Transparency and Trust Team
Department for Business Innovation and Skills
1 Victoria Street
London SW1H 0ET

By email: transparencyandtrust@bis.gsi.gov.uk

8 January 2015

Dear Sirs,

GC100 Response to BIS discussion paper, Corporate Directors: Scope of exceptions to the prohibition of corporate directors (the "Consultation")

I am writing on behalf of GC100 with its response to the Consultation and to thank you for the opportunity to participate. As you may be aware, GC100 is the association for the general counsel and company secretaries of companies in the FTSE 100. There are currently over 125 members of the group, representing 84 FTSE 100 companies.

Please note that, as a matter of formality, the views expressed in this letter do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

We welcome BIS' decision to continue to permit the appointment of corporate directors in a number of limited circumstances. In doing so, BIS recognises that many groups of companies already operate in a transparent way. In particular, listed companies are required to comply with the Disclosure and Transparency Rules (the "DTRs"), the Companies Act 2006, the UK Corporate Governance Code and other rules emanating from the UK's corporate governance regime.

We are pleased to see that the Government has weighed up the benefits of imposing a blanket ban on corporate directors against the significant additional costs and administrative burdens that well-run groups of companies would face as a result of such a ban.

Our response is targeted at those sections of the Consultation that apply to large listed companies, where we feel best qualified to offer a view. In doing so, our desire has been to present our response in a practical way that helps secure the Government's objectives.

We have followed the numbering within the Consultation in drafting this response.

Section 3a: UK companies with shares admitted to trading on regulated markets

As the Consultation suggests, large listed groups of companies frequently utilise corporate directors for ease of administration and to provide the correct expertise to their subsidiaries, which may number several hundred.

By way of illustration:

- One of our members has a group that includes 400 companies, each of which has one director who is a natural person and two more who are corporate directors. The corporate directors appoint a large number of 'authorised representatives' who are able to execute the 3,500+ routine documents that those companies are required to sign every year. Amongst these authorised representatives are carefully chosen specialists who are able to assist these companies and represent these companies at board meetings or meetings with third parties, where their particular expertise is required.

GC100 Group
The Association of General Counsel and Company Secretaries of the FTSE 100
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- Another of our members has a document execution system of a similar scale and volume which is based on the corporate director of an entity delegating a defined part of its duties to an appropriately qualified and skilled group of individuals. These individuals have the power to execute routine documentation at the end of a formally evidenced and robust request and approval process.

In these cases, the governance and administrative and cost efficiency of each of those companies is improved by having corporate directors.

Specific Responses:

- For the reasons set out above, GC100 is supportive of the exemption applying to subsidiaries of UK listed companies. We also support the exemption applying to UK subsidiaries of non-UK companies listed on UK regulated markets.

- We believe that the exemption should be made available to groups of companies with a listed parent that has similar disclosure requirements to those in the UK. We feel that it would be difficult for BIS to evaluate the disclosure requirements of companies listed across the globe and so suggest that the exemption be extended to companies listed on exchanges within the EEA, which should have broadly similar disclosure requirements to those in the UK.

- We believe that the exemption should extend to dormant companies, wholly-owned subsidiaries, bodies corporate controlled through voting rights or directors and subsidiary undertakings subject to wider means of parental company influence. We acknowledge that this would make the exemption wide and potentially apply to situations where the listed company did not control the company over which a corporate director were appointed, but we would welcome the flexibility that this would permit.

  By way of illustration, listed companies may have significant investments in special purpose vehicles (SPVs) that have long-term interests in a number of projects. It may be that the listed company does not have full control of the SPVs, such that they are not technically 'subsidiaries', however the parent company influences the business through a seat on each of the SPV's board. We believe that, being able to appoint corporate directors to the SPV, ensures the flexibility set out above at relatively low risk. The directors of corporate directors will always be kept up to date as they are used frequently and are very important to the group. Furthermore, as investor companies are often restricted on the number of directors that they can appoint to the SPV board to represent their interests, the flexibility of having a number of individuals that could attend meetings on behalf of the corporate director ensures that the investor is always represented.

- The exemption should only apply to companies appointing another company in the group as a corporate director rather than an 'external' company. The 'directors' of corporate directors should all be natural people, in order to promote BIS' objective of transparency.

- We do not believe that corporate directors should only be comprised from parent companies and believe that this would limit take up considerably. Many companies would choose not to appoint their parent as a corporate director, for reasons of liability and the more restrictive authorisation and governance regimes that apply to parent companies within groups.

