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U.K. Companies and LLPs Affected by New Provisions of the “People with Significant Control” Regime

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New regulations have come into force in the United Kingdom requiring companies and limited liability partnerships to register information on people with significant control of them, extending the regime previously applying to listed companies.

I. The People with Significant Control Regime

The Small Business, Enterprise and Employment Act 2015 inserted new provisions (a new Part 21A) into the U.K. Companies Act 2006 (“CA 2006”) relating to gathering and recording information about people with significant control (“PSCs”) of U.K. companies. Those provisions came into substantive effect on April 6, 2016, following the imminent coming into force of the Register of People with Significant Control Regulations 2016. At the same time, the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 applies the same regime to U.K. limited liability partnerships (‘LLPs’).¹

U.K. public companies are already subject to a regime under Part 22 of the CA 2006 under which information about persons interested in their shares is gathered and made available.² The new people with significant control regime (‘PSC Regime’) will mean that, for the first time, U.K. private companies and

LLPs will need to identify their registrable PSCs. Listed companies that are subject to the DTR regime³ are excluded from the scope of the PSC Regime.⁴

The PSC Regime is not restricted to individuals who are associated with the United Kingdom (e.g. nationality, residency or otherwise). As a matter of law, the PSC Regime applies to any individual that holds an interest giving it significant control (see below) over a relevant U.K. company or LLP. Foreign individuals may be subject to the disclosure requirements (see III. below) under the PSC Regime.

The purpose of the PSC Regime is to increase the transparency of corporate ownership and to assist combating money laundering, tax evasion and terrorist financing.

II. How the PSC Regime Works

The PSC Regime ultimately requires disclosure of the interests in relevant U.K. companies or LLPs held by persons having ‘significant control’. A person will be

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deemed to have significant control if one or more of the following five conditions is satisfied:

1. it holds, directly or indirectly, more than 25% of the shares in a relevant company or the right to share in more than 25% of any surplus assets of a relevant LLP on a winding up;
2. it holds, directly or indirectly, more than 25% of the votes in a relevant company or LLP;
3. it holds the right, directly or indirectly, to either appoint or remove a majority of the board of a relevant company or the majority of the persons entitled to take part in the management of a relevant LLP;
4. it has the right to exercise, or actually exercises, significant influence or control⁵ over a relevant company or LLP; and/or
5. it has the right to exercise, or actually exercises, significant influence or control over a trust or other similar entity (not being a 'legal person') which itself meets any of conditions 1. through 4. above.

For these purposes, 'indirectly' means through a chain of majority stakes, which means holding a majority of the voting rights (or controlling them through an agreement with other members), having the right to appoint or remove the majority of board members, or having the right to exercise, or actually exercising, dominant influence or control.

Accordingly, investors in most fund products will not need to be registered. As regards fund entities themselves, if they are (as is common) established outside of the United Kingdom, they will not ordinarily be registrable themselves.⁶

III. The PSC Register

The PSC Regime requires the disclosure of:

- if an individual: the PSC's name, address (business and residential), nationality and date of birth, or if not an individual: the PSC's name, principal office, legal form and governing law;
- the date the PSC became registrable (i.e. when it became a PSC for the relevant company or LLP);
- the nature of the control it holds (and whether, for conditions 1. and 2. or condition 5., where it applies by reference to conditions 1. or 2.) is above 25% but not more than 50%, more than 50% but less than 75% or 75% or more; and
- whether any of the particulars provided are protected (*see* IV. below for further details regarding protection of particulars).

Subject as noted below, this information is recorded by the relevant company or LLP on a register (the 'PSC Register'), which is publicly available for inspection. Any person can view the PSC register for free at the registered office or SAIL (single alternative inspection location) of the relevant company or LLP or ask for a copy of the PSC Register for a fee of 12 pounds. The PSC Register must be kept at the registered office or SAIL of the relevant company or LLP. From June 30, 2016, the PSC Register will form part of the new annual 'confirmation statement', which is replacing the current annual return regime. From April 6, 2016, a relevant company's or LLP's PSC Register must not be entirely blank.⁷

IV. Protected Information

As the PSC Register will be publicly available, there are some protections available to safeguard sensitive information. The current CA 2006 rules on the disclosure of the residential addresses of directors will apply to the residential addresses of PSCs, and the day of an individual's date of birth will be excluded from the PSC Register available through Companies House via the new annual confirmation statement. Further, if a PSC believes that the disclosure of their information will put them at serious risk of being subjected to violence or intimidation, they may apply to have their information protected from disclosure.⁸

V. The Two Types of Disclosure Under the PSC Regime

There are two ways in which disclosures as regards persons having significant control might be made: (1) relevant companies and LLPs have a duty to investigate and obtain information about such persons, to keep that information up-to-date and to maintain it on a register; and (2) at the same time, persons who have significant control have a separate duty to disclose it to the relevant company or LLP, and to update information so disclosed.

