



## Changes to UK company law - be prepared

The Small Business, Enterprise and Employment Act 2015 has now received Royal Assent. It will introduce some material changes to UK company law. The Government's provisional timetable will see these changes implemented in stages over the next 12 months.

The company law provisions of the Act are the end product of the Government's drive over recent years to improve transparency and trust in UK companies and reduce the red tape they face. The key company law changes are summarised below.

### Information on beneficial ownership – the new PSC register

*Provisional implementation date January 2016*

UK companies will be required to maintain a register of persons with significant control (known as "PSCs"). This will be separate to the register of members which records the legal holders of a company's shares. The aim of this new PSC register is to ensure that individuals with significant beneficial interests or other controlling rights in a company are easily identifiable. Details of PSCs will be publicly available online via Companies House.

This is probably the most controversial change introduced by the Act. It is likely to have a significant impact, most obviously in terms of day to day administration but potentially, and more fundamentally, on ownership structures.

UK companies with shares trading on a regulated or prescribed market (including the LSE Main Market and AIM) will be generally exempt from the regime - they are already subject to similar disclosure requirements under the Disclosure Rules and Transparency Rules.

The Act includes detailed provisions to help determine who is a PSC and the Government has also established working groups to produce additional guidance. Generally speaking, an individual will be a PSC in relation to a UK company if he or she (alone or jointly with others):

- owns or controls more than 25 per cent of the shares or voting rights; or

- has the ability to appoint or remove a majority of the board; or
- has the right to exercise significant influence or control over the company.

Companies will need to maintain information on their PSCs (personal details together with information about the nature of a PSC's control), record it in the PSC register and provide it to Companies House annually. The majority of this information will be accessible to the public. Individuals will be obliged to notify companies of any relevant interest and respond to requests for relevant information. Both companies and individuals may face criminal penalties for failure to provide, or for deliberately providing false, information.

Be prepared – start reviewing corporate structures to identify potential PSCs. Additional guidance on what is meant by 'significant influence or control' is unlikely to be available for several months.

### Abolition of corporate directors

*Provisional implementation date October 2015*

UK companies will not be permitted to appoint corporate directors. The default position will be that all directors must be natural persons. Again, the aim is to make it easy to identify the people 'behind' a company. Existing corporate directors will automatically cease to be directors one year after this prohibition comes into effect.

The Secretary of State can make exceptions to this general rule and the Government has consulted on what these exceptions should be. Originally the exceptions being considered were specific situations, for example, UK listed companies, large private or public companies within group structures and corporate trustee directors of pension funds. However, the Government has recently announced that the responses to the original consultation had "opened our eyes to practical uses of corporate directors that we hadn't fully appreciated". As a result,

they are now considering a 'principles' based exceptions regime where a corporate director will be allowed if both the following conditions (aimed at achieving transparency) are met:

- all directors of the corporate director are individuals; and
- the law under which the corporate director is established (if not UK registered) requires details of the individual officers of the corporate director to be accessible through a public register.

The approach to exceptions will be finalised after the election.

Be prepared – identify any corporate directors and (once the Government has clarified any exemptions) determine which (if any) need to be replaced. Consider suitable individuals to act as replacements if necessary.

### Abolition of bearer shares

*Provisional implementation date May 2015*

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. 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.

Be prepared – identify any bearer shares which have been issued. Prepare to give notice to holders of their rights to surrender (in accordance with the Act) as the nine month surrender period potentially starts soon.

### Central register option for private companies

*Provisional implementation date April 2016*

Private companies will have the option to stop maintaining their own company books in relation to the registers of members, PSCs, directors, directors' residential addresses and secretaries. Instead, they can ensure that the equivalent information is filed and kept up to date on the central register at Companies House. The administrative advantage in this approach would seem to be a relatively small one but may suit some private companies.

### Annual returns replaced

*Provisional implementation date April 2016*

The annual return will be replaced with a confirmation statement to be filed at Companies House in every 12 month period (allowing a more flexible approach than the fixed reference date used for the annual return). This confirmation statement will cover similar basic information about the company as the annual return currently does (and will also include details of the company's PSCs).

### Protection of date of birth details

*Provisional implementation dates October 2015 (directors) and April 2016 (PSCs)*

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 at Companies House, will lose this protection.

### Contact details

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