

# Client Update

## Important New Public Disclosure Requirements for Major Shareholders of English Private Companies

### LONDON

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On 26 March 2015, the Small Business, Enterprise and Employment Act 2015 became law in the UK. Part 7 of this Act contains changes to UK company law which, following a phase-in period, will require companies to keep a register of people with “significant control” over the company, and to make that register public. The Act also contains a requirement that all directors of UK companies be natural persons—a prohibition on corporate directors—with limited exceptions, yet to be identified.

These changes are part of the UK government’s focus on increasing transparency of company ownership and control. The government has stated that it will focus on transparency in the context of ensuring that the UK “is an open and trusted place to invest and do business”. The intention is to deter the use of companies for illicit activities such as money laundering, tax evasion and terrorist financing. On the European front, the Fourth Money Laundering Directive is expected to be passed into European law very soon and Member States will then have two years to transpose its requirements into national law. This Directive includes a requirement that all corporate and other legal entities established in member states’ territories must obtain and hold information on their own beneficial ownership.

The Act will be implemented in several stages. The prohibition on corporate directors (with certain exceptions) will come into force on 2 October 2015. Companies will be required to keep a register of people with significant control (“PSCs”) from January 2016 and they will be required to file this information at Companies House from April 2016.

The new requirement to keep a register of PSCs (a “PSC Register”) will apply to all UK-incorporated companies, other than those with shares trading on a regulated market (such as the London Stock Exchange).<sup>1</sup>

A PSC of a company is defined as an individual that:

- holds, directly or indirectly, more than 25% of the shares or the voting rights in the company;
- can appoint or remove a majority of the board of directors of the company;
- exercises significant influence or control over the company;<sup>2</sup> or
- is a trustee or member of a firm that is not a legal person, meets one of the above conditions, and has the right to exercise significant control or influence over the trust or firm.

Subsidiary companies will not usually have to go beyond identifying their immediate parent company, if that parent itself keeps a PSC Register (which will disclose the identity of any PSC) or has shares trading on a regulated market. It is noteworthy that this 25% threshold is in line with the threshold used for testing beneficial ownership under applicable UK money laundering regulations.<sup>3</sup>

The Act contains an exemption for individuals who are limited partners in a limited partnership and for individuals who hold shares or an interest in a corporate limited partner in a limited partnership. Such individuals will not be classified as PSCs solely by virtue of shares or votes held by the limited partnership. (For these purposes limited partnership means a limited partnership registered under the Limited Partnership Act 1907.) The exemption is not available to a limited partner who takes part in the management of the partnership business or where the limited partner “exercises significant influence or control over the company.” It appears that this exemption will also be available to corporate limited partners but we are awaiting guidance on this point.

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<sup>1</sup> Companies with shares trading on a regulated market are subject to the disclosure requirements contained in Rule 5 of the Disclosure and Transparency Rules (“DTRs”). DTR 5 requires any person who holds 3% or more of the voting rights in such a company to inform the company of that fact, and to also inform the company every time their holding increases or decreases through that threshold and each full percentage point above it.

<sup>2</sup> Statutory guidance on the meaning of “significant influence and control” is due to be published in October 2015. The BVCA is part of the working group currently tasked with preparing this guidance.

<sup>3</sup> The Money Laundering Regulations 2007.

This exemption will also apply to a “foreign limited partner”, being an individual who (a) participates in arrangements established under the law of a country or territory outside the United Kingdom, and (b) has the characteristics prescribed by regulations to be made by the Secretary of State. These regulations have not yet been published, and as a result the extent to which organisations which make use of limited partnership structures will be able to benefit from this “foreign limited partner” exemption remains to be seen.

In respect of each PSC the company must record the following information in its PSC Register and also file it at Companies House:

- name
- service address
- country or state of usual residence
- nationality
- date of birth
- usual residential address
- details of the date on which they became a registrable person
- the nature of their control

The UK government has confirmed that the public register will be freely available online and searchable by individual name, as well as by company name. An individual’s usual residential address, or the fact that his service address is his usual residential address, will not be included on the public register, and the day of the date of birth will also be omitted. Individuals will be able to apply for the information about them on the PSC Register to be removed from the public register but only in circumstances where the individual is at serious risk of violence or intimidation arising from the company’s activities.

A company will be required to take all reasonable steps to identify anyone who should be included in its PSC Register. This will include giving notice to anyone it knows or reasonably believes may be a PSC, or anyone it knows or reasonably believes may know the identity of a PSC, requesting confirmation of the identity of the PSC and the required particulars. Whenever there is any change to the information recorded in the PSC Register, the company will need to ensure that its PSC Register is updated accordingly. The details on the PSC Register will need to be filed with Companies House on an annual basis.

Failure to comply with these new requirements will be a criminal offence for the company, its directors and for PSCs. In addition, if a shareholder does not respond to a notice from the company requesting information about PSCs within a fixed period of time then the Act provides that the company can serve notice on that shareholder suspending all of their rights in respect of their shareholding – essentially disenfranchising them – for as long as they do not respond to the notice. The company can reverse such a notice upon receiving a response from the shareholder to the information request notice.

Disenfranchisement would appear to be a fairly draconian measure when compared with the penalties for non-disclosure under the equivalent regime for companies whose shares are traded on a regulated market (which are largely financial in nature). Nonetheless, it is consistent with the existing regime for investigating interests in public companies.<sup>4</sup>

These new requirements will mean that all entities such as local management advisory or subsidiary offices, portfolio companies and co-investment vehicles which are UK private companies will, from next January, have to maintain a PSC Register and that anyone who is the ultimate beneficial owner of 25% or more of any such entity, (including any individual(s) who controls more than 25% of the voting shares of a general partner) or otherwise falls into the definition of a PSC, will be included on a public register.

Whilst we are still waiting for more detailed guidance and the secondary legislation needed to clarify the full extent of these new requirements, it would make sense to start preparing for this new regime by reviewing current corporate structures to identify those individuals who are potential PSCs and who may need to be disclosed on the PSC Register. It would also be prudent to identify any corporate directors of current UK incorporated companies, so that analysis can be carried out as to whether these can remain in place once the terms of the exceptions to the prohibition on corporate directors is known.

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Please do not hesitate to contact us with any questions.

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<sup>4</sup> Under section 793 of the Companies Act 2006.