A. Enquiries Commenced by the Company or LLP

Relevant companies and LLPs are required to take reasonable steps to establish whether they have any PSCs⁹ and, if so, to identify them. Relevant companies and LLPs are also required to seek updated information where they know or have reasonable cause to believe there to have been any change or changes in relevant particulars.

The usual method for achieving this is for the relevant company or LLP to send a notice to each person which it knows to be, or has reasonable cause to believe, is a PSC with respect to it. The notice requires the recipient to confirm whether it is a PSC with respect to the relevant company or LLP, to confirm or correct any details supplied in the notice and to complete any details which are missing.

Notices may also be sent to any person whom a relevant company or LLP knows or has reasonable cause to believe either knows the identity of a PSC or knows the identity of a person with that knowledge, in which case the recipient must confirm whether they have such information and, if so, to supply particulars.

Pro forma notices are available, though their use is not mandatory.¹⁰

B. Separate Duty of Persons who have Significant Control

Quite separately from the above, PSCs who know (or ought reasonably to know) that they should be recorded on the PSC Register, where the required particulars of that PSC are not so recorded and where such state of affairs has persisted for a period of at least one month without the relevant company or LLP having issued a notice as described above, are under a duty to supply the relevant information within a further period of one month. There is a similar duty as regards updates.

VI. Defaults

Failure by a relevant company or LLP to take reasonable steps to identify its PSCs is a criminal offence. The punishment (applicable to both the company and any officer in default) is an unlimited fine and/or two years' imprisonment.

The default provisions for persons to whom a notice is sent by a relevant company or LLP are more complex. If default is made on a notice issued by a relevant company or LLP, that company or LLP may issue a 'warning notice', and if, after a one-month period, the default continues, the company or LLP may issue a 'restrictions notice'. A restrictions notice has the key effects of prohibiting transfers, prohibiting the exercise of rights attaching to the relevant shares or interest, and prohibiting distributions or payments on the relevant shares (except on liquidation).¹¹ A restrictions notice must be withdrawn by the relevant company or LLP if: (1) the original notice is complied with; (2) it is satisfied that there is a valid reason justifying the default; or (3) it discovers that a third party's rights are being unfairly affected.

Separately, if a person to whom a notice is sent by a relevant company or LLP fails to comply with that notice, or knowingly or recklessly makes a statement which is false in a material particular, or if a PSC fails in its own duty of disclosure described above, it commits a criminal offence, for which the punishment is again an unlimited fine and/or two years' imprisonment.

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NOTES

¹ It is anticipated that Scottish limited partnerships will be brought within the scope of the PSC Regime at a later date.

² See the *SRZ Briefing* 'Viewing the Shareholder Register'.

³ See the *SRZ Briefing* 'FCA Rules on Trade Reporting'.

⁴ Similarly, companies with voting shares admitted to trading on a European Economic Area regulated market (excluding those in the United Kingdom) or on certain markets in Switzerland, the United States, Japan and Israel are not subject to the PSC Regime.

⁵ Further statutory guidance has been issued regarding the meaning of 'exercising significant influence or control' as relevant for conditions 4. and 5.. In short, a person will be generally deemed to have significant influence in circumstances where they can ensure that the company or LLP adopts those policies or activities required by that person. A person will be deemed to have 'control' if they have the power to direct the policies and activities of the relevant company or LLP.

⁶ A legal entity will only be registrable itself if it comes within the definition of a person with significant control over the company if it had been an individual and it is subject to its own disclosure requirements (i.e. if it is a relevant U.K. company or LLP or subject to the DTR regime).

⁷ The statutory guidance referred to in endnote 10 below includes specific guidance for what should be included on the PSC Register in circumstances where: (1) the company or LLP has no PSCs; (2) there are unidentified PSCs; (3) there are unconfirmed particulars for PSCs; and (4) the company or LLP is still taking reasonable steps to ascertain certain details regarding its PSCs.

⁸ There are some transitional provisions for those PSCs potentially falling into this category on April 6, 2016 if they apply for their information to be protected before June 30, 2016.

⁹ There are special rules for PSCs who only hold their interests through one or more legal entities, each of which they have significant control over.

¹⁰ See Annex 3 of the guidance document, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/515720/Non-statutory_guidance_for_companies__LLPs_and_SEsv4.pdf

¹¹ No court order is required for a restrictions notice to have effect (unlike under the similar regime for U.K. public companies under Part 22 of the CA 2006, as referred to above).