

To: Mr Jim McManus  
Clerk  
Enterprise, Trade and Investment Committee

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From: David McCune  
DALO

## **UK SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL – LEGISLATIVE CONSENT MOTION**

I am writing to advise the Committee of the Minister's intention to seek a Legislative Consent Motion (LCM) in respect of a number of measures in the UK Small Business, Enterprise and Employment Bill.

The Small Business, Enterprise and Employment Bill was presented to Parliament on 25 June 2014, and as drafted will legislate for Northern Ireland on a number of transferred matters. The LCM will allow the Department for Business, Innovation and Skills to legislate for Northern Ireland in the following areas:

### Ownership and control of companies (transparency and trust)

The Prime Minister and his G8 counterparts, at the summit in June 2013, committed to a range of reforms aimed at ensuring that the ownership and control of companies in the UK is transparent. The UK government views these measures as important in combating tax evasion, money laundering and terrorist financing. The measures are also aimed at improving trust in UK companies amongst consumers, investors and employees.

As proposed, the Bill will:

- establish a new register of beneficial owners of companies, aimed at making clear exactly who benefits from a company's activities;
- abolish 'bearer shares' (unregistered shares in a company), which will help ensure that the real owners of a company can be identified; and
- increase transparency in respect of corporate directors, where one company is the director of another, and shadow directors, where a registered director acts as a 'front' on behalf of someone else.

### Company filing requirements

Companies are required to file certain information with Companies House, and the Bill will amend these requirements with the aim of simplification, reducing duplication and improving the accuracy of the public companies register. The provisions as drafted will, for example,

- remove the requirement for companies to deliver an annual return, instead allowing companies to check and confirm that basic company information is correct at any point time in the year in question; and
- give a company the option of holding some required information centrally at Companies House instead of at the company's registered office, if that is more convenient.

### Insolvency measures

Provision in the Bill will ensure that an automatic ban on undischarged bankrupts acting as directors applies throughout the UK. This forms part of a package of amendments to Northern Ireland primary legislation dealing with director disqualification.

A clause has been included in the Bill amending the Company Directors Disqualification (Northern Ireland) Order 2002 (CDDO) to prevent any of the following acting as directors in Northern Ireland except with leave from the court:

- persons who are undischarged bankrupts in GB;
- persons in respect of whom there is in force a bankruptcy restrictions order made or undertaking given under the Insolvency Act 1986 (applies in GB) or the Bankruptcy Scotland Act 1985;
- persons subject to a debt relief restrictions order or undertaking under the Insolvency Act 1986; and
- persons to whom a moratorium period under a debt relief order applies under the Insolvency Act 1986.

A clause has also been included to amend the Insolvency (Northern Ireland) Order 1989 to bar persons falling into these categories from acting as an insolvency practitioner in Northern Ireland.

### Company directors

All amendments being made by the Bill to the Company Directors Disqualification Act 1986 applying in GB will be replicated for Northern Ireland with reference to the CDDO. This has led to provision for the following amendments to the CDDO being included to:

- increase the time allowed for DETI to bring disqualification proceedings against directors of insolvent companies from 2 to 3 years;
- Reduce the time allowed for office-holders in insolvencies to report to the Department on the directors' conduct from six to three months;
- revise the list of matters to be taken into account by the Courts when deciding if a person is unfit to be a director;
- widen the scope of material that can be used in director disqualification proceedings – essentially to allow reports by a wider range of regulators to be used as a basis for bringing disqualification proceedings;

- allow applications to be brought to disqualify individuals from acting as directors if they have been convicted of offences relating to companies by courts outside Northern Ireland;
- enable the courts to make orders requiring directors against whom disqualification orders have been made to pay compensation for the benefit of creditors; and
- allow for the disqualification of persons responsible for directing or instructing a registered director to engage in misconduct which has led to the director being disqualified.

An amendment has also been included to put right an error in Article 9 of the Company Directors Disqualification (Northern Ireland) Order 2002. Provision should have been included in Article 9 to enable references in that Article and in Article 10 to a “director” to be treated as including a shadow director. Article 9 deals with disqualification of directors of insolvent companies by High Court Order on grounds of unfitness. Article 10 deals with applications for such Orders and the acceptance by the Department of undertakings from directors as an alternative to court proceedings. A shadow director is a person in accordance with whose directions or instruction the registered directors are accustomed to act.

Subordinate legislation, including Rules, will be needed in connection with some of the amendments.

#### Access to finance - company reporting on payment policies and practices

There is value in the aim to improve prompt payments, and so reduce the incidence of late payment being used by companies to improve their working capital at the expense of that of their supplier.

A measure will thus place an obligation on large companies to report on payment policies and practices, for instance proportion of invoices paid within agreed timescales and proportion disputed, with the aim of improving payment practices.

#### Liability of bodies concerned with accounting standards

This measure, which is related to company law, will remove the exemption from liability for bodies which carry out public functions in relation to accounting standards (e.g. setting standards, investigating cases where they are breached) and the regulation of the audit and accountancy profession.

The current exemption only applies to bodies which receive a grant from the Secretary of State for Business, Innovation and Skills, and only when exercising those functions. The SBEE Bill breaks the link between exemption from liability and getting a grant by giving this Secretary of State a power to make secondary legislation specifying which bodies are exempt from liability.

#### Access to finance - assignment of receivables

A further issue to improve business’ access to finance by removing legal barriers is currently under consideration.

## **Legislative Consent Memorandum**

The Minister for Enterprise, Trade and Investment will, in due course, approach the Executive with a view to bringing the necessary Legislative Consent Memorandum to the NI Assembly. The Committee for Enterprise, Trade and Investment will have an opportunity to formally report on these proposals once this Memorandum is laid.