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Briefing document

Beneficial ownership registers

Introduction

- Looking through the legal ownership of entities such as companies, Limited Liability Partnerships (LLPs), trusts, certain Scottish partnerships and other similar entities (UK legal entities) to find the ultimate beneficial owner, is a hot topic.
- The UK has already implemented a publicly searchable corporate register for UK legal entities (the 'People with Significant Control (PSC) register'), and a trust beneficial ownership register. The trust register was initially introduced in order to comply with the European Union's (EU's) Fourth Money Laundering Directive (4MLD). The EU has now introduced the Fifth Money Laundering Directive (5MLD) and the UK's trust beneficial ownership register is in the process of being amended in order to comply with 5MLD.
- The UK government has also announced its intention to introduce a register, during 2021, of overseas legal entities that own or are seeking to acquire UK property.
- In addition, a number of other jurisdictions are also establishing their own beneficial ownership registers, and may exchange information with the UK authorities and with each other.

This note provides an overview of the UK's beneficial ownership reporting requirements, and also refers to overseas beneficial ownership registers.

What does this note cover?

- Who needs to be named on the UK's public register for UK legal entities (the 'PSC register')
- Mandatory compliance and potential criminal penalties
- Individuals who may be protected from disclosure
- The proposed Register of Overseas Entities that own or are seeking to acquire UK real estate
- The trust beneficial ownership register
- Beneficial ownership registers around the world

Background

It has been a mandatory requirement, since April 2016, to inform Companies House of the individuals/relevant legal entity(ies) ("RLE") 'behind' UK legal entities. This information is publicly available subject to some protections outlined within this note.

Public data on companies goes beyond identifying direct shareholdings and details of directors. Companies need to trace through to their ultimate beneficial owners, wherever resident, including individuals who could or do exert influence or control (on them or on their immediate owners) as defined under UK company law.

These individuals/RLEs are referred to as People with Significant influence and Control (PSCs).

Requirements

Affected entities must both maintain their own internal PSC register and make the necessary notifications to Companies House. New information and changes to PSCs must be added to the internal PSC register within 14 days (this is not a mandatory requirement for Scottish partnerships), and Companies House notified within a further 14 days.

Entities affected

The UK legal entities that are required to comply with some or all of the requirements are UK LLPs, eligible Scottish partnerships, and UK corporates. However, there are exemptions, such as those UK legal entities that a) are listed on the London Stock Exchange and already disclose information on shareholdings under certain listing rules, and b) have voting shares listed in the UK or European Economic Area (EEA) on a regulated market, or specified markets in the USA, Switzerland, Japan or Israel.

Notably, AIM listed companies are **not** exempt from creating and holding an internal register of people with significant control (the **PSC register**).

Eligible Scottish partnerships are not required to maintain their own PSC register.

Who are PSCs?

PSCs are individuals who meet one or more of the five tests below:

1. An individual holds, directly or indirectly, more than 25% of the **shares** in the company;
2. An individual holds, directly or indirectly, more than 25% of the **voting rights** in the company;
3. An individual holds the right, directly or indirectly, **appoint or remove the majority of the board of directors**;
4. An individual has the **right to exercise,** or **actually exercises, significant influence or control** over the company;
5. Finally, where trustees of a **trust** or members of a **firm** that is not a legal person meet any of the above conditions (or would do if they were individuals), an individual who has the **right to exercise**, or **actually exercises**, **significant influence or control** over the activities of that trust or firm.

In addition, for conditions 4 and 5 it is irrelevant whether such influence or control has ever been exercised.

A registrable RLE is a company that meets any one or more of the above conditions 1 – 5, and (a) keeps its own PSC register, or (b) has voting shares that are admitted to a regulated market in the UK or elsewhere in the EEA, or on specified markets in Switzerland, the USA, Japan and Israel.

Where the first RLE in the company's ownership chain is not registrable (because it does not meet the requirements set out in the paragraph above), shares and rights in the company may be held indirectly by a registrable RLE having a majority stake (e.g. holding over 50% of the voting rights) through the unregistrable RLE. This criteria can be used to go up the ownership chain.

Where beneficial ownership of a company is held by a trust or another entity, the PSC in relation to that trust or entity will also need to be considered and disclosed (irrespective of jurisdiction or role). In certain cases where a trust beneficiary also owns shares personally, shareholdings may need to be aggregated in order to determine whether registration as a PSC is required.

At present, the guidance leaves this area somewhat vague, particularly in relation to trusts. For example if a person cannot appoint or remove trustees on their own, but could in conjunction with others, would that person be a PSC? Deloitte have sought clarification in this area, though this point has yet to be made clear.

UK companies, owning entities and PSCs all have obligations

Compliance with the rules is **mandatory.** A company is required to take all reasonable steps to ascertain whether they have any PSCs and if so, to identify them, notify the PSC in writing, insert the details into the PSC register and file the relevant statutory forms at Companies House. The company is also under a duty to maintain an accurate PSC register. In addition, a person or entity who knows or ought reasonably to know that they are a registrable person or RLE to notify the company if they have not themselves been given written notice by the company.

What is shown on the register?

The public register only contains the information of (a) registrable RLEs and (b) persons who have confirmed their details to the UK legal entity as PSCs in relation to that entity.

