UK IMPLEMENTS CHANGES TO BENEFICIAL OWNERSHIP REGISTER REGIME

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Corporate/M&A Alert

On 26 June 2017 the Information about People with Significant Control (Amendment) Regulations 2017 (the "2017 Regulations") were brought into force.

Key changes brought about by the 2017 Regulations include the following:

- UK-incorporated companies trading on the AIM market of the London Stock Exchange and other prescribed markets (such as the NEX Exchange Growth Market) are now required to make reasonable investigations as to their beneficial ownership and, from 24 July 2017, will need to produce, and make public, beneficial ownership registers;
- the way in which PSC information is notified to Companies House has been revised; and
- new deadlines for filing relevant information regarding PSCs with Companies House are significantly more onerous.

The 2017 Regulations were brought into force as part of the UK's implementation of Directive 2015/849/EU, commonly referred to as the Fourth Money Laundering Directive (the "Directive"). EU member states were obliged to implement the Directive by 26 June 2017.

The original K&L Gates guidance note relating to the introduction of the UK PSC regime, dated March 2016, can be found here.

BACKGROUND - WHAT IS THE UK PSC REGIME

On 6 April 2016, the UK government introduced important reforms aimed at increasing transparency over the ownership and control of UK companies and English law LLPs. One of the most significant changes introduced was a requirement for UK companies and English law LLPs to maintain a mandatory statutory register (a "PSC Register") of certain people with significant control (who are generally individuals) and registrable relevant legal entities ("RLEs"). This is generally referred to as the UK PSC regime.

When the UK PSC regime was introduced, the requirement to maintain a PSC Register was applicable to all English law LLPs and most UK-incorporated companies. The following companies originally fell outside the scope of the regime and therefore did not need to keep a PSC Register:

> a) companies which were already subject to the disclosure requirements of Chapter 5 of the Disclosure and Transparency Rules ("DTRs") in the FCA Handbook, broadly being companies listed on an EEA-regulated market (e.g. the London Stock Exchange Main Market) for which the UK is their home state or

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> UK public companies with shares admitted to trading on a prescribed market (e.g. AIM or the NEX Exchange Growth Market); b) companies with voting shares admitted to trading on a regulated market in an EEA state other than the UK; and c) companies with voting shares admitted to trading on certain specified markets in the United States, Israel, Switzerland and Japan (a "Specified Listed Company").

IMPACT OF THE CHANGES ON UK-INCORPORATED AIM-LISTED COMPANIES

The 2017 Regulations have removed the reference to companies subject to the DTRs from the list of companies exempt from maintaining a PSC Register. Other changes have also been made so that the only UK-incorporated companies which are now exempt from the UK PSC regime are:

- those with voting shares admitted to trading on a regulated market which is situated in an EEA state (e.g. the London Stock Exchange Main Market); and
- Specified Listed Companies.

Therefore, unless a UK-incorporated AIM-listed company falls within one of the two exemptions listed above, it is now subject to the UK PSC regime and has the following key obligations (which take into account relevant transitional provisions):

- from 26 June 2017, an obligation to investigate its ownership and control;
- from 24 July 2017, an obligation to maintain a PSC Register; and
- on an ongoing basis, an obligation to monitor its PSC and RLE details, update its PSC Register and comply with the ongoing obligation to make all requisite filings with Companies House.

Failure to comply with the duties imposed by the UK PSC regime is a criminal offence and the company and its directors and other officers may be subject to an unlimited fine or imprisonment of up to two years or both.

All UK-incorporated AIM-listed companies should now therefore be:

- investigating and collecting information on their PSCs and RLEs. This may include:
  - checking registers of members, articles of association and DTR 5 notifications for indications of who could be a PSC or RLE (see the below section "Identifying PSCs or RLEs Generally");
  - issuing notices to any registrable PSCs (or persons who they have reasonable cause to believe may be a registrable PSC) to help identify them correctly and obtain the relevant information about them to complete the PSC Register;
  - issuing notices to obtain the prescribed information required in respect of any registrable RLEs in order to complete the PSC Register;
- preparing their PSC Register so that this is ready by 24 July 2017; and
- considering (and preparing) any necessary filings that need to be made with Companies House.

Companies' registrars may also be able to assist in ensuring compliance with these obligations.

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IDENTIFYING PSCS OR RLES GENERALLY

Identifying PSCs and RLEs is not always straightforward. Detailed draft statutory guidance and updated non-statutory guidance relating to compliance with the UK PSC regime is available to help ensure that PSCs and RLEs are accurately identified. This guidance can be found here.

In brief, PSCs are persons who are deemed to have significant control of a company by virtue of meeting one or more of the following five "control conditions" in relation to the relevant company. A person will have "significant control" over a company if they:

> (a) directly or indirectly hold more than 25% of the shares in the company; or (b) directly or indirectly control more than 25% of the voting rights in the company; or (c) directly or indirectly have the right to appoint or remove a majority of the board of directors of the company; or (d) have the right to exercise, or actually exercise, significant influence or control over the company; or (e) have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm (which does not have a legal personality under the law by which it is governed) that has significant control (of the type in one or more of the above four conditions) over the company.

