

# Client Update

## Scottish Partnerships Now Required to Disclose “People with Significant Influence or Control”

Scottish limited partnerships—commonly used in Europe as vehicles for private funds—are now subject to requirements to identify whether there is anyone who has significant influence or control over them and, where this is the case, to register key information about that entity or individual on a public register.

The new law came into force on 26 June 2017 and, in most cases, will apply to Scottish partnerships with effect from 24 July 2017.

Any failure of a partnership to comply with the new requirements will expose the partnership and every “officer” (in a typical structure, the general partner) to the possibility of a criminal charge, fine and/or up to two years’ imprisonment. There is no defence available for any inadvertent or minor breach of the new requirements.

The law also imposes obligations on anyone who is aware that they have significant influence or control over a Scottish partnership to notify the partnership of this fact, with penalties for noncompliance.

### **WHO IS REQUIRED TO DISCLOSE?**

The new Regulations apply to “eligible Scottish partnerships”, defined as:

- Limited partnerships registered in Scotland and
- General partnerships constituted under the law of Scotland for any period during which all of their members are:
  - Limited companies or
  - Unlimited companies or Scottish partnerships, each of whose members is a limited company.

In this update, references to “partnerships” are to “eligible Scottish partnerships”.

## WHAT ARE THE NEW REQUIREMENTS?

Unlike English companies and LLPs, partnerships are not required to draw up and maintain their own register of people with significant control (“PSCs”). They are, however, required to take reasonable steps to determine whether there is any person with significant influence or control over them and to register this information with Companies House.

Going forward, all partnerships will have to deliver a statement of initial significant control with their application for registration.

Partnerships that are required to file an annual confirmation statement with Companies House must include details of any PSCs in that filing.

Significant influence or control means:

- Holding, directly or indirectly:
  - The right to more than 25% of the surplus assets on a winding-up;
  - More than 25% of the voting rights; and
  - The right to appoint or remove the majority of those entitled to take part in the management of the partnership.
- Otherwise having the right to exercise, or actually exercising, significant influence or control; and
- Exercising significant influence or control over a trust or firm which itself satisfies one of the conditions above in relation to an eligible Scottish partnership.

The task of analysing complex group structures to determine whether these conditions are met in relation to a partnership is not straightforward. Direct and indirect holdings need to be aggregated, nominee holdings must be “looked through”, joint holders of rights must be treated as each holding their combined rights, and extensive statutory guidance has been issued to assist with understanding the meaning of “significant influence or control”.

[For more detail on the meaning of “significant influence or control” please see our earlier Client Updates, “[Important New Public Disclosure Requirement for Major Shareholders of English Private Companies](#)” and “[UK Private Company and LLP Beneficial Ownership: New Disclosure Requirements from April 2016](#)”, and the BVCA’s Technical Briefing issued in March 2016<sup>1</sup>.]

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<sup>1</sup> <https://www.bvca.co.uk/Portals/0/library/Files/Legal%20%20Technical2/160330%20BVCA%20Technical%20briefing%20March%202016%20E2%80%93%20Introduction%20of%20the%20PSC%20Register.pdf>.

In terms of who can be registered as a PSC, the partnership will be required to look up its “chain of ownership” until it identifies either an individual or a “registerable relevant legal entity” with significant influence or control or satisfies itself that no such person exists. A registerable relevant legal entity is either an entity that is itself subject to the PSC regime or one that has shares listed on a regulated market.

### WHEN DO THE NEW RULES APPLY?

The new law came into force on 26 June 2017, and all partnerships formed after this date will have to identify anyone who is a PSC in their statement of initial control filed with their application for registration.

Existing partnerships have 14 days from 24 July 2017 to file information about their PSCs with Companies House. Where they are still in the process of identifying their PSCs, or confirming their details, then they must make a filing declaring this.

When a partnership becomes aware of any change to the information about their PSCs, they will have 14 days to file the new information with Companies House.

### HOW DO PARTNERSHIPS COMPLY WITH THE NEW RULES?

Partnerships are required to take reasonable steps to determine the existence of their PSCs. This includes giving notice to anyone who it knows or has reasonable cause to believe may be a PSC. Forms of notice to be sent and time periods for taking action are detailed in the legislation.

Once a PSC has been identified, the partnership has to file key details about that person, or entity, with Companies House. No filing can be made in relation to an individual until the individual has confirmed that the information is accurate.<sup>2</sup>

PSCs of a partnership are themselves subject to a statutory duty to identify themselves as a PSC and to provide all necessary information to such partnership. Any failure to comply with such obligation, or recklessly providing information that is false in any material particular, is again a criminal offence and may incur a fine and/or up to two years' imprisonment.<sup>3</sup>

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<sup>2</sup> In respect of each PSC, the PSC Register must display his (or her) name, nationality, date of birth, service address, residential address, date on which (s)he became a PSC, and the nature of his (or her) control. An individual's residential address and date of birth will be omitted from the public register.

<sup>3</sup> In addition, if a member does not respond to a notice from a partnership requesting information on PSCs within a fixed period of time, such partnership may serve notice on that member suspending all of his rights in respect of the partnership - essentially disenfranchising him - for as long as he does not respond to the notice.

## WHAT SHOULD PARTNERSHIPS DO NEXT?

All groups with eligible Scottish partnerships in their structure will need to take the necessary steps to identify whether there are any PSCs in respect of those partnerships and to ensure that the partnership is in a position to make the necessary filings with Companies House by 7 August 2017. Fund managers with limited partnership funds will already be somewhat familiar with this requirement and should find it relatively easy to apply a similar analysis to their Scottish limited partnerships. Any individual or entity who may be a PSC in relation to an eligible Scottish partnership will need to be ready to inform the partnership of that fact and for their information to be included on the public register.

## WHAT ELSE DO THE NEW RULES DO?

The new law will also have an impact on any company or LLP which is currently required to keep a PSC register and which has an eligible Scottish partnership as their investor. Such companies will have performed their PSC analysis and “looked through” the Scottish partnership as such an entity could not be included on the PSC register. With effect from 26 June 2017, eligible Scottish partnerships have become “relevant legal entities” for the purpose of the PSC requirements and, where they hold significant influence or control over an entity required to keep a PSC register, that register will need to be updated with the details of the eligible Scottish partnership, and a notification to Companies House of this change will need to be made.

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Please contact us if you need any assistance in reviewing your corporate structures, carrying out the required investigations and preparing the relevant filings.

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