



Transparency, Trust and the Red Tape Challenge - changes to company law

The Government has recently introduced the Small Business, Enterprise and Employment Bill to Parliament. The Bill aims to, amongst other things, implement the Government's plans to:

- increase trust and confidence in UK companies, through improved corporate transparency and accountability; and
- cut the red tape companies face in relation to administrative filing obligations.

The key plans for change are set out below. It is not yet known when the proposed changes will take effect but the Bill is expected to progress through Parliament during 2014 and into early 2015. The proposals may change during this process.

Key "Transparency and Trust" changes

Registry of Persons having Significant Control. Currently only the legal owner of shares is shown in a company's registers and on the public record at Companies House ("CH"). The proposed changes will require the gathering and recording of information on persons having significant control ("PSC") who ultimately control more than 25% of a company's shares or voting rights or otherwise exercise control over the company or its management. That information will include the individual's full name, home and service address, nationality, country of residence, full date of birth and details of the controlling interest. Other than in exceptional circumstances where a PSC is at risk, details of the individual will be publicly accessible.

Companies will need to obtain the information, record it in a new PSC register, provide it to CH and keep it up to date. Individuals will be obliged to notify the company of any relevant interest. Both companies and individuals may face criminal penalties for failure to provide, or for deliberately providing false, information.

If a relevant interest is held or controlled through a trust then in most cases the information gathered will be in relation to the trustees. If, however, another person effectively controls the activities of the trust then that person will be disclosed as a PSC.

Companies which have shares listed on a regulated market and comply with DTR 5 or equivalent disclosure requirements will be excluded from the regime.

Bearer shares. These will disappear - the issue of new bearer shares will be prohibited and holders of existing bearer shares will need to convert them to registered shares within a specified period.

Corporate directors. It will no longer be possible for a company or other corporate to be a director of a UK company (subject to limited exceptions). A period of one year from implementation is proposed to deal with the termination of existing appointments. Whilst not yet included in the Bill, exceptions being considered in the Government's response to the original discussion paper were group structures including large listed companies, group structures including large private companies and charities. We understand that there is an intention to allow the use of corporate directors by FCA-licensed OEICs and corporate trustees to continue.

Shadow directors. The statutory general duties which apply to directors will be extended to apply to shadow directors "where and to the extent they are capable of applying". It is likely that regulations will clarify the extent of these duties on shadow directors.

Directors' disqualification. This regime will be updated, widening the factors which can be taken into account when considering a disqualification, enhancing enforcement and compensatory provisions and creating closer working ties between the Insolvency Service and other regulators and enforcement bodies.

Key "Red Tape" changes

Annual filings. Companies will not need to file an annual return at a set time each year but will instead check and confirm their information is correct at any point in a 12 month period.

Company registers. Private companies will have the option not to keep their own registers for directors, directors' residential addresses, secretaries, members and the new PSC register. As an alternative, they can ensure that the equivalent information is filed and kept up to date on the central registry at CH. Any reduction in administration needs to be weighed against the potential loss of privacy as certain personal information (including, in some cases, home addresses and full dates of birth) will be publicly available.

Identity theft. Except where a private company chooses not to maintain its own registers, the public record at CH will show only the birth month and year of a director or PSC rather than a full date of birth.

New directors. The current 'consent to act' confirmation (which must be signed by a new director before filing at CH) will be replaced by a 'statement of truth' made by the company when filing a notice of appointment. CH will notify new directors of their appointment giving them the opportunity, if they did not actually agree to take on the role, to apply for it to be removed from the public record.

Strike off. The time it takes to dissolve and strike off a company will be reduced.

Limited liability partnerships - watch this space

In the preliminary discussions on transparency and trust, the Government suggested that it may be appropriate to extend certain of the proposals to limited liability partnerships. These included the plans for a PSC register and the ban on corporate directors. As currently drafted, the Bill does not expressly extend either of these proposals to LLPs but the issue could resurface at a later date.

By implication, the extension of the prohibition on corporate directors to LLPs would mean a corporate could not be a member of an LLP. Any change would fail to recognise the different nature of a member of an LLP from a director of a company. Whereas the directors of a company (even if they are also shareholders) have a role and status separate from that of the shareholders, the roles are combined in the case of LLPs whose members have a dual role as owners of and as agents for the LLP. LLPs can provide flexibility and are frequently used in joint ventures and similar structures where previously a private company may have been chosen. A ban on corporate members would mean that LLPs could no longer be used as a vehicle of choice for numerous wholly legitimate business purposes.

The Bill can be found <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0011/15011.pdf>

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