The Small Business Enterprise and Employment Act 2015:

...key changes to be aware of.

Recent 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 and the potential impact of Brexit on this area of law.

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

The Act introduces 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 are being 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 and the final tranche of changes will be delivered in October 2016. Those changes with the highest impact are to be delivered in the final stage, to allow companies sufficient time to prepare.

Key changes relating to corporate administration introduced by the Act

Register of People with Significant Control ("PSC") (effective from April 2016/June 2016)

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 (effective from June 2016)

UK companies will be familiar with the requirement to file annual returns at Companies House. These annual returns will be 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 (effective from June 2016)

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 existing rules.

Statements of capital (effective from June 2016)

The statement of capital will be simplified in the following respects:

1. the requirement to show the amount paid up and unpaid on each of the company's shares will be replaced by the requirement to show the aggregate amount unpaid on the total number of shares;
2. companies will be 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.

Corporate directors (effective from October 2016)

Companies will no longer be permitted to appoint corporate directors, except in limited circumstances (such circumstances are yet to be clarified by the Government) and so all directors must be natural persons. Companies with existing corporate directors will need to take steps to remove them, unless they can provide evidence that they fall within one of the exceptions.

Brexit: impact on UK company law?

The UK voted to leave the European Union ("EU") on 23 June 2016. Whilst the economy has inevitably been hit by a period of uncertainty, it is unlikely that the UK's departure from the EU will have a significant impact on UK company law in the foreseeable future, particularly for small and medium sized businesses. This is because the primary source of company law in the UK is the Companies Act 2006 (the "CA 2006") and related secondary legislation.

Only a minority of the provisions in the CA 2006 are based on EU derivatives, including those relating to disclosure of information and accounts and shareholders' rights. However, the most significant EU-based provisions relate to companies with shares listed on a regulated market. Although it is possible that the Government may review such provisions, company law is unlikely to be a priority area for post Brexit reform, given the relatively recent implementation and review of the CA 2006. Even if amendments are made to EU-based provisions, these are unlikely to impact heavily on privately owned UK companies, in terms of their day-to-day corporate administrative and operational functions. More significant changes post-Brexit are likely to be in areas such as employment law, tax and finance. We will continue to monitor developments in corporate matters closely, as they unfold in the coming months and years.

Practical steps

The changes 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;
- be aware that the statement of capital required to be filed at Companies House has been simplified; and
- review its board and take steps to remove corporate directors (subject to any applicable exceptions).