- Given the time of year, it has not been possible for many of our members to prepare an analysis of the ongoing costs associated with a ban on corporate directors. We do have an analysis from a few companies and believe these costs would be replicated across a number of our members.

  Where a group with several hundred subsidiaries appointed a number of executives across its group and one was to resign, we estimate that it would cost approximately £125 per company to hold the necessary meetings and then produce and file the paperwork

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associated with that resignation and a replacement appointed. It follows that, where the individual had 100 directorships, the cost would be approximately £12,500.

One company reported that it would need to employ one additional person to deal with the additional document execution burden alone. This would require several hundred powers of attorney to be produced and executed. It would also cause unnecessary delays in getting documents signed, at a cost running into tens of thousand pounds in lost revenues per annum. Our members have indicated that this scenario is likely to be replicated across a number of companies.

Section 3b: UK companies with shares admitted to trading on UK prescribed markets

Specific Responses:

- We believe that those companies listed on other UK prescribed markets, such as AIM, should also benefit from the exemption as they are required to comply with some of the DTRs and a number of the other corporate disclosure requirements.

- Again, we feel that it would be difficult for BIS to evaluate the disclosure requirements for companies trading on prescribed overseas markets beyond the EEA. We therefore suggest that the exemption should apply to companies trading on prescribed markets in the UK and EEA only.

Our responses to the remaining questions in this section mirror those in Section 3a.

Section 3c: Public companies without shares admitted to trading

We believe that public companies without shares admitted to trading are not required to have similarly high levels of corporate governance and transparency and we therefore feel that the exemption should not extend to them. If it did, it might create a loophole that was relatively straightforward to exploit.

Section 3d: Private companies

We offer no view on the questions in this section.

Section 4: Companies in regulated sectors

We believe that companies in certain regulated sectors are subject to stringent rules and regulations and therefore have high levels of standards of transparency and corporate governance. We feel that these companies should also benefit from an exemption from the prohibition of corporate directors.

Section 4a: Charitable companies

We offer no view on the questions in this section, though note that the sector is less well regulated than others such as financial services or pensions.

Section 4b: Corporate trustees of pension funds

We believe that a distinction should be drawn between corporate directors sitting on the boards of pensions trust vehicles and pensions trust vehicles themselves that can take the form of a private company limited by guarantee or limited by shares. The answers below are provided on the assumption that the former is the subject matter of the questions.

Specific Responses:

- It is very common for independent trustee organisations to operate via a corporate vehicle.

- We understand corporate directors in corporate pension trusts are usually independent

professional trustees who provide specialist knowledge from experts/professionals of the pensions sector. It is expected that, in the same way that other professional organisations do, corporate trustees take advantage of the flexibility and ease of administration afforded by a corporate vehicle.

- We do not believe that there are significant risks attached to allowing corporate directorships in corporate pensions trustees to continue, since the pensions sector is a regulated sector and the corporate trustees and their directors have the same responsibilities as an individual trustee. In our experience, the corporate director/trustee provides either one or two individual representatives who attend all meetings etc. In some cases, the independent corporate director/trustee is also the chair of the board, which helps the board function more effectively and ensures continuity since, should the individual representative become incapacitated, the corporate director is able to provide a replacement without a new appointment being needed.

- We are of the opinion that if BIS believes that transparency in this area needs to improve, it should be by way of the relevant pensions and finance legislation, rather than through prohibiting the use of corporate trustees in managing pension funds. In particular, the practices of certain unscrupulous trustee boards such as those involved in the recent so-called "Pensions Liberation fraud" (whereby individuals have been targeted by unscrupulous pension liberation companies with tempting offers to release pension cash, but failing to mention the huge tax implications for those under the age of 55) need to be addressed by the Pensions Regulator and not through prohibiting the use of corporate trustees.

Section 5: Consideration of other legal entities beyond companies

Section 5a: Societas Europaea (SEs)

We offer no view on the questions in this section.

Section 5b: Limited Liability Partnerships (LLPs)

We agree with the approach that the use of corporate members of LLPs should continue unchanged in the present reforms and that LLP members may have an economic stake in the LLP which would not be appropriate for an individual to have.

We agree that BIS should review the issues in relation to corporate members of LLPs in parallel with the review of the Small Business Enterprise and Employment Bill provisions covering corporate directors of companies.

Transitional Arrangements

In addition to the matters outlined above, we suggest that transitional arrangements should be considered for companies who no longer qualify for the exemption, for example if they de-list. This should allow sufficient time for them to re-arrange their activities and complete matters involving the corporate directors that are in progress. We suggest a period of at least six months.

Yours sincerely,

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