate directors since the primary legislation was passed?**

We cannot provide any direct evidence, but it seems to us that companies may have made decisions about appointing directors in anticipation of the coming into force of provisions to ban or reduce the use of corporate directors.

- **Do you have any evidence on what might be the costs to companies from the proposed restrictions on corporate directors?**

We cannot provide any direct evidence, but it seems to us that it is logical to anticipate that there may be some costs involved in undertaking the necessary due diligence to ensure that existing corporate directors comply with the new requirements or replacing those that do not.

Potential for Extending Corporate Director Principles

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?

We consider that this approach would make sense, as it would create a level playing field and have a neutral impact on choice of business medium. We would anticipate that ID verification could be adapted to work in a similar way to that proposed for companies.