

## Small Business, Enterprise and Employment Bill: improving transparency in UK companies

The Government has recently passed the 'Small Business, Enterprise and Employment Bill' which has wide reaching implications for numbers of areas such as competition, insolvency, finance and employment. In a company and commercial law context, the Bill is likely to lead to changes designed to increase transparency in the ownership and control of companies incorporated in the UK. These amendments include:

- a requirement on UK companies to maintain a publicly available register (PSC) that identifies those persons with significant control over the company
- the creation of bearer shares will be prohibited
- the use of corporate directors will be prohibited

Although as a conceptual legal matter the prohibition on bearer shares is significant, in practice the use of bearer shares by UK businesses is rare and so this is unlikely to have a material impact on commerce generally.

The two other changes referred to above are potentially important however, and are discussed in more detail below. We have previously commented on beneficial ownership disclosure requirements [here](#).

### **PSC register and disclosure of beneficial ownership**

Companies will be required to identify and keep a publicly available record of any beneficial owner (or persons acting together) who have 'significant control' over the company. A person will have 'significant control' if they meet one of the requirements below:

- the individual holds, directly or indirectly, more than 25% of shares in the company, calculated by reference to the nominal value of the shares in the case of a company with a share capital. If the company does not have a share capital, this condition is met by an individual holding a right to share in more than 25% of the entity's capital or profits.
- the individual is entitled, directly or indirectly, to appoint a majority of the board of directors of the company or to control the exercise of a right or rights (in aggregate) to appoint or remove a majority of the board.
- the ability to exercise significant influence or control over the company. 'Significant influence or control' has yet to be defined; however the Secretary of State is expected to publish further guidance on this area.
- if a person's shares are held by a nominee, they are treated as held by that person for the purposes of determining those with significant control over the company.

Who does this apply to?

This will apply to all companies, with the one exception of 'DTR5 issuers' (issuers which fall within Chapter 5 of the Disclosure Rules and Transparency Rules sourcebook, which are essentially companies regulated by the FCA). There may be further exceptions specified in the regulations by the Secretary of State. If a company fails to comply with this requirement for a period of 14 days both the company and every officer of the company who has failed to comply shall be committing an offence.

What type of information must be included in the register?

The PSC register will include an individual's name, date of birth, nationality, address and details of their interest in the company. The 'day' of the date of birth and the residential address of an individual will not be available on the public register at Companies House.

Where will this information be available?

The general rule is that the PSC register must be kept available for inspection at a company's registered office. Private companies will have the option of keeping PSC information on the public register at Companies House instead of a separately maintained PSC register. Any person may request to inspect the register but they must give the reason for that request, and a company can apply to court to deny the request if the request is not for a 'proper purpose'.

The Bill places a heavier burden on UK companies to be transparent about their ownership structure:

- companies will be required to take reasonable steps to identify people they know or suspect to have significant control. Individuals will be required to disclose their interest in the company.
- companies will have a right to impose restrictions on the exercise of share rights without a court order where a person with a relevant interest in the company has failed to comply with its disclosure obligations under the new significant control regime.
- companies will be allowed to give notice to a person if the company knows, or has reasonable cause to believe, that the person knows the identity of an individual or legal entity with significant control in relation to the company, or knows the identity of someone likely to have that knowledge.
- companies will be required to provide an initial statement about persons with significant control on incorporation. They will be required to update this information at Companies House at least once every 12 months.

Conclusion

For the majority of companies in the UK, particularly those run as owner managed businesses, these proposed new rules are likely to be of limited relevance and will simply be an additional minor complication to be factored in to dealing with compliance obligations.

For those companies which do have more opaque or complicated ownership structures however, the introduction of the new rules could pose significant challenges. One factor which is not immediately clear however, and which is likely to have a significant impact on how successful the new regime is in delivering greater transparency, is the extent to which it

will be possible to circumvent its provisions through the use of discretionary trust and similar arrangements.

### **Prohibition of corporate directors**

Under the proposed prohibition appointment of a corporate director will be void. There are likely to be some limited exceptions, for instance when the use of a corporate director would create a low risk of illicit activity but a high value to the running of the company. The aim behind these measures is to deter opaque arrangements involving company directors and to increase accountability. Under the proposed prohibition there will be a transition period of one year after the new section comes into force, after which time existing corporate directors will automatically cease to be directors.

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