Prohibition of corporate members of LLPs

Technical

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Readers may recall that earlier this year a discussion paper was published by the Department for Business Innovation, and Skills (BIS) titled Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business. Paragraph 169 contained the worrying proposal that LLPs should be prohibited from having corporate members (see Tax Adviser, August 2014, p17)

This proposal followed the government's decision to pursue a default prohibition of corporate directors of limited companies, save in limited circumstances. Draft legislation on this is included in the Small Business, Enterprise and Employment Bill, now before parliament.

We wrote to BIS objecting to the proposal. We were concerned that, if the government went ahead with plans to ban corporate members of LLPs, there would be serious consequences for many commercial business arrangements, particularly property development and farming partnerships.

We are therefore pleased to report that in its latest paper, Scope of Exceptions to the Prohibition of Corporate Directors, BIS agree that there is not a strong case for action to prohibit corporate members of LLPs. Its thoughts are set out in paragraphs 68 to 73.

There may be a theoretical risk that corporate membership of LLPs might be used to mask beneficial ownership – although the government acknowledges that there is no strong body of evidence suggesting abuse so far. But it should not be an issue if information about the beneficial owners of the corporate member are made public on the Register of People with Significant Control (PSC Register), as the government proposes.

BIS is proposing that the position be appraised in parallel with the review of the Small Business, Enterprise and Employment Bill provisions covering corporate directors of companies (scheduled to take place five years after the Bill's provisions come into force), or sooner if compelling evidence of abuse of the LLP structure were to emerge.

But we think that these are separate issues and should be considered on their respective merits. As the review noted, there is overwhelming evidence that corporate members of LLPs are there for commercial reasons. We think it would be damaging to commercial investment to indicate that a well-used entity might be withdrawn. Rather, it would be preferable to give an indication that future policy would not withdraw general use of LLPs by companies but would consider a targeted approach should misuse by a minority become material.

The CIOT's response can be viewed at www.tinyurl.com/krz9kx8

The BIS document can be viewed at www.tinyurl.com/pbv2guj