

## MACFARLANES

# CHANGES TO BENEFICIAL OWNERSHIP REGIME COME INTO FORCE

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From today (26 June 2017), changes to the regime for recording persons with significant control (PSCs), sometimes known as the beneficial ownership register regime, come into force.

Under the PSC regime, most UK-registered companies (including European companies registered in the UK), and all UK-registered limited liability partnerships (LLPs), must identify all persons who have "significant control" over them and keep a publicly available register containing their details.

The PSC regime has now been extended to other companies, including companies admitted to prescribed markets, such as AIM. It has also been extended to certain types of Scottish partnership.

Although the Government had previously hinted at some of the detail, it has now (on Friday, 23 June 2017 and today) published the final regulations making these changes, giving businesses and advisers little time to prepare for the amended regime.

Below is a summary of the key changes.

### **AIM COMPANIES MUST KEEP A REGISTER**

Previously, companies that are subject to the Financial Conduct Authority's Disclosure Guidance and Transparency Rule 5 (DTR 5) did not need to keep a register, on the basis that they already made information on their controllers available through public announcements. Broadly, DTR 5 requires a person who holds an interest in more than 3% of a company's voting rights to notify the company and the company will then inform the market.

DTR 5 applies to companies whose voting securities are admitted to trading on a "prescribed market". This includes both regulated markets in the UK (such as the London Stock Exchange Main Market), as well as other UK securities exchanges that are not regulated markets (such as AIM).

From today, the reference to companies subject to DTR 5 has been replaced with a reference to companies whose voting shares are admitted to trading on a regulated market in the European Economic Area (EEA).

As a result, companies whose shares are admitted to a "prescribed market" that is not a regulated market have now become subject to the PSC regime. This affects mainly companies whose shares are admitted to AIM or the NEX Exchange Growth Market.

These companies **must start investigating and collecting information on their PSCs from today**. However, the regulations allow these companies a grace period of one month to collect this information before they have to record it in their books. As a result, AIM companies and other companies now subject to the PSC regime **will need to keep a PSC register from Monday, 24 July 2017**.

In most cases, these companies will probably already be aware of their PSCs through the voting rights notification regime under DTR 5. However, the regime in DTR 5 and the PSC regime are not the same. In particular, a person who can appoint and remove a majority of an affected company's board, or who has the right to exercise significant influence or control over the company in some other way, will be registrable under the PSC regime but may not have had to notify the company under DTR 5.

AIM companies and other companies that are now subject to the regime should therefore review their shareholder registers and historic DTR 5 notifications to identify their PSCs. They will also need to consider issuing information notices to identify any PSCs not disclosed through DTR 5.

### **OTHER COMPANIES**

Changes to the legislation also mean that a limited number of "unregistered companies" are now subject to the regime and will need to keep a register from Monday, 24 July 2017. This includes only companies incorporated under Royal Charter or a special or private Act of Parliament and so will not affect the majority of commercial companies.

The Government had previously stated in consultations that the PSC regime would be extended to other entities in order to comply with the European Union Fourth Money Laundering Directive (4MLD). This was to include (among other things) building societies, friendly societies and open-ended investment companies (OEICs).

The new regulations have not extended the PSC regime to these kinds of entity. However, the Government will need to publish regulations to bring these entities within the regime in order to implement 4MLD into UK law.

### **SCOTTISH PARTNERSHIPS ARE NOW SUBJECT TO THE REGIME**

A parallel PSC regime has been put in place for certain kinds of Scottish partnership. The regime for Scottish partnerships is broadly the same as the regime for companies and LLPs, but with some differences. The key points are as follows:

- ◆ **The regime applies to all Scottish limited partnerships (SLPs).**
- ◆ **The regime applies to Scottish general partnerships for so long as they are “Scottish qualifying partnerships” (SQPs).** An SQP is a Scottish partnership whose members are all limited companies (or unlimited companies whose own members are all limited companies). In other words, Scottish general partnerships with at least one natural person as a member appear not to be subject to the PSC regime.
- ◆ **SLPs and SQPs will need to investigate their PSCs from today (26 June 2017) using their new statutory powers.**
- ◆ However, unlike companies and LLPs, SLPs and SQPs will not need to keep a PSC register. Instead, they will need to **file their PSC information publicly at Companies House from Monday, 24 July 2017.**
- ◆ In addition, Scottish general partnerships which meet the conditions for being an SQP will need to **register with Companies House for the first time** from 24 July 2017. This is because they will need an entry on the register in order to be able to file information on their PSCs.
- ◆ **The conditions for being a PSC of an SLP/SQP broadly mirror the conditions for LLPs.** So, a person will be a PSC of an SLP/SQP if he or she:
  - holds the right to more than 25% of the SLP's/SQP's surplus assets on a winding-up;
  - holds more than 25% of the voting rights in the SLP/SQP;
  - holds the right to appoint or remove a majority of the members who take part in the SLP's/SQP's management;
  - has the right to exercise, or actually exercises, significant influence or control over the SLP/SQP; or
  - (broadly) has the right to exercise, or actually exercises, significant influence or control over a trust or firm that satisfies one of those other conditions.

