

## Company transparency – Key changes introduced by the Small Business, Enterprise and Employment Act 2015

### Background

In July 2013 the Department of Business Innovation and Skills (“BIS”) published a discussion paper on enhancing the transparency of UK company ownership. The discussion paper looked at ways to increase transparency in UK companies in order to help tackle tax evasion, money laundering and terrorist financing. The recommendations of the paper included establishing a publicly accessible register of company beneficial ownership information, restricting the use of corporate directors and abolishing bearer shares.

These measures were included in the Small Business, Enterprise and Employment Act 2015, which received Royal Assent on 26 March 2015.

### What’s happening?

#### Register of Persons with Significant Control (“PSC” register)

Companies will be required to keep an additional statutory register containing information regarding people with significant control over the company and to file this information at Companies House. The provisions do not apply to publicly traded companies (which already report under the Disclosure and Transparency Rules) or to limited liability partnerships (although the government has confirmed that the regime will be extended to LLPs at a later date).

The definition of person with significant control (“PSC”) is broad and, as well as people holding (directly or indirectly) more than 25% of the shares or voting rights in the company, will also include individuals who exercise “significant influence or control” over the company. It is not yet clear what “significant influence or control” will mean in this context but in a ministerial statement on 15 January 2015 BIS announced that an expert working panel would be formed to draft statutory guidance on what is meant by the expression.

The information to be filed includes both identifying information regarding the PSC and information about the nature of their control.

The Act also imposes obligations on companies to investigate, obtain and update information regarding PSC’s, and on PSC’s to supply information. There will be criminal penalties for companies and their officers and for PSC’s for non-compliance with these duties.

Companies will need to start thinking about what internal processes they will need to develop to fulfil their requirements regarding identification of PSC’s and updating information on the register well ahead of the scheduled implementation date.

### **Ban on corporate directors**

The Act requires all directors to be natural persons and prohibits the appointment of corporate directors, but gives the Secretary of State power to make regulations setting out exceptions to this general requirement. No regulations have yet been made under this provision, but BIS intends to introduce an exception whereby companies may appoint a corporate director if all the directors of the corporate director are natural persons and the corporate director is required by the law under which they are established to make certain details of their directors available on a publicly accessible register.

Any appointments made in contravention of the provisions will be void and one year after the provisions come into force all existing corporate directors will cease to be directors.

### **Abolition of bearer shares**

As of 26 May 2015, companies are prohibited from creating bearer shares. Following a 9 month surrender period (starting on 26 May 2015), during which existing bearer share holders may surrender their shares for conversion to registered shares, companies with remaining bearer shares must, within 3 months, apply to court for their cancellation.

There are also obligations on companies with issued bearer shares to notify the holders of their right to surrender and the consequences if they do not do so.

If they haven't done so already, companies should check that they do not have any issued bearer shares (although these are rare in UK companies).

### **When is it happening?**

The PSC register provisions require implementation through secondary legislation, which is yet to be published, however it is envisaged that the requirement to maintain a PSC register will apply from April 2016 and the obligation to file this information at Companies House will apply from 30 June 2015.

The prohibition on corporate directors is intended to come into force in October 2016.

The prohibition on creating bearer shares is already in force and the 9 month surrender period commenced on 26 May 2015.