

# IFA REPRESENTATION 2/21



## **Implementing the ban on corporate directors**

The IFA welcomes the opportunity to comment on the consultation on [implementing the ban on corporate directors](#) issued for consultation by BEIS on 9th December 2020.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

Institute of Financial Accountants  
Member of the IPA Group  
CS111, Clerkenwell Workshops  
27-31 Clerkenwell Close  
Farringdon, London EC1R 0AT  
T: +44 (0)20 3567 5999  
E: [mail@ifa.org.uk](mailto:mail@ifa.org.uk)  
[www.ifa.org.uk](http://www.ifa.org.uk)

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The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter and regulator. We are also recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.

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[www.ifa.org.uk](http://www.ifa.org.uk)

## General comments

1. IFA welcomes the proposed exemptions which we consider will allow businesses to function without compromising transparency. The ban on corporate directors is not anything 'new' as provisions were put in place in the Small Business, Enterprise and Employment Act 2015 (SBEEA 2015). The SBEEA 2015 made provisions for a transitional phase of 12 months (on commencement of the provisions) to enable companies to achieve compliance. However, these provisions have yet to be implemented and we fully support the government's intention to implement these changes in conjunction with the Corporate Transparency and Register Reform.
2. IFA would like to thank BEIS for the opportunity to respond to this consultation and offers its support and future engagement on corporate reform.

## Specific questions

### Section 1: 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?***

3. The IFA believe the proposed 'principles' based exception would deliver a pragmatic balance between improving corporate transparency and providing companies adequate scope to realise the legitimate benefits of the use of corporate directors.
4. Under current UK Anti Money Laundering legislation all regulated businesses must be able to identify ultimate beneficial ownership of its clients. By ensuring that any company that is appointed as a director has only natural persons as its directors this will only serve to help this process and achieve greater transparency.
5. The planned introduction of ID verification for the general partners of Limited Partnerships and for designated members of Limited Liability Partnerships should form an appropriate basis for permitting appointments where the corporate director is one or other of the partnership forms.
6. It is not clear from the proposal of any consequences of companies failing to comply with the regulations. For instance, if Company 1 appoints Company 2 as a corporate director where Company 2 has natural persons as directors at the time of appointment, and then Company 2 subsequently appoints a corporate director of its own there appears to be no provision to identify or challenge this.

### Section 2: The Scope

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

7. IFA considers ID verification of all relevant natural persons by Companies House to be a reasonable straightforward and workable solution.

8. IFA supports the notion to limit the range of corporate entities eligible for the exception so as not to undermine the purpose of the general prohibition.
9. IFA supports the inclusion of overseas companies within the exception, however during the course of completing due diligence on the ownership of accountancy firms we have not come across any instances of overseas companies being used as corporate directors.
10. IFA would have concerns on how to identify the directors in overseas jurisdictions which do not have publicly accessible registers. Therefore, detailed guidance should be provided as part of these reforms to assist in this process.
11. In order to be transparent IFA would suggest the identity of the natural persons of an overseas corporate director should be disclosed and made publicly available on the public register.
12. IFA believes the principles based exception goes a long way towards achieving the desired transparency, provided the natural persons of a corporate director are freely accessible and there are proportional controls in place to ensure transparency is maintained, i.e., information cannot be changed after incorporation without being subject to further scrutiny as per the example provided in IFA's answer in question 1.
13. IFA understands that the exceptions apply to charitable companies, however it is not clear how this would affect corporate trustees as a company that carries out trust business or acts as a corporate trustee, or whose name includes the words "trust corporation" or "trust company", does not necessarily have trust corporation status.

***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?***

14. IFA believes the principles based exception goes a long way towards achieving the desired transparency, provided the natural persons of a corporate director are freely accessible and have proportional controls in place to ensure transparency is maintained, i.e., cannot be changed after incorporation without being subject to further scrutiny as per the example provided in IFA's answer in question 1.
15. IFA cannot foresee any issues with allowing the appointment of corporate directors for LPs and LLPs providing the correct controls, scrutiny and transparency are in place.

### **Section 3: Compliance and Reporting**

***Question 4: Do these reporting requirements appear proportionate and reasonable?***

16. IFA believes the reporting requirements appear proportionate and reasonable using the annual confirmation statement and existing legislation obligating a company to notify the Registrar of any changes of directors.
17. IFA would caveat the above by adding that the Registrar would need proportionate enforcement powers to implement these requirements to quickly identify breaches. Possible automatic flagging of late confirmation statements or delayed notification of director changes

would be very helpful information to include in the register and could aid the risk-based approach for ID verification. IFA has commented on this separately in the Powers of ha Registrar consultation.

### Section 4: Impacts

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

18. IFA believes the impact assessment does provide a reasonable assessment of the costs and benefits of the prohibition and possible exceptions.

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

19. IFA has no supporting evidence to add.

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

20. IFA has no supporting evidence to add.

### Section 5: 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?**

21. IFA believes it is important not to prevent LLPs from having corporate members as this could have the effect of banning corporate shareholders of companies and could cause serious and costly issues for legitimate group structures as an unintended consequence.

### Contact details

Should you wish to discuss our responses further, please contact Tim Pinkney, Head of Practice Standards by email at [timp@ifa.org.uk](mailto:timp@ifa.org.uk)