

UK Corporate Update: Looking to 2017

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Set against the backdrop of the Brexit referendum, the resulting change in Prime Minister and other key government personnel, and the UK's self-appointed role as a leading nation in the fight for global corporate transparency, 2016 has seen the implementation of significant changes in UK company law. In this update we have discussed some of the consequences of these changes, while also highlighting the key corporate legislation companies should be anticipating for 2017.

Corporate Transparency

Corporate transparency has again been one of the focuses of the UK government throughout 2016. Measures introduced in April 2016 by the *Small Business, Enterprise and Employment Act 2015* (the SBEE Act) were addressed in a previous update (available [here](#)). This was followed by the global Anti-Corruption Summit hosted in London in May, at which the government announced a raft of new policy proposals aimed at further strengthening the corporate transparency of those operating in the UK.

The SBEE Act introduced a new public register of persons with significant control (PSCs) over the voting rights in most UK companies – effectively a form of public register of beneficial ownership. Compliance departments and others tasked with keeping their organisations on top of this rapidly evolving area should be aware that, far from taking a pause for breath, 2017 is expected to see further significant developments.

The Treasury is currently consulting on the implementation of the EU's Fourth Money Laundering Directive, due to occur during the early part of 2017. While the Directive primarily affects those operating in certain regulated industries (such as banks, lawyers and accountants), its implementation is likely to require changes to laws affecting all UK companies. Part of this Directive is aimed at introducing registers of beneficial ownership across all EU Member States. The outcome of the Treasury consultation may result in further changes being made to the new PSC regime as, for example:

- the Directive requires that all centrally held beneficial ownership information must be current at all times – at present the information is only required to be updated once annually with the UK's Registrar of Companies (Companies House); and
- the Directive potentially applies to a wider range of entity than is currently caught by the PSC

regime, which is focused on limited companies and limited liability partnerships.

Another change implemented through the SBEE Act is the abolition of the use of corporate directors (i.e. a company acting as a director of another company). This was due to take effect in October 2016, but has been delayed until 2017 while the relevant government department considers the likely limited circumstances in which an exception may apply. Any exceptions will be of particular interest to those operating, for example, professional pension trusteeship companies.

Most of the proposals announced at the Anti-Corruption Summit have not yet become the subject of formal legislation, but consultations are under way and it is expected that some will become law during 2017. Of particular importance are the following proposals:

- to create a register of beneficial owners of all foreign companies that own UK property, as well as all companies bidding for UK government contracts; and
- to separately introduce new corporate offences of failing to prevent fraud, money-laundering or the criminal facilitation of tax evasion.

Taking Security over UK Company Shares

Of particular importance to lenders is the indirect impact that the new PSC regime has had on the process of taking security over the shares of a UK company. In order for a UK company to know whose details should be included in its PSC register it is necessary to understand the ownership structure of the company's shareholders, and this requires the shareholders to be cooperative.

Where a shareholder is not cooperative the company is effectively required to serve a "warning notice" on the shareholder requesting the relevant information. If there is no adequate response then the company may issue a "restriction notice." However, as directors are under a duty to ensure that the company complies with its obligations to gather PSC information, they would have to have a very good reason not to issue a restriction notice.

Once issued, a restriction notice has various consequences which apply until the company is satisfied that the PSC information has been properly provided, including that any transfer of the affected shareholder's shares, or any agreement to transfer those shares, is void (save pursuant to a court order). Obviously, this would have a significant impact on the ability of a holder of a charge over the affected shares to exercise its security. For this reason it is now recommended that share charges over a UK company's shares include:

- a warranty that no restriction notice has been issued in respect of the shares;
- a positive covenant that the shareholder giving the charge will comply with any requests from the company to provide PSC related information; and
- the issue of a warning notice as an event of default (so that the lender has the option to enforce its security before a restriction notice is issued).

Public Companies

Two consultations have recently been issued which will be of particular interest to public companies:

Prospectus Regulation

The European Parliament has recently been considering amendments to a new Prospectus

Regulation which will repeal and replace the existing Prospectus Directive. This legislation governs the circumstances in which companies seeking to offer their securities to the public, or to admit them to trading on a regulated market, must first publish a prospectus that has been approved by the appropriate "home state" regulator (the Financial Conduct Authority, in the UK).

The new Regulation is, in part, aimed at simplifying the production and approval of a prospectus. The documents that may be incorporated by reference into the prospectus have been widened and the thresholds governing the circumstances in which a prospectus is required have been relaxed (for example the requirement for a prospectus would not apply to offers of securities to fewer than 350 persons per member state, as opposed to 150 currently). The new Regulation also creates an abbreviated prospectus format for SMEs which have no securities admitted to trading on a regulated market.

Once adopted, the new Prospectus Regulation will automatically form part of the law of each EU member state. It will not require implementing legislation to be passed at state level. The European Parliament's formal adoption of the Regulation is expected during 2017, and the Regulation will have effect 12 months after this adoption. As a result it is expected to be effective before the UK completes its Brexit negotiations and leaves the EU.

Corporate Governance

In September 2016 the UK government launched an inquiry into corporate governance. The inquiry will primarily focus on whether executive pay should reflect long-term performance, whether executive pay rises should reflect pay rises given to more junior employees, whether directors' duties should include the promotion of corporate transparency, and how to increase the number of women, and employee representatives, sitting on company boards.

The inquiry has been prompted by several recent high-profile clashes between the UK government and major companies (notably Sir Philip Green's perceived involvement in the collapse of BHS and Mike Ashley's control of Sports Direct). Submissions from any interested parties were due to be filed with the inquiry by October 2016 and a further timetable is now to be announced. It is expected that the inquiry could lead to changes in corporate governance rules being implemented during 2017.

Summary

Notwithstanding the likely commencement of Brexit negotiations, expected in the first half of the year, we expect 2016's busy schedule of new and amending corporate legislation to continue into 2017, particularly in the key areas highlighted above. Vedder Price has advised many of its clients on the impact of the above mentioned changes, including helping them to comply with the new PSC regime.

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