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Central Register of Beneficial Ownership to be Introduced in the UK

FRIDAY, APRIL 10, 2015

On 26 March 2015, the United Kingdom Parliament passed into law the Small Business, Enterprise and Employment Act 2015 (the "Act").

The Act will bring about a number of fundamental changes to UK company law including, amongst others, the abolition of bearer shares and corporations acting as directors and, perhaps most controversially, the establishment of a central public registry of those individuals who hold significant control of UK companies. The stated aims of the reforms are to "*increase transparency around who ultimately owns and controls UK companies*," and should be framed in the wider context of the UK Government's commitment to promoting greater corporate transparency at the G8 Summit in June 2013 and the G20 Summit in November 2014.

The full impact of the Act on financial institutions in the UK and abroad remains to be seen but it is anticipated that it will heavily influence the customer due diligence undertaken as a matter of best practice when looking to enter into a transaction with a UK company.

The Act will receive a staged implementation commencing in May 2015 and be fully implemented by April 2016. We plan to monitor developments in this area and will update this Alert as appropriate.

Beneficial Ownership Register

The Act will require the majority of UK companies to identify those "persons with significant control" ("PSCs") over the company and maintain a register of those persons. The publically available PSC register is expected to be fully searchable and freely available online.

A PSC is defined as an individual who ultimately owns or controls more than 25% of a company's shares or voting rights or, who otherwise exercises control over a company or its management. It is expected that the UK Government will issue guidance in the autumn to assist companies in determining whether an individual exercises "significant influence or control".

Companies will be required to take reasonable steps to identify people they know or suspect to hold significant control, or risk being convicted of a criminal offence. Similarly PSCs will be required in certain circumstances to disclose their interest in the company to the company or risk being convicted of a criminal offence.

Unless an exemption applies, the Act will apply to all UK incorporated companies. The two key corporate entities that fall outside the scope of the Act are:

- Limited liability partnerships ("LLPs"); and
- Companies with securities listed on a regulated market (e.g. the London Stock Exchange and AIM) and who are already subject to equivalent requirements under Chapter 5 of the Disclosure and Transparency Rules sourcebook.

It should also be noted that the UK Secretary of State is afforded discretion under the Act to exempt any person (whether an individual or a legal entity) from the provisions of the PSC register. Such exemptions must not be granted unless the Secretary of State is satisfied that there are "special reasons" why that person should be exempted, however no guidance is provided in the Act as to what constitutes such "special reasons."

Companies will be required to maintain a PSC register from January 2016 and provide this information to Companies House for inclusion on the public register from April 2016 onwards.

Abolition of Bearer Shares and Corporations Acting as Directors

Bearer shares, or issued shares with no registered owner where ownership is established by physical possession of the share warrant, are to be abolished. From May 2015 the Act will prohibit UK companies from issuing bearer shares and existing bearer shareholders will have a nine month conversion period in which they will be required to surrender their shares to the company in exchange for registered shares.

The Act will also prohibit the use of corporate directors and require all directors of a UK company to be natural persons, with limited exceptions. The exceptions are due to be to be set out in regulations and, according to guidance issued by the UK Government in support of the Act, corporate directors may be permitted to continue to be appointed where their use "*presents a low risk of illicit activity and is of high value to the running of the company.*"

Commentary

As with all new legislation, we will have to wait to determine the full impact of the Act. One area where the provisions of the PSC register are likely to be keenly felt are on the due diligence requirements imposed on financial institutions (whether located in the UK, the US or further afield) when looking to enter into a transaction with a UK company. The PSC register, once established, is likely to be scrutinized as a matter of corporate best practice in any company searches undertaken by a party before entering into a transaction with a UK company.

It should also be borne in mind that, in addition to businesses, the PSC register will provide greater transparency over company ownership and control to both regulatory and criminal enforcement agencies in the UK and abroad.
The UK government's efforts are taking place against the backdrop of the G20 and the Financial Action Task Force's ("FATF") stated desire to increase transparency in the financial system. The

PSC register is likely to be an important element of FATF's upcoming mutual evaluation (i.e. peer review) of the UK's anti-money laundering regime.

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