


Prohibition on corporate directors – what's the latest?

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As we have previously reported, the provisions of the Small Business, Enterprise and Employment Act 2015 (SBEEA) will require all company directors to be natural persons and prohibit the appointment of corporate directors (subject to certain exceptions). The SBEEA also provides that the appointments of existing corporate directors will automatically cease after a 12 months grace period.

The implementation date for these provisions has now been delayed several times – and currently we still do not have a confirmed date for when these provisions will go live or final details of what the exceptions to the prohibition will be. However, it is still widely expected that this ban will come into force in the not too distant future - and Companies House confirmed in its published Business Plan for 2018-2019 that it intends to work with BEIS to implement the prohibition.

Currently the Companies Act 2006 states that a company must have at least one director who is a 'natural person' – so provided a natural person is appointed one or more corporate directors (i.e. a company or an LLP appointed as a director) are also allowed. Once the ban is implemented, all directors would need to be natural persons, unless one of the (not yet finalised) exceptions applies – and acting in breach would constitute a criminal offence. This explains why many companies making use of corporate directors at the moment are monitoring developments here closely to ensure they are geared up to comply with the new law once in force.

Whilst we await a further announcement on the implementation date for the ban – and the likely exceptions – corporate groups would be advised to double-check which UK group companies have any corporate directors and keep a list of these to hand. This will facilitate a quick assessment of whether any of the exceptions apply once these details are published and an action plan can then be quickly drawn up to ensure compliance.

At this stage it would also be worth considering any knock-on consequences of the potential removal of any corporate directors (for example on a company's constitution or the balance of power on board decision making) to see whether any further changes are necessary or desirable. Some companies are also choosing not to appoint new corporate directors at this stage, as it is likely that such appointments would need to be revisited in the near future.

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