

Corporate Director Exception proposal CLLSCLC response submitted to BIS¹ – 23 April 2015

1. **WILL THE PROPOSED 'PRINCIPLES' BASED EXCEPTION ENABLE UK COMPANIES TO CONTINUE TO USE CORPORATE DIRECTORS TO ACHIEVE THE THREE IDENTIFIED BENEFITS THE USE OF CORPORATE DIRECTORS CURRENTLY PROVIDES (I.E. REDUCED ADMINISTRATION COSTS, ACCESS TO EXPERT ADVICE AND ACCESS TO MULTIPLE SIGNATORIES)?**

Yes.

2. **GIVEN THE EASE OF SETTING UP A COMPANY IN THE UK, IS THERE ACTUALLY ANY NEED FOR UK COMPANIES TO BE ABLE TO APPOINT CORPORATE DIRECTORS WHICH ARE NOT COMPANIES REGISTERED UNDER THE COMPANIES ACT 2006?**

We believe that corporate transparency would best be served by limiting the use of corporate directors to companies registered within the UK

- Yes
 No

Please explain why

While in many cases it will make sense to use a UK company registered under the Companies Act 2006 as a corporate director, this will not always be the case.

If the principle on which the exemption is based (as we perceive it is) is that corporate directors who act through identified (and identifiable) individuals are acceptable, it should not be necessary to limit the exception to UK incorporated companies. A proviso to this is the need to ensure that confidence in the transparency of those entities is retained – see commentary on Q3 below

3. **IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, WHICH OF THE FOLLOWING SHOULD BE ALLOWED TO BE APPOINTED AS A CORPORATE DIRECTOR?**

- UK limited liability partnerships (LLPs)?
 any other type of legal entity governed by UK law (and, if so, which type)?
 any type of European company/corporate body registered in the UK (and, if so, which type)?
 foreign companies?
 other foreign legal entities?

Please explain why

We agree with a requirement, subject to the proviso below, that corporate directors should themselves have directors (or equivalent) who are (a) natural persons and (b) identified on a publicly searchable register. This identification requirement is satisfied in relation to UK companies, and we consider that – in line with EU principles – this should be

¹ <https://www.surveymonkey.com/r/CDexceptions>

extended to EU/EEA companies if they can satisfy the same tests. See Q.7 below as to companies with two-tier board structures.

The proviso to the above is if a corporate director is authorised by the FCA/PRA (or local equivalent for other EEA companies): in these cases we consider there are sufficient controller checks performed under the approval process to allow more flexibility on the entity or on the make-up of its directors. For example, some UK funds have LLPs as corporate directors in their structures and we believe these should be allowed to continue, provided those entities are FCA/PRA authorised (as they invariably are if the corporate director is the manager of the fund).

Although logically the exemption could be extended beyond EEA entities, we consider it acceptable for practical reasons to limit the exemption/proviso to the EEA

4. IF LLPS WERE, IN PRINCIPLE, TO BE ALLOWED TO ACT AS CORPORATE DIRECTORS, SHOULD ALL OF THE LLP'S MEMBERS BE REQUIRED TO BE NATURAL PERSONS ETC?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No

If not, what should be the test for determining which of an LLP's members have to be natural persons in order to meet the exception and ensure transparency for the public?

See response to Question 3. Although LLP members are publicly disclosed in the UK, we recognise the difficulty in identifying which members of an LLP have director-like responsibilities. We therefore support the idea of enabling an LLP entity to act as the corporate director only if it is authorised and regulated by the FCA/PRA; transparency and public policy concerns would be protected as the controllers of, and individuals carrying out controlled functions for, the LLP will be registered with the FCA/PRA (and therefore appear on its register).

5. IF ANY OTHER UK LEGAL ENTITIES (I.E. UK LEGAL ENTITIES OTHER THAN COMPANIES REGISTERED UNDER THE COMPANIES ACT 2006 OR LLPS), WERE, IN PRINCIPLE, TO BE ALLOWED TO ACT AS CORPORATE DIRECTORS;

i. does the entity clearly have persons holding an office corresponding to that of a UK company director? (please detail for each type of entity that you think, in principle, should be allowed to act as a corporate director)

LLPs: as limited liability partnerships are inherently flexible vehicles, there is no standard structure and accordingly it is difficult to be definitive as to who amongst its members should be considered equivalent to "directors".

6. [CONTINUED FROM PREVIOUS]

ii. If not, what should be the test for determining the persons who are to be treated as that type of entity's 'directors' for the purpose of the exception (and who must therefore be natural persons etc)?

See Q.4 above as to the suggested basis on which transparency of LLPs is protected.

7. IF EUROPEAN COMPANIES/CORPORATE BODIES REGISTERED IN THE UK (E.G. SOCIETAS EUROPEAS (SES)) OR FOREIGN COMPANIES/OTHER FOREIGN LEGAL ENTITIES WERE, IN PRINCIPLE, TO BE ALLOWED TO ACT AS CORPORATE DIRECTORS;

i. Does the entity clearly have persons holding an office corresponding to that of a UK company director? (please detail for each type of entity that you think, in principle, should be allowed to act as a corporate director)

SEs registered in the UK may have a single tier administrative organ (equivalent to a board of directors) or a two-tier system with a management organ and a supervisory organ. We suggest it is the members of the administrative organ /management organ (who exercise management powers) who should be regarded as corresponding to UK company directors. We suggest a similar approach should be taken to foreign companies, which should have either a single or two-tier structure.

8. [CONTINUED FROM PREVIOUS]

ii. If not, what should be the test for determining the persons who are to be treated as that type of entity's 'directors' for the purpose of the exception (and who must therefore be natural persons etc)?

See answer to 7.

9. [CONTINUED FROM PREVIOUS]

iii. If the legal entity in question (e.g. an SE) has a two-tier board structure involving a management organ and a supervisory organ, should the members of the supervisory organ (as well as the members of the management organ) be treated as the entity's "directors" for the purpose of the exception?

See answer to 7.

10. IF COMPANIES OR LEGAL ENTITIES ARE ALLOWED TO ACT AS A CORPORATE DIRECTOR; WHAT DETAILS OF THE ENTITY OR ITS 'DIRECTORS' SHOULD HAVE TO BE HELD AND DISCLOSED ON A PUBLIC REGISTER FOR THE PURPOSES OF THE 2ND PART OF THE EXCEPTION CONDITION? (TICK ALL THAT APPLY)

- i. Entity name (of the corporate director entity)
- ii. Any registration number allocated to it by a public authority;
- iii. The full name of each 'director' (of the corporate director entity)
- [For each of the directors]
- iv. Date of appointment as director
- v. Any former names used (if used in the last 20 years)
- vi. Nationality;
- vii. Month and year of birth
- viii. Country/state of usual residence; and
- ix. Service address

11. DO YOU FORESEE THE PROPOSED APPROACH GIVING RISE TO ANY PROBLEMS?

Yes

No

If yes, please explain

By way of clarification, we see no problems if the register referenced in question 10 were to be a readily searchable on-line register of directors of the relevant entity in the jurisdiction of its incorporation. We do not understand the proposal to include a requirement that the register must be kept in the UK (and agree that there should not be such a requirement).

12. WE MAY WISH TO CONTACT YOU TO FOLLOW UP ON YOUR RESPONSES TO THESE QUESTIONS. ARE YOU HAPPY FOR BIS TO CONTACT YOU?

Yes
 No

13. CONTACT DETAILS

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