Regulation Report

Persons with Significant Control - Company Law and Money Laundering changes

In this month's Regulation Report we review new measures to be phased in from 6 April 2016 which are likely to have important ramifications for most law firms, especially those that operate as registered companies or LLPs. The new provisions will also affect the client identity checking processes required by the Money Laundering Regulations 2007, and should also feature in any pro-active advice that commercial firms provide to their clients.

Persons of Significant Control

The changes relate to "persons of significant control (PSC's)" and are as a result of provisions to be found in the Small Enterprise and Employment Act 2015. In a wider context the new requirements anticipate certain changes to the money laundering "customer due diligence (CDD)" regime as a result of the Fourth EU Directive on Money Laundering which was approved last June, relating to beneficial ownership. Under current CDD provisions, beneficial owners are, broadly, anyone with a 25% plus shareholding in a company, with similar definitions for those concerned with trusts and other "obliged entities". Much the same tests for those who qualify as beneficial owners will now apply to PSCs.

Beneficial ownership

One of the most notable changes within the Fourth EU Directive is that all member states will have to create and maintain a register of beneficial owners which will need to be made available to those with a legitimate interest in their contents. The record keeping requirements will apply to companies and LLPs and also, in the UK, trusts that pay tax. Law firms will be entitled to inspect the new registers in relation to companies but whether they will be allowed to do so in relation to trusts is still open for consultation.

The UK government might, in one respect, be seen to have jumped the gun on these provisions through the new PSC regime. In a nutshell, all companies and LLPs (and thus law firms so constituted as well as their clients) must have created a register by 6 April. The definition of PSCs, based on the 25% plus shareholding definition of beneficial ownership, will mean that larger firms will be unlikely to have any PSCs since no one partner in a firm of four or more partners may hold more than 25% of the shares. In these cases, the record would simply state that no one individual qualifies as a PSC, but the register must be created none the less.

From 30 June 2016, the registers must be filed with Companies House and will then become accessible to those entitled to view them. For once, this regulatory change will make life easier for law firms as the task of checking beneficial ownership interests has been one of the most confusing elements of the AML regime to date. As explained by the Law Society Practice Note on Money Laundering (October 2013), although it is necessary to check for beneficial ownership details, this need not involve conducting a full identity check as required in most matters for new clients, unless suspicions arise as to the nature of the instructions or the bona fides of those concerned.

Clearly, being able to consult a formal register of beneficial owners will be helpful when conducting CDD but it might prove to be even more helpful in relation to the other obligation to keep CDD up to date on existing clients by way of "ongoing monitoring". Currently a company client should be asked from time to time if there have been changes to the ownership and control structure to see if somebody now qualifies as a beneficial owner, but in future it will be possible to meet this obligation without the direct interrogation of the client - a source of common frustration according to many who do so.

Money laundering will be a topic that will be bound to arise again later this year when new draft Money Laundering Regulations can be expected, primarily to address the 4th Directive which will have to have been addressed by all members states (assuming we remain such) by the end of June 2017.

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