

SBEE Act: Corporate update

SBEE BILL GETS ROYAL ASSENT

On 26 March 2015, the Small Business, Enterprise and Employment Bill received Royal Assent and became the Small Business, Enterprise and Employment Act 2015 ("**SBEE Act**"). The SBEE Act includes new measures designed to increase transparency in the ownership and control of companies.

The corporate aspects of the SBEE Act (contained in Parts 7, 8 and 9) will amend the Companies Act 2006 (the "**CA 06**"), the Company Directors Disqualification Act 1986 (the "**CDDA 86**") and the Insolvency Act 1986 (the "**IA 86**"). The Government will also use powers delegated by the SBEE Act to implement

proposals concerning company reporting obligations and invoice finance.

This alert provides an overview of the corporate aspects of the SBEE Act. We will provide further alerts as detailed provisions emerge in secondary legislation and guidance, and as parts of the SBEE Act come into force.

Who does it affect?

Although its title suggests that it will only affect small businesses, the SBEE Act implements substantial changes to company law and corporate governance which will impact all companies.

Changes to the CA 06

BIS has issued a provisional timetable in relation to the changes to the provisions of the CA 06 regarding company transparency and filing obligations.

Two months after Royal Assent

Bearer shares: Companies will be prohibited from issuing new bearer shares. Companies with existing bearer shares will be subject to a transitional process by which any such shares must be surrendered and converted into registered shares within nine months or cancelled.

Shadow directors: The general duties of directors under the CA 06 will apply to shadow directors.

October 2015

Prohibition of corporate directors: Companies will be prohibited from appointing corporate directors and, after 12 months, existing corporate directors will cease to be directors. The prohibition will be subject to exceptions that will be contained in a separate regulation. We expect the exceptions to allow corporate directors to be used where there are good arguments that to do so facilitates efficient company administration (for example, on the boards of subsidiary companies).

It should also be noted that a recent BIS consultation proposed a principles based exception that would allow a UK company to be a director if all of the directors of that corporate director are individuals. The consultation also proposed extending this exception to non-UK companies whose directors are individuals and whose identity is published in a public register. The consultation will close at the end of April 2015.

January 2016

PSC register: Companies will be required to maintain a publicly available register of people with significant control over the company (the “PSC register”), which should include, among other things, the relevant person's name, service address and date of birth (if an individual). This information will also have to be filed at Companies House, although only the month and year of birth will be made publicly available. Although companies will be required to keep a PSC register from January 2016, the obligation to file this information with Companies House will not take effect until April 2016.

People with significant control are **individuals** who either (a) hold (directly or indirectly) 25 per cent. of a company's shares or voting rights, (b) control rights to appoint or remove a majority of the board, or (c) otherwise have the right to, or actually do, exercise significant influence or control over the company. Companies will be subject to certain duties (and given certain powers) to gather information to enable them to maintain and update the register. Companies subject to DTR5 (traded on LSE or AIM) or subject to a “broadly similar” disclosure regime are not required to keep a PSC register.

The Government has announced that: (i) statutory guidance will be produced on the meaning of “significant influence or control”. An expert working panel comprising company law specialists will draft this guidance; and (ii) non-statutory guidance will be produced in relation to the implementation of the PSC register more generally. A working group will meet between February and September 2015 to oversee the production of such guidance.

The Government will produce regulations which will outline the fees to be charged to gain access to a company's PSC register and the circumstances in which information can be withheld from it. We expect that this will be limited to circumstances where an individual is subject to the threat of serious physical harm.

April 2016

Annual return abolished: The SBEE Act abolishes the requirement for companies to deliver an annual return to Companies House. Companies will instead be obliged to deliver, once every 12 months, a “confirmation statement” that certain information has been filed with Companies House. In this statement, companies will also be required to notify Companies House of any relevant changes to previously filed information. This will include information on a company's PSC register.

Options to hold registers at Companies House: Private companies can choose to keep certain information on the public register at Companies House only, thus dispensing of the need for statutory registers, including the registers of members, directors, secretaries, directors' residential addresses and the PSC register.

In addition to the above amendments, the SBEE Act also reduces the period after which the Registrar can strike off a company from the register from 6 to 4 months.

Changes to the CDDA 86 and IA 86

The SBEE Act will implement the following changes to the CDDA 86:

- A court may impose a disqualification order upon a person who gave directions or instructions to a director which resulted in conduct that led to the director being disqualified. This may enable a court to disqualify the appointor of a nominee director.
- A court must have regard to a more expansive set of behaviours in determining whether a person is unfit to act in management of a company or should be disqualified as a director, and the period of any disqualification.
- The Secretary of State will be able to bring disqualification proceedings against a person who has been convicted of certain offences overseas.
- The court may make a compensation order against disqualified directors requiring them to compensate creditors of an insolvent company (of which that disqualified director has been a director) who, as a result of their misconduct, have suffered an identifiable loss.

The SBEE Act will implement the following changes to the IA 86:

- Administrators have the capacity to bring wrongful trading and fraudulent trading claims and to make these and certain other causes of action assignable.

FURTHER PROPOSALS RELATING TO THE SBEE ACT

Although not implemented by the SBEE Act itself, under powers delegated by it, the Government has announced proposals for: (i) nullification of bans on invoice assignments; (ii) reporting on payment practices; and (iii) transparency on equal pay.

NULLIFICATION OF BANS ON INVOICE ASSIGNMENTS

In December 2014 BIS consulted on its proposal to nullify ban on invoice assignment clauses. The proposal to nullify bans on invoice assignment is intended to help small and medium-sized enterprises access invoice finance (i.e. finance that uses invoices as collateral). The proposed nullification would apply to business to business contracts only. BIS did not propose to nullify clauses banning invoice assignment in financial services contracts.

In its summary of the responses to the consultation, published on 27 February 2015, BIS stated that, overall, the responses supported the proposals but that the effect of nullifying these clauses on contract law was an area of concern for some respondents. We expect a Government Response to be published after the election.

REPORTING ON PAYMENT PRACTICES

Following a consultation on new reporting requirements for larger companies in relation to their payment practices and policies, BIS published a written statement on 20 March 2015 setting out its plans for implementing the proposals. From April 2016, large companies, large LLPs and large quoted companies will be required to report on a half-yearly basis on a series of metrics that ought to give an indication of their payment performance. BIS has produced an indicative format of the report; it requires companies to provide, among other things, the proportion of their invoices paid in breach of their agreed terms; the proportion of invoices paid over 30, 60 and 120 days; the average time taken to pay invoices; and any dispute resolution procedures.

The Government intends to produce secondary legislation early in the next Parliament.

TRANSPARENCY ON EQUAL PAY

A new clause was introduced into the SBEE Bill in the late stages of the legislative process. Section 147 of the SBEE Act requires the Secretary of State to make regulations no later than 12 months after the Bill comes into force, to require the publication of information about gender pay gaps by companies with 250 or more employees.