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LAWFLASH

IMPLEMENTATION OF NEW UK PSC REGIME

February 26, 2016

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UK companies will be obliged to take steps to identify and maintain a public register of persons with significant control, and such persons must supply such companies with information for inclusion on the register or face criminal penalties and possibly frozen shareholder rights.

On 25 January, the final version of the Register of People with Significant Control Regulations 2016 (the PSC Regulations) was laid before the UK Parliament for approval. Similarly, the Department for Business, Innovation and Skills (DBIS) has now published its final guidance on the meaning of “significant influence and control” (the final amendments were released on 22 February). The PSC Regulations implement and provide further details about the new regime, which was introduced by the Small Business, Enterprise and Employment Act 2015 (SBEEA).

BACKGROUND

The SBEEA introduced a new regime under which UK companies, limited liability partnerships (LLPs), and other UK corporate entities are obliged to maintain a register of people with significant control over the respective entity (the PSC Register). The purpose of this regime is to increase transparency over the identity of the ultimate beneficial owners of such UK entities. The SBEEA provided that, before the new regime was introduced, further details on certain aspects of the new regime would be set out in regulations, and also provided for the government to issue guidance on the interpretation and implementation of certain aspects of the new regime.

The PSC Regulations set out such details in relation to the application of the new regime to companies. Similar provisions relating to the application of the new regime to LLPs are set out in the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 (the LLP Regulations). The new regime takes effect on 6 April 2016.

WHICH ENTITIES MUST MAINTAIN A PSC REGISTER?

The new regime will apply to all UK-incorporated companies limited by shares or guarantee, UK LLPs, and *societas Europaea* (SEs). However, a company will be exempt if it is either (a) already subject to the reporting requirements of Chapter 5 of the Disclosure and Transparency Rules (which apply to all listed and

AIM-quoted companies incorporated in the UK) (DTR5) or (b) is listed on a regulated market in another European Economic Area state or on certain other markets (in Israel, Japan, Switzerland, and the United States) specified in Schedule 1 to the PSC Regulations. Overseas entities that operate in the UK are not subject to the regime.

This LawFlash only considers the regime as it applies to companies. However, the rules that apply to LLPs and SEs are very similar.

WHO IS A “PERSON WITH SIGNIFICANT CONTROL”?

A “person with significant control” (PSC) is an individual who meets one of the following criteria:

- Has direct or indirect ownership of more than 25% of a company’s shares
- Has direct or indirect control of more than 25% of a company’s voting rights
- Has the direct or indirect right to appoint or remove more than 50% of directors
- Exercises (or has the right to exercise) significant influence or control over a company
- Exercises (or has the right to exercise) significant influence or control over a trust or firm that meets one of the above conditions

The DBIS guidance published this month gives further guidance on what is meant by “significant influence and control”. Among other things, it sets out certain relationships, such as limited partnership interests or commercial lenders, which are not normally considered to constitute significant influence or control for these purposes. Similarly, the guidance sets out circumstances, such as the right to control key decisions relating to a business (e.g., approval of the business plan, or veto rights over the appointment of a majority of the directors), which may indicate significant influence or control.

In addition, some entities (such as governments, local authorities, etc.), will be capable of being PSCs.

“Relevant legal entities” will also need to be disclosed on the PSC Register; these are essentially entities that would be PSCs if they were individuals and are subject to their own disclosure regime, for example under DTR5.

WHAT ARE COMPANIES COVERED BY THE REGIME REQUIRED TO DO?

UK companies must do the following from 6 April 2016:

- Maintain a PSC Register.
- Take reasonable steps to identify people they know or suspect have significant control. The DBIS guidance includes factors to consider for the purposes of meeting the test of taking “reasonable steps” for these purposes.
- Serve statutory notices on any suspected PSC or relevant legal entity requiring that person to confirm whether or not he or she is a PSC or relevant legal entity and provide certain specified information. A company may also be obliged to serve notices on certain other persons, including persons the company knows or suspects knows the identity of any PSC or relevant legal entity, or where it believes that a person has ceased to be a PSC or relevant legal entity, or there has otherwise been a change of circumstances.

