

The SBEEA is a significant piece of legislation introducing the most wide-ranging changes to company law since the introduction of the Companies Act 2006. Despite its title, SBEEA fundamentally alters legal requirements for companies of all sizes (such as, Companies House filings); all companies will be affected by at least some of the SBEEA changes. SBEEA will impact companies' systems and processes so early preparation is advisable.

The drivers behind SBEEA are to:

- reduce red tape whilst increasing the quality of information on the public register; and
- enhance transparency and ensure the UK is seen as a trusted and fair place to do business.

SBEEA is being implemented in stages.

Changes Currently in Force

Bearer Shares or share warrants to bearer were abolished back in May. The process of surrendering bearer shares is currently underway.

Shadow Directors. The general statutory duties that apply to directors under the Companies Act will also apply (where and to the extent they are capable of applying) to shadow directors, being those people who are not formally appointed as directors but are people in accordance with whose directions or instructions the directors of the company are accustomed to act. The Secretary of State has been given power to make regulations regarding the application of the general duties, although no such regulations have yet been produced. This will, however, increase the accountability of shadow directors.

Changes Due in October 2015

Date of Birth. The day element in the date of birth of directors and people with significant control may be partially suppressed on the public register. This is intended to minimise individuals' exposure to the risk of identity theft or fraud.

Accelerated Strike-Off. The time it takes to strike companies off the register will be reduced. The voluntary strike off process is being reduced to around two months from the current three to four months and the strike off period where instigated by the Registrar of Companies is being reduced from the current five to six-month period to between three and four months.

Statement of Truth. New directors will no longer be required to sign a "consent to act" form that is currently filed at Companies House. Instead, when a new director is appointed on the company record, the company must file a "statement of truth" confirming that the director has consented to their appointment. This will be incorporated into the filing and will not require a separate statement.

Changes Due in December 2015

Director Appointment Disputes. SBEEA will introduce an easier way to remove the details of falsely appointed directors from the register. When a company notifies Companies House of the appointment of a new director, Companies House will write to the newly appointed director advising that their appointment has been filed and explain their statutory general duties. If the new director did not in fact consent to act as a director they will be able to apply to Companies House for removal of their appointment from the public register. Companies therefore need to be mindful when appointing directors and ensure they get written consent of the director being appointed so that they can keep this as evidence of the director's approval of appointment. It is recommended that the evidence whether in the form of a signed AP01 or a letter confirming consent to be appointed as a director be kept with the Company Books.

Registered Office Disputes. A new remedy will be provided where a company uses an unauthorised registered office address. Currently, no such procedure is in place.

Changes Due in January 2016

People with Significant Control (PSC). Companies will need to create a register of people with significant control ("PSC register") in anticipation of the requirement to file this information centrally at Companies House from April 2016. This is also known as the register of beneficial ownership and applies to all UK companies other than those who make disclosures under the Disclosure and Transparency Rules (DTR 5).

The purpose of the central register is to enable the public to see who actually owns or controls a company. The government has published a first draft consultative set of regulations but full details are awaited and a further briefing will be provided in due course. In the meanwhile, PSC are individuals or legal entities who satisfy one or more of the following conditions:

- directly or indirectly, holds more than 25% of the shares in the company;
- directly or indirectly, holds more than 25% of the voting rights in the company;
- directly or indirectly, has the power to appoint or remove a majority of the board of directors of the company;

- has the right to exercise, or actually exercises, significant influence or control over the company (statutory guidance on what this means is being drafted); or
- has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal person, which in turn meets one or more of the other conditions specified above.

Draft regulations are currently indicating that the information to be included in the PSC register is likely to include the name, residential or registered address (not publicly viewable), a service address (public), date of birth (for individuals), and information about the extent of their “significant control” and which of the five elements above relate to them as a PSC. There is currently talk of having the shares and voting rights banded into 25%, 50%, 75%+. We still await the outcome of the consultation on this.

Companies should start now to identify who would constitute their PSCs in readiness for issuing warning notices if required.

When a company identifies a PSC they may need to obtain further information about them. A warning notice can then be issued to that person or entity requesting they provide the full information required for the PSC register. This can be done under s.790 D and E of the Companies Act 2006 (as amended by SBEEA). Issuing the notice gives the individual or entity 28 days to respond. Failure to respond allows the company asking for the information to place a restriction notice on them. This effectively freezes their interests in the company, meaning they will not receive any benefits of ownership of the shares and will not be able to transfer shares.

It is worth noting that the EU Fourth Money Laundering Directive will require all EU member states to hold central registers of company beneficial ownership from 2017. These are similar to the SBEEA requirements but further tweaks may be required to the PSC regime in due course.

Changes Due in April 2016

People with Significant Control (PSC). Companies will need to provide the information from their PSC register to Companies House which will then be made public in a central searchable register. Going forward, this information will need to be provided to Companies House on incorporation and updated at “check and confirm”, as explained below.

Check and Confirm. Companies will be required to check and confirm the accuracy of the company’s information filed at Companies House and notify changes if necessary at least once every 12 months. These confirmation statements will replace the current requirement to file an annual return.

This may be of benefit to small businesses with one director and shareholder where the information never changes from one year to the next. For most active companies, this will still mean the directors having to check the public register, address any anomalies with the filings to ensure the public register reflects the true position of the company before they can go ahead and actually do the “check and confirm” exercise. It is worth noting that companies will only have 14 days to complete this exercise under the new regime and not 28 days as they do currently.

Confirmation statements can be submitted at any time (and more than once) in any 12-month review period and a new review period of 12 months will be set from the date of the last confirmation statement.

Company Registers. Private companies will be able to opt to keep certain information on the public register only, instead of maintaining their own statutory registers. This will apply to the registers of members, directors, directors’ residential addresses, directors’ interests, secretaries and the PSC register.

However, private companies may prefer to maintain their own registers for reasons of confidentiality and the speed at which they can update their own registers. The general consensus is that most companies will continue to hold and keep their own registers.

Directors’ Misconduct. The disqualified directors’ regime will be updated and strengthened. In particular, the Secretary of State will be able to apply to the court for a disqualification order on the grounds that a director has been convicted of certain offences overseas.

SBEEA will also give the courts a power to make a compensatory award against a disqualified director in favour of one or more creditors of an insolvent company who have suffered an identifiable loss due to their misconduct.

Statement of Capital. This will be simplified, in that statements of capital will no longer need to set out the amount paid and unpaid on each individual share. Only the aggregate amount unpaid on all the shares will need to be specified. Companies will welcome this change.

Reporting on Payment Practices. Large quoted companies, large private companies and large LLPs will be required to publish information about the company’s payment practices and policies and its performance by reference to those practices and policies. They will be required to publish their payment practices twice a year on a digital platform, detailing:

- average payment time;
- proportion of invoices paid beyond terms;
- any late payment interest owed and paid; and
- the proportion of invoices paid within 30 days, over 30 days, over 60 days and over 120 days.

Changes Due in October 2016

Corporate Directors. A prohibition on appointing corporate directors will be introduced, subject to certain exceptions (we are awaiting the details in secondary legislation). All companies with a corporate director will need to act, either to explain how they meet the conditions for an exception or to give notice to the Registrar that the corporate director has ceased to be a director.

Given the advantages of using corporate directors the government is considering introducing an exception if:

- all the directors of the corporate director are individuals; and
- the details of those individual directors are available through a public register.

How We Can Help

As we receive further details of the secondary legislation we will send a further update. In the meantime, we would be pleased to discuss with you in more detail any of the matters raised in this update and help you prepare for the new regime.

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