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UK Implements New Beneficial Owner Disclosure Requirements

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New UK laws, which came into force on April 6, impose an obligation publicly to disclose the ultimate beneficial owners or controllers who have "significant control" over UK incorporated companies. The UK is the first country in the European Union ("**EU**") to implement this new disclosure regime through the Small Business, Enterprise and Employment Act 2015, which amends the Companies Act 2006. However, under the Fourth EU Money Laundering Directive, all member states in the EU are required to introduce an Ultimate Beneficial Owner register by June 26, 2017 to record "adequate, accurate and current" information about a company's beneficial owners.

What do the new UK laws mean for companies incorporated outside the UK which have a subsidiary in the UK?

From April 6th this year, most UK companies, Societates Europaeae (public companies registered in accordance with European law), ("**SE's**"), and Limited Liability Partnerships ("**LLP's**") must keep a register of persons or entities that have significant control over them. Companies subject to chapter 5 of the Disclosure and Transparency Rules (including those listed on the main market of the London Stock Exchange or AIM) will not be required to do so, on the basis that they are already required to disclose significant shareholdings. Furthermore, from June 30th 2016, companies must deliver this information to UK Companies House when filing their Confirmation Statements (the new equivalent to Annual Returns). Persons of significant control ("**PSC's**") are defined as an individual who meets one or more of the following conditions in relation to the UK company, SE or LLP:

1. directly or indirectly holding more than 25% of the shares;
2. directly or indirectly holding more than 25% of the voting rights;
3. directly or indirectly holding the right to appoint or remove a majority of directors;
4. otherwise having the right to exercise, or actually exercising, significant influence or control; or
5. having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

Although a PSC is by definition an individual, legal entities can own and control companies, and must be put on the PSC register if they are "relevant and registrable". "Relevant" is defined as fulfilling any one of the five PSC criteria above plus one or more direct criteria described as follows:

1. it keeps its own PSC register; or
2. it is subject to Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules (DTRs); or
3. it has voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel.

And an entity is "**registrable**" if it is the first relevant legal entity in your company's ownership chain. Venture capital funds or other investors may be "relevant and registrable" and therefore trigger the PSC disclosure requirements to identify their beneficial owners.

Relevant UK Companies, SE's or LLP's must take reasonable steps to identify if they have a PSC. The legal guidance suggests that the company also record the steps it has taken to make that identification: doubtless with a view to producing this evidence if a regulator subsequently comes calling.

In the current climate, taking account of the G20's fight against terrorism and organised crime, international steps to effect transparency of beneficial ownership must be welcomed.

But two concerns arise at this stage:

First, is the UK, in implementing these strict measures ahead of issuing regulations from the EU under the Fourth EU Money Laundering Directive, gold plating the beneficial ownership transparency initiative? Is it over regulating companies incorporated in the UK? How will this affect competitiveness with companies incorporated outside the UK, which are not subject to such a stringent regime? And how will non-UK companies with a subsidiary in the UK formulate global policies to police this issue?

Second, the PSC measures are punishable by criminal sanctions, leading to fines and/or imprisonment of up to two years. Is this appropriate in the context of a company registration/disclosure regime? Will other EU countries treat this as a civil matter when they implement their own Ultimate Beneficial Owner registers over the next year or so? Will there be the resources to enforce the regime or will prosecutions only occur as part of wider tax-based or regulatory investigations? It should be noted that whilst failure to respond to a notice from the company seeking information about the PSC is a criminal offence, the Company can also disenfranchise the shareholder's voting rights and prevent further shares being offered or payments being made for share capital in the company. This could have an effect on overseas companies which have UK incorporated subsidiaries.

International companies with subsidiaries, including dormant companies, incorporated in the UK, should now ensure that they are compliant with the in-house register requirement and that they supply compliant PSC information to Companies House in the UK from June 2016 when filing their annual Confirmation Statement. They should also prepare to make similar ownership disclosures for subsidiaries elsewhere in the EU, as the Ultimate Beneficial Owner regimes are implemented in all other EU member states.

If you would like assistance analysing what you need to do next to comply with the new PSC regime, please get in touch with Julie Wicklund or Danish Hamid (both US) Louise Delahunty or Chris Finney (both UK).

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