In addition, from 30 June 2016, UK companies must provide the information on the PSC Register to Companies House when they file their annual confirmation statement (which will replace the annual return) or, for new companies, on incorporation. The information filed at Companies House will be publicly

available for free on a single searchable public register. Private companies will have the option to maintain their PSC Register at Companies House, provided that no PSC objects.

A company's failure to comply with these statutory obligations will constitute an offence by the company and any company officer who is in default.

WHAT MUST A PSC DO?

PSCs (or relevant legal entities) are obliged to provide the following:

- The information set out in any statutory notice received from the company.
- The prescribed information even if such person has not received such a notice, if such person knows or ought reasonably to know that he or she is a PSC (or relevant legal entity), has been for at least one month, and his or her details are not already disclosed in the PSC Register. A similar obligation arises if there is any subsequent change in such information.

Failing to comply with a statutory notice or to comply with the general obligation to provide information is an offence, unless certain conditions are met. In addition, if any person fails to comply with a statutory notice served on it by a company, the company may give that person a warning notice that it intends to issue the person with a restrictions notice with respect to its interests in the company. If a restrictions notice is subsequently served, any transfer of the restricted interests will be void, no dividends may be paid on such interests, and no rights attached to such interests may be exercised (and it is an offence for the person to try to do any such thing).

WHAT INFORMATION WILL BE INCLUDED IN THE PSC REGISTER?

Where a PSC is an individual, the following information must be disclosed on the PSC Register: name, service address, usual country or state of residence, nationality, date of birth, usual residential address, date on which such person became a PSC in relation to the company, and the nature of his or her control over the company. Companies must update this information if they know or might reasonably be expected to have known there has been a change.

The PSC Register should also include details of any relevant legal entity. The intention is that an interested party could then look at disclosures made by such relevant legal entity under its own disclosure regime to identify any ultimate PSC.

The PSC Register can never be blank. A company should disclose in the PSC Register whenever it (a) has reason to believe that there are PSCs or relevant legal entities but it has not been able to identify them or confirm their details, (b) knows or has reasonable cause to believe that there are no PSCs or relevant legal entities, (c) has not yet completed taking reasonable steps to determine whether there are any PSCs or relevant legal entities; (d) has served a statutory notice that has not been complied with (or there was late compliance), or (e) has issued or withdrawn a restrictions notice.

A company's PSC Register must be made available for free to any person on request, or a copy provided on request at a cost of £12. A company may seek to apply to the court for an order permitting noncompliance if it believes that the application is not for a proper purpose. The public register at Companies House will be searchable by any person free of charge.

The usual residential address of a PSC will not be publicly available, either on a company's own register or

the register at Companies House, although it will be accessible by certain public bodies and (unless a PSC makes a specific application) credit reference agencies. The PSC's date of birth will be publicly available on a company's own PSC Register, but not on the register at Companies House (unless the company elects to hold its own PSC Register there). The PSC Regulations also permit PSCs to seek further protection of their personal information from public disclosure, provided that they can satisfy certain tests relating to there being a serious risk of harm. This protection regime is based on the existing UK protection regime for directors.

WHAT'S NEXT?

Companies and LLPs will need to put in place the necessary internal systems to deal with the new regime and should begin taking reasonable steps to identify PSCs and relevant legal entities and preparing their PSC Register to be ready for 6 April 2016, when the majority of the PSC Regulations and LLP Regulations take effect. Similarly, PSCs who wish to limit the information relating to them that will be publicly available on the PSC Register should also begin preparing such applications.

Further amendments to the PSC regime are likely in order to bring it fully into line with the requirements of the Fourth Money Laundering Directive, although such changes are unlikely until next year.

CONTACTS

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

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