

The Small Business, Enterprise and Employment Act

May 11, 2015

One of the last acts of parliament was to pass the Small Business, Enterprise and Employment Act (“the Act”), which received Royal Assent on 26 March 2015.

Ostensibly, the primary purpose of this piece of legislation is to encourage entrepreneurship in the UK by helping small businesses to compete, grow and innovate. However, the Act itself is somewhat of a legislative hotchpotch, addressing various issues discussed by the government in recent years, ranging from insolvency and corporate transparency to employment law.

The main effects of the legislation are to:

- Enhance the transparency of the ownership of UK companies;
- Improve the ability of small and medium-sized businesses to access finance;
- Reform aspects of the UK restructuring and insolvency regime.

From an anti-corruption perspective, the Act is very good news. In particular, provisions that deal with corporate transparency and disqualification of directors are likely to be of great assistance to those seeking to trace ownership of companies, as well as clamp down on corrupt practices. These aspects are discussed below.

Beneficial Ownership

The Act introduces some important changes to the Companies Act 2006, which includes a requirement for companies to identify persons with “significant control” over a company and also to keep a publicly available register of those persons. “Significant control” is defined as having more than 25% of a company’s shares or 25% of the voting rights or the rights to appoint or control the majority of the board of directors or the company. The significant control can also be through a partnership or trust. Further guidance from the government on the definition of “significant control” is expected by October 2015.

Furthermore, the measures also impose a proactive disclosure obligation on companies and individuals to investigate and register the details of persons with significant control on the appropriate company register. Once enacted, this requirement will apply to most companies. Listed companies are considered exempt on as they must already comply with certain disclosure obligations. Limited Liability Partnerships are also exempt, although it is expected that the requirements will be extended to them also.

The register of persons with significant control over the company will include the following information:

- Name, address, and date of birth (although this will be protected from disclosure to the public – thereby making identity theft more difficult)
- Nationality – or, if an entity, the law under which it is governed.
- The date on which the person become a beneficial owner, and the nature of their control or interest.

A company can impose sanctions if a person with significant control does not comply with the disclosure obligations. The Act also provides for criminal penalties for the company, its directors, secretary, and persons with significant control if they do not comply.

Corporate Directors and Shadow Directors

The Act makes it much harder for an individual who has committed misconduct to act as a director. New grounds for disqualification have been introduced into the Company Directors Disqualification Act 1986, with the effect that the Secretary of State can now apply for a disqualification order if a director has committed certain offences outside Great Britain.

Section 87 of the Act introduces a new provision into the Companies Act 2006 that requires that all directors must be

natural persons – it is now prohibited to appoint corporate directors. One year after the new Companies Act 2006 section coming into force, any corporate directors will cease to be directors. This should have the effect of reducing the number of companies, particularly shell companies, that are used for money laundering and criminal activity.

The Act also amends the Companies Act to provide that the general duties of directors also apply to shadow directors where and to the extent they are capable of applying.

Summary

Secret beneficial ownership of companies often hinders corruption and fraud investigations and claims. The Act has created the world's first public register of beneficial ownership of companies. This is a historic achievement, although it will also increase compliance costs of private companies.

The timetable for implementation of the various measures under the Act is as follows:

- Corporate directors to be prohibited, with exceptions (October 2015, with a 12 months' transitional period for existing corporate directors).
- Unquoted companies to keep a public register of people with significant control (January 2016). Details of these people to be provided to Companies House annually (April 2016).
- Annual "confirmation statements" to replace annual returns (April 2016).
- Private companies to be able to keep their statutory registers (e.g. registers of members and directors, and the new register of people with significant control) at Companies House, instead of having to keep their own registers (April 2016).

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