

# Reporting Burden Increased for UK's People With Significant Control Regime

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On June 26, 2017, The Information about People with Significant Control (Amendment) Regulations 2017 (PSC Amendment Regulations) and The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force in the U.K. These make important amendments to the U.K.'s People With Significant Control regime (PSC Regime). In particular, entities that maintain their own register of "people with significant control" (PSCs) may have filing obligations to be satisfied by July 10, 2017, while some entities that were previously outside the scope of the PSC Regime, such as alternative investment market (AIM) listed companies, are no longer exempt.

The PSC Regime has been in force since April 6, 2016, and requires every U.K. company, limited liability partnership (LLP) and Societas Europaea to establish and maintain a register of PSCs unless an exemption is available. The changes to the PSC Regime stem from the transposition of the European Union's Fourth Anti-Money Laundering Directive in the U.K. and include new compliance obligations for U.K. businesses to consider.

## The PSC Amendment Regulations

The changes brought about by the PSC Amendment Regulations fall into two categories: changes to the reporting requirements for entities within the PSC Regime, and changes to the entities within the PSC Regime and the availability of exemptions.

### Changes to Reporting Requirements

As of June 26, 2017, an entity within the PSC Regime must update its PSC register within 14 days of becoming aware of any changes to its PSCs and provide updated information to Companies House within 14 days of changing the PSC register (for a maximum of 28 days from becoming aware of a change occurring).

This is a significant change for entities that have been within the PSC Regime but have not elected to maintain their PSC registers with Companies House. Previously, changes to the PSC register were only required to be notified to Companies House annually as part of the confirmation statement, which replaced the requirement on certain U.K. entities to submit an annual return to Companies House. As part of the transitional arrangements, if an entity that maintains its own PSC register has made any changes to that register since submitting its last confirmation statement, it must submit the updated information to Companies House within 14 days of June 26, 2017 — *i.e.*, by July 10, 2017. Where an entity chose to maintain its PSC register centrally with Companies House, it was already required to keep that information up to date.

One area of potential tension is the interplay between the obligation to take reasonable steps to identify PSCs and the obligation to keep the PSC register up to date. The guidance from the U.K. government indicates that, in taking reasonable steps to identify PSCs, entities should consider requesting information on potential PSCs from intermediaries or advisers known to act for them, including lawyers, accountants, banks and trust or company service providers. An entity must update the register if it "knows or has reason to believe" a change has occurred to its PSCs. There is no further guidance on when an entity "has reason to believe" a change has occurred, or whether it should be taking more proactive steps consistent with those required to originally identify PSCs.

Given that failure to maintain accurate information on the PSC register can be a criminal offense and may result in a fine or a prison sentence of up to two years, U.K.

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entities within the PSC Regime may want to consider whether any additional steps may be appropriate to the complexity of their holding structure. For example, where an entity has a PSC that is independent of the business operation, it may be appropriate to remind such persons of their duties to notify that entity of changes to the PSC's interest.

The changes should not have any direct impact on PSCs themselves. However, a PSC may find that the entities in respect of which they have significant holdings may be more proactive in confirming any changes to their information or to the nature or size of their interest.

## Changes to Entities Within the PSC Regime and Available Exemptions

As of June 26, 2017, Scottish limited partnerships and Scottish general partnerships where all of the partners are bodies corporate are caught by the PSC Regime. This will be of particular concern to those private equity and other closed-ended fund managers that use Scottish partnerships as management and carried interest vehicles in their fund structures.

A further change reduces the exemption available to certain listed companies. Previously, any "DTR5 issuer" — an entity whose shares are admitted to trading on a regulated market or a prescribed market — was exempt from the requirement to maintain a PSC register. The PSC Amendment Regulations replace the references to DTR5 issuers with "companies with voting shares admitted to trading on a regulated market which is situated in an EEA State." This change means that entities listed on prescribed markets, such as the AIM, will be within the PSC Regime as of June 26, 2017.

In each case, the transitional arrangements provide that the Companies House registration requirements for newly in-scope entities will apply from July 24, 2017. Such entities must identify their PSCs and register that information with Companies House within 14 days from July 24, 2017 — *i.e.*, by August 7, 2017.

## People With Significant Control

A person has significant control over a company or an LLP where they satisfy one or more of the following specified conditions (with equivalent tests applicable to the other entities captured by the PSC Regime):

- they hold, directly or indirectly, more than 25 percent of the shares in the company or the right to share in more than 25 percent of the LLP's surplus assets on a winding-up;
- they hold, directly or indirectly, more than 25 percent of the voting rights in a company or more than 25 percent of the rights to vote on matters to be decided by a vote of members of the LLP (including rights only exercisable in certain circumstances);
- they hold, directly or indirectly, the right to appoint or remove the majority of the board of directors or a company, or the persons entitled to take part in the LLP's management;
- they have the right to exercise, or actually exercise, significant influence or control over the company or the LLP; or
- they have the right to exercise, or actually exercise, significant influence or control over the trustees or members of a trust or firm that is not a legal person, where those trustees or members would meet any of the specified conditions (or would do if they were individuals).

## Statutory Guidance

The U.K. government has published [statutory guidance](#) on the meaning of "significant influence or control" in respect of companies and LLPs and separate nonstatutory guidance to assist in determining the application of the PSC Regime.