What’s new in 2016 for UK Company Law?


The Small Business, Enterprise and Employment Act 2015 (SBEE) materially reforms UK company law which will impact on companies of all sizes. Broadly speaking, the changes are aimed at increasing transparency around who controls UK companies and reducing red tape, particularly in relation to the filing requirements for UK companies. Many of the changes are expected to be implemented by October 2016 however some are already in force since the SBEE was passed into law on 26 March 2015.

Key Changes

- **New PSC Register**
- **Abolition of corporate directors**
- **Changes to company filing**
- **Information regarding gender pay gaps**
- **Reporting company payment practices and policies**
- **Accelerated Strike-Off procedure**
- **Abolition of bearer shares**

**New PSC Register**

One of the most controversial changes is the introduction of a central public registry of “people with significant control” of English companies and limited liability partnerships (LLPs) – known as PSCs.

SBEE requires details of those individuals who:

- Own or control more than 25% of an English company’s shares or voting rights; or
- Have the right to share in more than 25% of any surplus assets of an English LLP or who ultimately own or control more than 25% of members’ rights to vote; or
- Exercise significant influence or control over the company, LLP or its management,

to be included on a private and public register (the PSC Register).

The register will be freely available online and searchable by using individual names and/or corporate entity names.

Companies will be required to:

- start keeping a register from **6 April 2016** which must be open for inspection on that date and from **30 June 2016** PSC information will also need to be included in companies’ annual confirmation statements in lieu of annual returns;
- take reasonable steps to find out if there are any people with significant control who should be registered and identify them;
- comply with their duty to take steps to keep the information up to date.

Both companies and individuals may face criminal penalties for failure to provide, or for deliberately providing, false information.
Abolition of Corporate Directors

SBEE will require all directors to be natural persons, subject to certain potential exceptions which have yet to be confirmed.

Companies may wish to start compiling a list of those group companies with corporate directors on their boards and give thought to which individuals may be appropriate replacements. Existing directors who are not natural persons will automatically cease to be directors 12 months after the provision is in force. Consideration should also be given to any impact on existing quorum, voting rights and other provisions in their articles, any shareholder agreements and other arrangements.

Changes to company filing

The following changes are aimed at reducing red tape rather than increasing transparency:

- **Annual Returns:** A new confirmation statement confirming (or updating) the company information on the public register will replace the annual returns. This must be filed once every 12 months;

- **Statement of Capital:** Removal of the requirement to show the amount paid up on each share. Only the aggregate amount unpaid will now be shown and there will no longer be a requirement to deliver an annual statement of capital if there have been no changes since the last annual confirmation statement;

- **Director and Secretary Consent to act:** SBEE has removed the requirement that a director or secretary provide a formal “consent to act” and replaced it with an obligation on the company to make a statement that the appointee has consented to act as a director or secretary. The registrar will send a notice to newly appointed directors notifying them of their appointment as well as information about the office and duties of a director. Any person appearing on the public register as a director will from April 2016 be able to apply to have their name removed if they did not consent to act;

- **Registered office disputes:** SBEE will enable regulations to be made requiring the registrar, on application, to change a company’s registered office if the registrar is satisfied that the company is not authorised to use the address;

- **Protection of date of birth details:** In a bid to help protect individuals from identity theft, the public record at Companies House will show only the birth month and year of directors and PSCs (rather than a full date of birth). Private companies which decide not to maintain their own register of directors and PSCs, instead choosing to keep those records on the central registry and Companies House, will lose this protection. This has been in effect for directors since October 2015 and will come into effect for PSCs in April 2016.
**Information regarding gender pay gaps**

The SBEE provides that the Government will introduce regulations “for the purpose of requiring the publication of information showing whether there are differences in the pay of make and females”. Companies will be required to be open regarding their gender pay gaps, however, as no draft regulations have yet been published there are questions that remain unanswered, such as; What information must be published? When it must be disclosed? When will the new law come into force?

It is expected to apply to all businesses with 250 or more employees.

It is also expected that regulations will be made by 26 March 2016 with the duty coming into force later in 2016, following a grace period to allow employees time to prepare. There are criminal sanctions for non-compliance of this duty not to mention potential public and media scrutiny for potentially affected companies.

**Reporting company payment practices and policies**

From 2016, large companies (those that are not defined as ‘small’ or ‘medium’ under the Companies Act 2006) and LLPs will be required to publish details of their business to business payment practices and policies. The department for Business Innovation and Skills (BIS) confirmed that companies will be required to report twice yearly and publish the report on the company’s website. Large companies are expected to be required to disclose a number of provisions including:-

- Payment terms;
- Average time taken to pay;
- The proportion of invoices paid beyond those terms;
- The proportion of invoices paid in 30 days or less, between 31 – 60 days and beyond 60 days; and
- Any late payment interest owed and paid.

Again, non-publication is likely to be a criminal offence punishable by a fine of up to £5,000 not to mention adverse reputational impact.

**Accelerated Strike Off procedure**

SBEE has amended the Companies Act 2006 enabling a company to be struck off the register slightly faster. The amendments include the following:-

- In the case of a company which is being wound up and which fulfils certain criteria, the company will be struck off after two (not three) months of the date of the Gazette notice; and
- Where a company applies to be struck off the register, the company can be struck off after two (not three) months from date of publication of the Gazette notice.
Abolition of bearer shares

Bearer shares (where proof of ownership is determined by the physical holding of a share certificate rather than a registered holding) are not commonplace in the UK. The issue of new bearer shares will be prohibited and existing bearer shares must be surrendered for conversion to registered shares within a prescribed nine month period, failing which they will be subject to a court sanctioned cancellation procedure.

This has been in effect since May 2015.

Conclusion

The change to transparency of UK company and LLP ownership and control is significant and it can be deemed that the UK is leading the way internationally. The EU’s Fourth Money Laundering Directive, will amongst other things, oblige EU member states to maintain central registers listing information on the ultimate beneficial ownership of corporate entities. The directive, although now in final form, need not be implemented in member states until 26 June 2017. Whether the UK will be considered a welcome market leader in this area will be seen over the coming months as SBEE’s reforms are implemented.

Links

- Small Business Enterprise and Employment Act 2015
- Explanatory Notes on Small Business Enterprise and Employment Act 2015
- Department for Business Innovation & Skills – Guidance on PSC