



Private Edge Knowledge Bank

The Small Business Enterprise and Employment Act 2015

DIRECTORS & OFFICERS

Key changes to be aware of

Changes have been made to UK company law by the Small Business, Enterprise and Employment Act 2015. It is crucial for directors to be aware of these changes and ensure that their companies are compliant. This article looks at the key changes.

Background to the Small Business, Enterprise and Employment Act 2015 (the “Act”)

The Act has introduced material changes to UK company law, designed to achieve the Government’s objective of increasing trust and transparency in UK businesses and to simplify the filing regime, in an effort to improve the quality of information held on the public record and to reduce ‘red tape’.

The changes cover a broad range of corporate matters and have been introduced in phases. The first phase was introduced in May 2015, and the second followed in October 2015. The third and fourth phases took place in April and June 2016.

Key changes relating to corporate administration introduced by the Act

Register of People with Significant Control (“PSC”)

UK companies and LLPs must maintain what is referred to as a PSC register and PSC information must be filed with Companies House from 30 June 2016 onwards (depending on their incorporation and last annual return dates), when filing their confirmation statement. The PSC register must include the required

details of individuals who have significant control. A person with significant control over a company is defined as an individual that (either alone or as one of a number of joint holders of the share or right in question) meets one or more of the following conditions:

1. the individual holds, directly or indirectly, more than 25% of the shares in the company;
2. the individual holds, directly or indirectly, more than 25% of the voting rights in the company;
3. the individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company;
4. the individual has the right to exercise, or actually exercises, significant influence or control over the company; and
5. the trustees of a trust or the members of a firm that is not a legal person meet one or more of the other specified conditions in their capacity as such or would do if they were individuals.

The PSC register must also include the details of 'relevant legal entities' ("RLEs"). An RLE in relation to a company, is an entity which:

1. if it were an individual, would meet one of more of the conditions set out at 1-5 above; or
2. is required to keep its own PSC register or is subject to a similar qualifying disclosure regime.

A company and its officers have certain obligations to investigate and obtain information relating to PSCs, including an obligation to take reasonable steps to

find out if there is anyone who is a registrable person or registrable RLE in relation to it, to identify such persons or entities, and to give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or registrable RLE, requiring that person to state whether they are a registrable person or RLE. An offence is committed by the company and every officer in default (punishable by imprisonment or a fine) if the company fails to take steps or give the notices required.

Confirmation statement

UK companies will be familiar with the requirement to file annual returns at Companies House. These annual returns have now been replaced by confirmation statements, which are statements confirming that the company has delivered all the information it was required to provide in the 12 month period to which the confirmation statement relates.

Any changes to relevant company information must be reported at least once every 12 months and within 14 days of the end of the relevant 12 month period. Information which is the subject of the confirmation statement includes: details of a change of registered office; details of company registers relating to directors, company secretaries (if appropriate) and PSCs; obligations arising as a result of a decision by a company to keep any of its registers on the central public register; and details of where a company keeps company records, if it uses an alternative inspection location.

Public register at Companies House

Companies now have the option to keep certain information on the public register, maintained at Companies House, rather than holding and maintaining their own statutory registers. This applies to registers of: (a) shareholders; (b) directors; (c) secretaries; (d) directors' residential addresses; and (e) PSCs. Inspection of information kept at a company's registered office address or at a single alternative inspection location ("SAIL") will continue to be governed by the pre-existing rules.

Statements of capital

The statement of capital is now simplified in the following respects:

1. the requirement to show the amount paid up and unpaid on each of the company's shares is now replaced by the requirement to show the aggregate amount unpaid on the total number of shares;
2. companies are now able to indicate on the confirmation statement that there have been no changes during the relevant annual period, instead of having to file a statement of capital; and
3. companies need only provide a full statement of capital if there have been changes during the relevant annual period.

Practical steps

The changes that have been implemented by the Act provide companies with an opportunity to review their current corporate information and processes so as to ensure that they are complying fully with the Act and availing themselves of the administrative efficiencies it offers. In particular, companies should:

consider those individuals which have “significant control” and create a register of PSCs;

- be aware of the requirement to file a confirmation statement rather than an annual return and become familiar with the information required in the statement;
- consider whether it should keep certain information on the public register maintained at Companies House, rather than holding and maintaining statutory registers; and
- be aware that the statement of capital required to be filed at Companies House has been simplified.

This article is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.

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