SLAUGHTER AND MAY

The PSC regime: changes following implementation of the Fourth Anti Money Laundering Directive

July 2017

The scope of the PSC regime, requiring disclosure of people with significant control ("PSCs"), has been extended to include companies listed on AIM and NEX, as well as unregistered companies. A modified form of the regime will also apply to certain Scottish partnerships. In addition, companies are now required to update their registers within 14 days of any changes to the particulars of their PSCs.

The changes in brief

- **New regulations amending the PSC regime came into force on 26 June 2017.** Companies listed on AIM and NEX must now keep PSC registers. A modified form of the regime applying to certain Scottish partnerships, including Scottish limited partnerships, has also been introduced.
- A transitional period applies so previously exempt entities which are now caught by the regime are only required to comply from **24 July 2017**.
- PSC registers must now be updated within 14 days of any changes.
- Companies House must be notified within 14 days after register updates on new forms PSC01 - PSC09.

This note sets out a brief overview of the new requirements and highlights some practical issues arising from the new rules. Our previous briefing giving a general overview of the PSC regime is available here.

Since 6 April 2016, most UK companies and LLPs have been required to keep a register of people with significant control ("**PSC Register**") and to file that information annually with Companies House as part of their confirmation statement.

The Information about People with Significant Control (Amendment) Regulations 2017 ("**PSC Regulations 2017**") came into force on 26 June 2017. The PSC Regulations 2017 make changes to the existing PSC regime as required to implement Article 30 of the 4th Anti Money Laundering Directive (EU) 2015/849 (the "**Directive**"). BEIS has also updated associated guidance, including its non-statutory guidance on the application of the PSC regime (the "**Guidance**") to reflect these changes.

Extension of scope of PSC regime

Companies listed on certain prescribed markets

The scope of the regime has been extended to include companies listed on certain prescribed markets such as **AIM** and **NEX**, which are not EEA regulated markets. Previously, listed companies which were required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Guidance and

Transparency Rules ("**DTR5**") (which includes companies with shares traded on AIM or NEX) were exempt from the requirement to keep a PSC register on the basis that their disclosure obligations under DTR5 meant that ownership interests in those companies were thought to be sufficiently transparent.

Given that they are already required to comply with DTR5, AIM-listed companies may be surprised to realise that they are required to maintain a PSC Register. However, the provisions of the Directive mean that only those companies listed on an EEA regulated market or "subject to equivalent international standards" can be exempted, and the Government has taken the position that this excludes companies trading on AIM or NEX. Companies listed on the Main Market continue to be exempt.

Scottish partnerships and unregistered companies

A modified form of the regime now applies to certain "eligible" Scottish partnerships, including all Scottish limited partnerships (SLPs). Eligible Scottish partnerships are **not** required to keep their own internal PSC register but are instead required to deliver relevant PSC information to Companies House directly for the central register.

Unregistered companies (such as companies incorporated by Royal Charter) are now also within scope of the regime. Charitable incorporated organisations and mutual organisations such as community benefit societies remain outside the regime.

Transitional periods

There is a transitional period so that entities which were previously exempt but which are caught within the scope of the regime from 26 June need not comply with requirements until **24 July 2017**.

Updates to PSC register and filing requirements

Previously, companies had a duty to keep their PSC register up to date, but there was no specific obligation to do so within a particular time frame. For companies which did not elect to keep their registers centrally at Companies House, PSC information was only notified to Companies House annually through the confirmation statement process. This meant that updates to PSC information between statement dates would not necessarily be reflected in the Companies House central PSC register.

On becoming aware of any changes to their PSC register, the new regime requires companies to update their registers (whether kept at the registered office or at Companies House pursuant to an election) within 14 days beginning with the day after:

- all of the changes to an individual PSC's particulars and the date of those changes have been "confirmed"; or
- in relation to a relevant legal entity ("**RLE**") that is registrable in relation to that company, the company "first has details of all of [the] changes" and the date on which those changes occurred.

The central register must then be updated within 14 days of any update of the company's own register. New versions of forms PSC01 – PSC09 are available on Companies House's website for the purpose of making the required notifications.

Where the company is obliged to take an action to keep the register up to date prior to the commencement of the PSC Regulations 2017 on 26 June, there are transitional arrangements giving the company 14 days beginning with the commencement date to comply with that obligation.

Practical issues with updating the register

In relation to an individual PSC, the 14 day period within which the register must be updated only begins from when details of any changes to the particulars have been "confirmed" by the individual (meaning that the details have either been provided by that individual him or herself or with that individual's knowledge).

The point at which a company "first has details of all" the changes (or all required particulars) relating to its registrable RLE requiring it to update its register may be less clear in practice. For example, on a change of ownership of the company in a sale process, the company's board may not have received formal notification setting out details of the new RLE. If the company has not been informed of the change, but is aware of the change or has "reasonable cause" to believe a change has occurred, it is obliged to send a statutory notice requesting confirmation, and details, of any changes within 14 days of becoming so aware, which the recipient must respond to within a month. The Guidance also states that information must be "accurate" before the company can enter it into its PSC register. Nonetheless, the company could already be said to "have details of all the changes" at this point by virtue, for example, of the board's involvement in the sale process and knowledge of the relevant transaction documents. This could start the obligation to update the PSC register within 14 days, even if the company is still waiting for a response to a statutory request for information.

The Guidance suggests that, in these circumstances where a formal statutory notice is sent and the company is awaiting response, the company should enter the appropriate holding statement (with specified wording set out in the legislation) in its register. While not expressly stated, that should discharge the obligation to update the register within the 14 day timeframe. A further update to the register should be made once a response is received. Any updates to any of the particulars on the PSC register need to be notified to the registrar within 14 days of each update so in such circumstances, multiple filings may be required.

In practice, it is likely that these issues will be resolved through ensuring appropriate written notices of any changes are sent to the company as part of post-completion work on any transaction or group reorganisation. Entities required to comply should, as ever, ensure that adequate policies and templates are in place to meet the new requirements.

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