

Small Business, Enterprise and Employment Act 2015 How will the new measures affect you?

In a bid to increase the transparency of ownership and control of UK companies, the Small Business, Enterprise and Employment Act 2015 (the “Act”), which received Royal Assent on 26 March 2015, has introduced a number of measures which will result in the amendment of some key provisions in the Companies Act 2006.

Below is a summary of the changes in chronological order of their implementation:

1. New duties of shadow directors

From 29 May 2015, the general duties of directors (as set out in sections 170 to 177 of the Companies Act 2006) now apply to shadow directors (to the extent that they are capable of applying). Some of these general duties include the duty to promote the success of a company, the duty to exercise independent judgment and the duty to avoid conflicts of interest.

2. Prohibition on the appointment of corporate directors

From 10th October 2015 there is now a general prohibition on UK companies to appoint a corporate director and by October 2016, all existing corporate directors will be removed and any appointment made in contravention of this restriction will be void. It is an offence to breach the prohibition. There are limited exceptions to this prohibition which has been the subject of much negotiation, nevertheless, the Department for Business, Innovation and Skills proposed that the exception should only be available if all of the directors of the proposed corporate director are natural persons and the law under which the corporate director is established requires certain details of the those directors to be included in a publicly maintained accessible register. UK companies will need to review their current boards of directors and either replace any corporate directors with a natural person or explain to Companies House how any existing corporate directors fall into the exception. Any corporate directorships still in existence on 1st October 2016 will automatically cease. This potentially has a large impact on existing corporate structures, where corporate directors have been utilised for the convenience of signing documents as well as for the operation of company bank accounts.

3. Changes to directors' appointments

From 10th October 2015 the requirement to send a “consent to act” form to Companies House on the appointment of a new director was abolished. Instead, companies are now required to make a statement that a newly appointed director has consented to act and the newly appointed directors will be contacted by the Registrar of Companies to make them

aware of their appointment and provide them with information about their roles and duties as directors.

In addition, the *day* of the date of birth of all company directors now does not need to be included in the public register in order to help prevent identity theft.

4. Accelerated Company strike-off

From 10th October 2015 the amount of time that it takes for a company to be dissolved (whether voluntarily or not) was reduced from three months to two months after publication of the notice in the Gazette.

5. Creation of a register of persons with significant control

From January 2016 all UK companies will be required to keep a public register of people with “significant control” over the company (“PSC Register”). The requirement to file this register with Companies House comes into effect in April 2016. “Significant Control” means those who hold either directly or indirectly, more than 25% of the shares or voting rights in a company or who have rights to appoint and/or control the majority of the board of directors. Please see our briefing note “*New Register of Beneficial Ownership*” for further information in relation to this requirement.

6. Changes to company registers and filing requirements

From April 2016:

- Companies will no longer need to file an annual return. Instead, companies will be required to “check and confirm” company information and notify Companies House of any changes, once every 12 months;
- Companies will no longer be required to deliver statements of capital to Companies House and will not have to show the amount paid up and unpaid on each share. Instead, companies will be required to specify the aggregate amount unpaid on the total number of shares in issue;
- Private limited companies will have the option (at a cost) to keep information that must be recorded in certain statutory registers (register of members, directors, directors’ residential addresses and secretaries), on the public register maintained by the Registrar of Companies, thereby dispensing with the requirement to keep and maintain those registers separately;

- Disqualification proceedings against directors can be taken in the UK where there has been director misconduct overseas. In addition, the period of time for applying to the court for disqualification of an unfit director of an insolvent company will increase from two to three years.

Whilst the above changes are intended to create a greater degree of transparency in relation to the ownership and control of UK companies, they represent significant changes to UK company law and directors and company owners and managers should familiarise themselves with the above measures in good time for their implementation, in particular in relation to the requirement to maintain a PSC Register.

For further information on any of the issues raised in this Briefing Note, please contact a member of the Rooks Rider Solicitors Team.



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