The public register contains the personal details of the individual(s) identified as a PSC including their service address and month and year of birth. The exact condition/s which they satisfy which makes them a PSC needs to be recorded. The UK legal entity must also hold the PSC's usual residential address and full date of birth in its PSC register. Companies House requires this information and although it will not publicly be disclosed, the information will be made available to law enforcement agencies, HMRC and credit agencies if required.

The PSC register can never be blank. The current status of the PSC information gathering must be recorded – such as if the UK legal entity has not succeeded in identifying its PSCs, if it is in the process of identifying PSCs or has concluded there are no

PSCs. Specific statements are assigned to a company's status on the PSC register and these statements must be provided to Companies House.

Penalties
UK legal entities are obliged to take reasonable steps to identify PSCs. In cases where a PSC notice is not complied with, a UK legal entity has the right to effectively 'suspend' the relevant shares, i.e. suspend dividend, voting, sale and transfer rights. In practice, company directors may effectively have little option but to eventually use these powers in order to meet their own obligations.

Directors who fail to take reasonable steps to identify PSCs are punishable by fine, imprisonment, or both. Matching penalties apply to PSCs who fail to identify themselves or to anyone who provides false information in relation to a PSC or RLE. It is a criminal offence for individuals to fail to provide information for the PSC register.

Claim for protection from public disclosure
Applications may be made by either the UK legal entity or the PSC to Companies House on the grounds that the applicant reasonably believes that due to the activities of the UK legal entity or due to the connection of the PSC with that UK legal entity, the public information will put the applicant or a person living with them at serious risk of being subjected to violence or intimidation. The application must be accompanied by evidence which supports the applicant's statement.

In such cases the information must still be provided by the PSC to the company, and the fact that the information exists but is protected, will be made public. Tax authorities, and other law enforcement authorities, are still be able to view the protected information.

Beneficial ownership register for foreign companies (Register of Overseas Entities)
The government has announced its intention to introduce a new beneficial ownership register for overseas incorporated legal entities (including companies) that own or are seeking to acquire UK real estate (whether commercial or residential). The Register of Overseas Entities is intended to be modelled on the PSC register.

Trust beneficial ownership register
The UK has also introduced a non-publicly available beneficial ownership register for trusts.

The trust register in force at present was introduced in order to comply with 4MLD. Registration is required by UK trusts and non-UK trusts that have UK income or assets and which have a 'UK tax consequence' (a liability to one of a number of specified taxes). Registration must be done in respect of the first tax year since the register was introduced in 2016/17 in which the trust has a UK tax consequence. Annual updates are required or, where there are no changes to the trust's details, confirmation of this must be submitted to HMRC. The deadline for registering a trust or updating details held by HMRC is 31 January following the tax year.

The trust register is in the process of being amended in order to comply with 5MLD. Notably, information held on the trust register will become more widely available (to those with a legitimate interest, or potentially more broadly where the trust controls a non-EEA entity). The number of trusts required to register will be expanded to include UK trusts without a tax consequence and non-UK trusts that enter into certain business relationships with UK persons or which acquire UK land.

HMRC and HM Treasury's joint technical consultation on the amended trust register stated that it is expected to become operational in 2021. Trusts that meet the 5MLD trust registration requirements on or after 10 March 2020 that are not required to register under the existing 4MLD trust register will be required to register by 10 March 2022. Trusts that are required to register and keep HMRC updated under the 4MLD register must continue to do so.

A separate briefing note on the trust register is available on request.

Beneficial ownership registers around the world
Many countries around the world have already created or have plans to make beneficial ownership registers. As a result, it may be that a person has several similar but different reporting obligations across diverse jurisdictions.

Under the Fifth Money Laundering Directive (5MLD) EU Member States were required to launch publicly accessible registers of beneficial ownership of companies by January 2020, though a number of Member States have not yet done so. EU Member States are also required to launch trust beneficial ownership registers. 5MLD states that the EU Member State's beneficial ownership registers must be interconnected via the European Central Platform by 10 March 2021.

The British Overseas Territories and Crown Dependencies either already have or will launch similar registers, although many are not publicly accessible. With the exception of Gibraltar (which, as part of the EU by virtue of the UK's membership, needs to comply with 5MLD), the exact dates by which the British Overseas Territories and Crown Dependencies which have not already launched public registers will do so has not yet been determined, although the Crown Dependencies (Jersey, Guernsey and the Isle of Man) recently committed to achieve this by January 2023.

It is also notable that an intergovernmental body – the Financial Action Task Force (FATF) – recommends that competent authorities have access to adequate, accurate and timely information on the beneficial ownership and control of legal entities and share this with competent authorities from other jurisdictions. At the end of 2016, 53 countries were reported to have committed to the systematic sharing of beneficial ownership information. Over 200 jurisdictions have now committed to adopting FATF recommendations.

Find out more…

The contents of this note are aimed at providing a brief overview of the issues which need to be considered under the various rules and requirements relevant to disclosing beneficial ownership information, including legislation, issued guidance, announcements and information exchange agreements. The note also considers information available on the announced Register of Overseas Entities and 5MLD compliant trust register: changes may be made before enactment. Please be aware that this note does not cover all aspects of this subject.

This is a complex area with numerous considerations which need to be taken into account. If you would like further information, please contact your usual Deloitte advisor or one of the people listed below. This briefing note reflects our understanding of the law as at 12 June 2020.

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