

CLIENT MEMORANDUM

UK Law May Require Disclosure by UK Companies of Persons of Significant Influence

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Background

Following recent legislation designed to improve corporate transparency, the United Kingdom has enacted a law which, as of April 6, 2016, will require UK companies (public and private) and limited liability partnerships (“LLPs”) to identify and keep a register of the individuals and/or relevant legal entities which are their ultimate beneficial owners and controllers.

The law has been written broadly to capture a variety of different ownership structures, including potentially private equity funds. This requirement will apply to private equity funds with a significant direct or indirect interest in a UK company (including those with US or other interposed holding companies) and may require such funds to disclose the names of certain individuals within their general partner.

New Requirements

The primary requirement under the new rules is for UK companies and LLPs to:

- a. keep an up-to-date register of their controlling individuals, who have been defined in the legislation as ‘persons with significant control’ (“PSCs”); and/or

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- b. record the details of 'relevant legal entities' with significant control. A relevant legal entity in relation to a company is defined as a legal entity which would have been classed as a person with significant control had it been an individual and which is subject to its own disclosure requirements.

The new rules will not apply to UK companies whose shares are admitted to trading on the London Stock Exchange or on another European regulated market (or on specified markets in the USA, Switzerland, Japan and Israel) on the grounds that they are already subject to rigorous transparency rules.

The requirements to keep a PSC register are set out in Part 21A of the Companies Act 2006 (as inserted by the Small Business Enterprise and Employment Act 2015) and the following regulations:

- a. The Register of People with Significant Control Regulations 2016;
- b. The European Public Limited-Liability company (Register of People with Significant Control) Regulations 2016; and
- c. The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016

Determining PSCs

Pursuant to the relevant legislation, for a person to be considered a PSC he or she must satisfy at least one of the following qualifying conditions (the "Conditions") in relation to the UK company:

- a. directly or indirectly owns more than 25% of the company's shares;
- b. directly or indirectly holds more than 25% of the company's voting rights;
- c. directly or indirectly holds the right to appoint or remove the majority of directors;
- d. otherwise has the right to exercise or actually exercises significant influence or control; or
- e. holds the right to exercise or actually exercises significant control over an arrangement which is not a legal entity (e.g. a trust), but would satisfy any of the first four conditions if it were an individual.

The legislation contains detailed provisions relating to the interpretation of the Conditions, including various anti-avoidance provisions.

In situations where a UK company is owned through a chain of one or more legal entities, in order for an individual to be deemed to have 'indirect' control, the UK company's immediate parent must hold more than 25% of its shares or voting

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rights (or have board control) and then each successive entity in the chain (as well as the potential PSC individual) must in turn hold a majority stake in the entity immediately below it.

Private Equity Funds

In respect of private equity funds, where such funds own a direct or indirect controlling interest in a UK portfolio company (including a wholly owned UK subsidiary of a non-UK company), it is possible that one or more of the principals of the fund's general partner will satisfy one of the Conditions and be considered a PSC.

In situations where a private equity fund does not hold a controlling interest, it may still be required to comply with the PSC disclosure requirements if it can be shown that certain general partner principals satisfy Condition d above (i.e., they have the right to exercise significant influence or control over a UK portfolio company). Guidelines have been provided by the UK Secretary of State in respect of the meaning of 'significant influence and control', which should be considered in conjunction with the articles of association and/or the shareholders' agreement of the UK company when assessing if Condition d has been satisfied.

Ultimately, in order to assess if any principals or other key individuals within a fund management structure are PSCs of a UK company, it will be necessary to consider the fund's investment and the general partner's ownership and control structure.

The PSC Register

After a UK company identifies a PSC, certain personal information about the PSC must be recorded in the PSC register of the UK company, including name, service address, country or state (or part of the UK) in which the individual is usually resident, nationality, date of birth, residential address and the date on which such individual became a PSC. The PSC register must also contain details of the nature of the control exercised (i.e. which of the Conditions have been satisfied).

It is important to note that relevant UK companies must at all times have a completed PSC register. If a company does not have any PSCs, its PSC register must state this fact.

Public Access

A UK company's PSC register will need to be kept at its registered office and must be available for inspection to members of the public acting with 'proper purpose' (the exact meaning of which has not been formally defined).

In addition, as of June 30, 2016, the information on the PSC register must be provided to Companies House (the UK company registrar) at the time of the next annual report of the company or, for companies incorporated after June 30, 2016, on incorporation. With the exception of the residential address and the full date of birth of the PSC, the information will be available for public access on the Companies House website.

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Non-Compliance

Every UK company has a duty to take reasonable steps to find out if there are any PSCs in relation to it. Failure to provide accurate information on its PSC register and failure to comply with notices from the company requiring a certain individual to provide information may result in criminal and/or financial penalties for the company, its officers and the individuals or relevant legal entities concerned.

In addition, persons who know they are a PSC but have not received a notice or do not appear in the PSC register must notify the company of their status. Failure to do so may result in criminal and/or financial penalties for the persons concerned.

Next Steps

With the requirements due to come into force from April 6, 2016, relevant UK companies should be taking necessary steps to review their ownership and control structures and gather the information required in order to complete their internal PSC registers. However, many private equity houses are approaching the requirements cautiously with a view towards compliance by June 30, 2016 when the requirement to publicly register the relevant information will come into force. Private equity funds should review their portfolio for applicable UK companies where they may have significant control or influence and should consider the reporting requirements for their control persons or principals.

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