However, as with LLPs, statutory guidance suggests that a person is also likely to be a PSC of an SLP/SQP if he or she has the right to receive more than 25% of its profits.

- ◆ SLPs and SQPs will now need to deliver an **annual confirmation statement** to Companies House in the same way that companies and LLPs already do.

#### **NEW DEADLINES**

Previously, companies and LLPs had to send a notice “*as soon as reasonably practicable*” on becoming aware that the details of any person recorded in their PSC register had changed, asking them to confirm that change. Whilst this obligation still remains, companies and LLPs now have a **deadline of 14 days to send this notice** after becoming aware of the change. SLPs and SQPs also have 14 days to send a notice after becoming aware of a change.

**Companies and LLPs also now have a deadline of 14 days to update their PSC register** once a PSC has confirmed his or her details (or a change to those details). As noted above, SLPs and SQPs do not need to keep a PSC register.

Finally, entities subject to the PSC regime now need to **file details of and changes to their PSCs publicly at Companies House within 14 days.** This replaces the previous obligation to file a statement of PSCs once a year with the annual confirmation statement. For companies and LLPs, this 14-day period begins with the date on which they update their PSC register. For SLPs and SQPs, it begins with the date on which the PSC's details have all been obtained and confirmed. Companies House has updated its [forms PSC01 to PSC09](#) (and the equivalent forms for [LLPs](#)) for this purpose.

Importantly, this new deadline also applies to changes that have been made to an entity's PSC register before today and which have not yet been notified to Companies House. **Entities already subject to the regime will need to file these changes at Companies House on or before 9 July 2017.** Entities that have just become subject to the regime (including SLPs and SQPs) appear to have until 6 August 2017 to make these filings.

The aim of these new deadlines is to ensure that records of PSCs at Companies House are always up to date. However, under the amended PSC regime, these 14-day periods appear to fall consecutively. When added to the one-month period that a PSC has to respond to an information notice, it could in theory take as long as ten weeks from the date on which a company or LLP becomes aware of a change (or as long as eight weeks for an SLP or SQP) for it to file details of that change at Companies House. In reality, however, we expect these filings will be made significantly earlier than this.

## PROTECTED INFORMATION

The PSC regime contains a mechanism allowing PSCs to apply to court for their details to be hidden from the public register. This is designed to protect people who would be at serious risk of violence or intimidation if their details were made public.

People who are PSCs of SLPs, SQPs, AIM companies and other companies that have now become subject to the PSC regime will be able to apply for protection now, before those companies compile their first registers or make their first filings. If unsuccessful in their application, these people will have **12 weeks to dispose of their control**. If they do so, they will not appear in the entity's PSC register or in any public filings.

This mimics the transitional provisions that applied when the original PSC regime came into effect. Through this mechanism, PSCs will have an opportunity to dispose of their holdings to ensure they never appear on the public record.

Finally, the legislation allows Companies House to disclose information on PSCs to public authorities and credit reference agencies, even if that information is protected. From today, this mechanism has been extended so that most of this information can also be disclosed to credit institutions and financial institutions for the purpose of allowing these organisations to carry out customer due diligence checks.

## WHAT TO DO NOW

- ◆ Existing companies and LLPs to whom the PSC regime applies should **check their PSC registers to see whether any changes have occurred since the confirmation date on their last confirmation statement**. This includes changes to an existing PSC's details, as well as adding and removing people from the PSC register. If any changes have occurred, the company or LLP will need to file details at Companies House.
- ◆ Companies admitted to AIM, the NEX Exchange Growth Market and other non-regulated markets should check whether they have voting shares admitted to another EEA regulated exchange or one of the other markets specified in the PSC regulations. If they do not, they are now subject to the regime and should begin investigating their PSCs.

- ◆ **These companies should now begin investigating who their PSCs are.** This exercise will include reviewing past DTR 5 notifications, as well as following the suggestions in the Government's [guidance](#) (such as checking their registers of members and articles of association for indications of their likely PSCs). Ultimately, they may need to send information notices under section 790D of the Companies Act 2006 to their suspected or known PSCs.
- ◆ **Scottish partnerships should now begin investigating who their PSCs are.** This will principally involve examining their partnership agreement to understand how capital, voting and profit share rights are distributed. Scottish general partnerships should review their membership base first to check whether they constitute an SQP (although, in practice, most SQPs should already be aware of this by virtue of being required to prepare statutory accounts).

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