Schulte Roth&Zabel

Alert

Changes to the UK's 'People with Significant Control' Regime

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Background — the People with Significant Control Regime
From 6 April 2016, most UK-incorporated limited companies and limited liability partnerships ('LLPs') have been required to: (i) identify and maintain a register of people with significant control ('PSCs'), broadly being those with 25 percent or more of their equity and certain indirect majority holders thereof, (ii) allow for that register to be available for public inspection, and (iii) include its content in its annual filings at Companies House[1].

Following the European Union's Fourth Money Laundering Directive[2] ('MLD4') coming into effect, the UK government published The Information about People with Significant Control (Amendment) Regulations 2017 (SI 693/2017) (the 'Regulations') and The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (SI 694/2017) (the 'Scottish Regulations') on 23 June 2017. In short, the Regulations: (i) broaden the scope of entities caught by the PSC regime reporting requirements, and (ii) change the time limit to report changes to PSC registers; and the Scottish Regulations extend the PSC regime (as so broadened and modified) to certain Scottish legal entities. The changes to the PSC regime became effective from 26 June 2017.

Extended Scope of the PSC Regime
Originally, there were exemptions from the PSC regime for issuers which are already subject to disclosure and transparency obligations under DTR5. From 26 June 2017, this exemption will only apply to those UK companies with voting shares admitted to trading on a 'regulated market' in the European Economic Area, as well as certain specified markets in the United States, Switzerland, Japan and Israel. Accordingly, issuers with securities traded on a 'prescribed market', such as AIM, will now need to comply in full with the PSC regime.

The Regulations include a transitional period for UK companies who are now brought into scope of the reporting requirements of the PSC regime. Such UK companies will be required to comply with the PSC regime from 24 July 2017.

The Scottish Regulations bring the following entities within scope of the PSC regime: (i) Scottish limited partnerships, and (ii) Scottish general partnerships where all partners are corporate bodies. The reporting obligations placed on these Scottish entities will mirror those under the PSC regime generally. The Scottish Regulations include a transitional period for relevant Scottish entities which are now

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[1] Please see the SRZ *Alert*, "UK Companies and LLPs Affected by New Provisions of the 'People with Significant Control' Regime" (24 March 2016) for further information.

[2] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC Fourth Money Laundering Directive ((EU) 2015/849).

brought into scope of the PSC regime; the filing obligations (and the requirement to deliver PSC information on first registration) take effect on 24 July 2017.

Tightened Reporting Deadlines of the PSC Regime

Under the original PSC regime, a UK company or LLP could either: (i) maintain a PSC register at its registered office or SAIL (single alternative inspection location) and annually update Companies House with any changes to the PSC register as part of its annual confirmation statement, or (ii) elect to maintain the PSC register online at Companies House. The first of these options could lead to a potential mismatch between a company's or LLP's current PSCs, as per its up-to-date PSC register, and the PSCs filed for the previous financial year and on display online at Companies House.

From 26 June 2017, this issue will no longer arise, as PSC information must be notified to Companies House following a change (using specified Companies House forms, set out below) and will no longer be subject to annual reporting via the confirmation statement procedure. UK companies and LLPs must update their internal PSC register within 14 days of a change and file a notification of such update with Companies House within a further 14 days. The notifications to Companies House are to be completed using forms PSC01 to PSC09, LL PSC01 to LL PSC09 or SQP PSC01 to SQP PSC09 (as applicable). Failure to update your PSC register correctly can trigger a fine of up to £1,000 and for continued contravention a daily fine of up to £100.

The Regulations include transitional provisions for: (i) those UK companies and LLPs who have filed their most up-to-date PSC registers before 26 June 2017, and (ii) those UK companies and LLPs who have outstanding updates to their PSC registers following the filing of their latest annual confirmation statements. In the first case, the new 14-day filing period does not apply and, for the latter, the 14-day time limit commences on the 26 June 2017, being the commencement date of the Regulations.

What This Means for You

The Regulations and Scottish Regulations will add an additional layer of reporting obligations to UK companies, LLPs and certain Scottish partnerships, given the dual requirement to update their PSC register (if not maintained online at Companies House) and file the updates with Companies House within a reduced time period. This development brings the approach to PSCs in line with the current filing requirements and deadlines for a change of company director or LLP member. Furthermore, having a publicly accessible, up-to-date PSC register online at Companies House should, in theory, reduce the KYC burden on investors, service providers and/or clients when ascertaining the beneficial ownership of UK corporate structures.

As before, most fund investors will not be required to take any action with respect to their fund interests under the PSC regime, and most fund entities themselves will be established outside of the United Kingdom and therefore will not be required to file. However, most UK corporates, LLPs and now Scottish limited partnerships included in management company or fund structures will be caught.

Authored by Jim McNally and Anthony Lombardi.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

Schulte Roth & Zabel
London | New York | Washington DC
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