BAN ON CORPORATE DIRECTORS

Date: 23 February 2016

Corporate/M&A Alert

From October 2016[1] no person, other than a natural person, will be able to be appointed as a director of a company formed and registered under Companies Act 2006 (the Act) or Companies Act 1985[2], unless that company is the subject of an exception. Existing non-natural person directors of those companies will cease to be directors of those companies by operation of law 12 months after the ban is introduced, i.e. based on the current expected date on which the relevant rules will become effective, October 2017. There are no current plans to extend the ban to corporate members of English law limited liability partnerships.

CURRENT LAW

Under the current law a company is required to have at least one director who is a natural person[3]. Provided at least one natural person is acting as director, one or more legal persons may also be appointed, which, for example, permits a company to be appointed as a corporate director.

REFORM

The UK's Department for Business, Innovation & Skills (BIS) put forward a proposal to address the use of corporate directors in order to promote greater oversight of companies, and to make company management more transparent; a ban on corporate directorships was seen to promote these objectives. The resulting change to the Act is that "a person may not be appointed a director of a company unless the person is a natural person"[4], thereby preventing the appointment of a company as a director.

EXCEPTIONS

The Secretary of State will have power to allow exceptions from the general prohibition on non-natural person directors[5]. Possible exceptions are being considered by BIS following responses to a consultation paper that was published in November 2014, and are not yet finalised. That consultation contemplated that a variety of entities could be given exceptions (subject in some cases to additional conditions). Those entities include certain subsidiary UK companies, and UK companies whose shares are admitted to trading on a regulated market, or a prescribed market such as the Alternative Investment Market, AIM.

LLPS

The BIS consultation also discussed the possible extension of the ban to corporate members of English law

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limited liability partnerships but indicated that there is not currently considered to be a strong case for similar action in this area.

TIMELINE

The Act provides for a 12 month transitional period following implementation of the ban[6] which will allow non-natural person directors to be removed or replaced as directors of a company (to which an exclusion does not apply) by a natural person before they are removed by operation of law 12 months after the ban is introduced, i.e. based on the current expected date on which the relevant rules will become effective, October 2017.

NOTES:

[1] The exact date is to be appointed

[2] The ban is being implemented by way of amendment to the Companies Act 2006, by the Small Business, Enterprise and Employment Act 2015

[3] s155(1) of the Act

[4] new s156A of the Act

[5] new s156B of the Act

[6] new s156C of the Act

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