An entity will only be a RLE if (in addition to meeting one or more of the relevant control conditions) it:

>

(a) is a body corporate or a firm that is a legal person under the law by which it is governed; and

(b) either

> (i.) is required to keep its own PSC Register under UK rules; (ii.) has voting shares admitted to trading on a regulated market situated in an EEA state; or (iii.) is a Specified Listed Company; and

(c) is the first entity meeting the conditions in paragraphs (a) and (b) of this section in a chain of ownership above the entity whose PSC Register is under consideration.

A person is not required to be entered as a PSC into a company's PSC Register if, in relation to that company, their only interest in the company is held indirectly through a RLE or through a chain of entities at least one of which is a RLE. By contrast, if the person holds both direct and indirect interests in the company, regardless of the size of the direct interest, they will be required to be entered as a PSC into a company's PSC Register if they are an individual who meets at least one of the relevant control conditions on the basis of the aggregate of their direct and indirect holdings.

Further information on the requirements in different factual scenarios are set out in our previous alert here.

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IDENTIFYING PSCS OR RLES - SPECIFIC UK-INCORPORATED AIM-LISTED COMPANY CONSIDERATIONS

Whilst UK-incorporated AIM-listed companies will be familiar with the transparency requirements of the DTRs, the prescribed information required under the UK PSC regime is more extensive, including, in relation to any identified PSC:

> (a) name; (b) date of birth; (c) nationality; (d) country, state, or if the PSC is resident in the UK, the part of the UK where the PSC usually lives; (e) service address; (f) usual residential address; (g) the date when the individual became a PSC in relation to the company; (h) which of the above five conditions for being a PSC the individual meets; and (i) any restrictions on disclosing the PSC's information publicly that are in place.

Many individuals hold shares or rights in UK-incorporated AIM-listed companies through a nominee. Where this is the case, the UK PSC regime will treat these shares or rights as if they were held by the person for whom the nominee is acting. If this person is a PSC, their details must be entered on the PSC Register.

If two or more people hold the same shares or rights in the UK-incorporated AIM-listed company, for the purposes of calculating control each joint holder is regarded as holding the total number of shares or rights held by all of the joint holders. Similarly, where two or more people arrange to exercise all or substantially all of their rights (including rights conferred by shares) jointly in a way that is predetermined, each of them is deemed to hold the total rights held by all of them.

NEW FILING REQUIREMENTS

Subject to a short grace period for UK-incorporated AIM-listed companies, from 26 June 2017 all companies subject to the UK PSC regime will be required to:

> (a) update their PSC Register within 14 days from when the company became aware of a change in their PSC or RLE details and has all the particulars necessary to fully complete the PSC Register (which particulars need to be sought, and, where relevant, confirmed, promptly); and (b) file the update with Companies House using one of nine forms (outlined below) within a further 14 days.

UK-incorporated AIM-listed companies will be required to comply with these obligations from 24 July 2017 but are obliged to commence investigations on the completion of their PSC Registers from 26 June 2017.

The following forms should be used to notify Companies House of a change in PSC details:

> **PSC01 -** Notice of individual PSC
> **PSC02 -** Notice of RLE with significant control
> **PSC03 -** Notice of other registrable person ("ORP") with significant control

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> **PSC04 -** Notice of change of details of PSC
> **PSC05 -** Notice of change of details of RLE
> **PSC06 -** Notice of change of details of ORP
> **PSC07 -** Notice of ceasing to be a PSC, RLE or ORP
> **PSC08 -** Notice of PSC statements
> **PSC09 -** Notice of update of PSC statements

Most of the information recorded on a company's PSC Register, including the identity of PSCs and RLEs, must be made publicly available and be updated throughout the year on an event-driven basis through forms filed with Companies House (rather than notified annually by way of the confirmation statement).

For entities that were obliged to keep a PSC register prior to 26 June 2017, any changes that have occurred since the company last submitted its confirmation statement will need to be filed with Companies House, using one of the above forms, within the 14 day period from 26 June 2017.

OTHER CHANGES

Some of the other changes brought into force on 26 June 2017 are set out below:

- certain UK unregistered companies have been brought within the UK PSC regime;
- the list of bodies which now are able to access certain PSC information that has been granted protection from appearing on the public central register at Companies House has been extended. Financial and credit institutions undertaking customer due diligence on a company are now permitted access to this information; and
- the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 introduced a broadly similar PSC regime applicable to Scottish limited partnerships and certain Scottish partnerships.

WHO TO CONTACT

Should you require any further guidance on the matters raised above please feel free to reach out to the contacts below.

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