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Briefing note

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The PSC Register: New Disclosure Requirements for Insurers

Insurance companies and their shareholders are already subject to disclosure requirements in relation to those persons who have acquired, or propose to acquire a significant level of control over an insurance company. From 6 April 2016 these requirements will be extended when all UK incorporated companies (that are not exempt) and LLPs will need to keep a register of people with significant control over them (the "**PSC Register"**).

Please see our briefing paper "The PSC Register Requirements: A Practical Guide for Corporates" for more details on the specific PSC Register requirements and below for what these new requirements mean for insurers.

Current Requirements

Currently insurance companies and/or their shareholders are subject to the following requirements:

- **Change in control notifications**: Under Part 12 of the Financial Services and Markets Act 2000 ("**FSMA**") controllers and potential controllers of FCA and PRA authorised firms must make a notification to the relevant regulator if they propose to change their control over the authorised firm. Change in control notification is triggered when a particular controller first acquires a 10% or greater interest (or any percentage of shares with the ability to otherwise exercise significant influence), or increases or decreases its interest beyond the limit of its current "control band" (10% to 20%; 20% to 30%; 30% to 50%; and 50% or more).
- **Disclosure in solvency and financial condition report:** Under Article 293 of the Solvency II Delegated Regulation, insurers are also required to disclose in their solvency and financial condition report, "*a description of the holders of qualifying holdings in the undertakings*". A "*qualifying holding*" is a direct or indirect holding of at least 10% of the shares or the voting rights, or a holding which "*makes it possible to exercise a significant influence*" over the company.

The PSC Register Regime

Although similar to some aspects of the current regime, the new PSC Register requirements do have significant differences which are likely to impose additional burdens on insurance companies:

- **Wider scope:** As a result of exemptions, only those

Key issues

- The requirement to maintain a PSC Register will impose additional public disclosure requirements on insurers.
- Though similar in some aspects to current disclosure requirements relating to controllers of insurance companies, the new requirements have significant differences.
- The requirement to maintain a PSC Register is an ongoing one with criminal sanctions for the company and its officers in the event of a breach.

companies whose shares are not traded on certain specified markets (including the LSE and AIM) are required to maintain a PSC Register. However, subsidiaries of listed companies which are themselves not listed will still need to comply with the requirement. In contrast, the FSMA change in control requirements apply to all PRA or FCA authorised firms and the Solvency II disclosure requirement applies to all firms subject to the Solvency II Directive.

- **Higher level of control required:** Broadly, the PSC Register requirement only applies to persons holding either 25% of the shares or the voting rights, although certain powers (e.g. the benefit of certain veto rights) or otherwise exercising "significant influence or control" may also qualify. In contrast the FSMA change in control requirement and the Solvency II disclosure requirement are both triggered at the lower threshold of either 10% of the shares or the voting rights or any percentage of shares with the ability to otherwise exercise significant influence over the management of the company.
- **Different treatment for overseas entities:** Under the PSC Register requirements when determining whether a legal entity has significant influence or control over a company you "look through" those overseas entities whose shares are not traded on certain specified markets in the EEA (other than the UK), Israel, Japan, Switzerland or the USA. In contrast the FSMA change in control requirements apply to all entities, including those incorporated overseas, if they meet the applicable thresholds.
- **The meaning of "significant influence":** Both FSMA and the PSC Register requirements make reference to the ability to exercise "*significant influence*". However, the term may not be interpreted in the same way across the two regimes given that specific statutory guidance has been published on the meaning of "*significant influence or control*" that is expressed to apply only in the context of the PSC Register requirements.
- **Obligation on the company:** The obligation to maintain a PSC Register is on the company. In contrast, under FSMA the main or statutory obligation to notify the regulators is on the person acquiring or reducing its control over the authorised firm (although there are some notification requirements on the firm also).
- **An ongoing obligation**: The requirement to update the PSC Register is an ongoing one. In contrast, the Solvency II solvency and financial condition report must only be published annually and the FSMA change in control requirement is only applicable when a person decides to acquire or reduce control over an authorised firm through certain thresholds.
- **Different procedure:** The PSC Register must be updated following a person becoming a person with significant control. In contrast, notification under FSMA and consent must be sought before the relevant change in control takes place. As a result, the making of a change in control application may (but not always will) be a useful indication of whether the PSC Register will need to be subsequently updated.
- **Sanctions against the company:** A breach of the PSC Register requirements can lead to criminal sanctions against the company and its officers. In addition, if a person with significant control fails to respond to a notice from the company asking for the information necessary for the company to update its PSC Register, that person may be restricted from transferring its shares, exercising its rights in relation to its shares (such as voting), or receiving sums due on its shares (such as dividends). In contrast, a failure to make a notification under FSMA can lead to criminal sanctions for the relevant controller or potential controller.

How we could help...

We have legal advisers available to:

- Advise you on the new PSC Register requirements.
- Review your group structure and related constitutional document to asses which entities would be "relevant legal entities" and who would be "persons with significant control".

Contacts:

Katherine Coates
Partner

T: +44 20 7006 1203
E: Katherine.coates@cliffordchance.com

Hilary Evenett
Partner

T: +44 20 7006 1424
E: Hilary.evenett@cliffordchance.com

Alex Erasmus
Partner

T: +44 20 7006 1344
E: Alex.erasmus@cliffordchance.com

Ashley Prebble
Partner

T: +44 20 7006 3058
E: Ashley.prebble@cliffordchance.com

Narind Singh
Partner

T: +44 20 7006 4481
E: Narind.singh@cliffordchance.com

Clare Swirski
Partner

T: +44 20 7006 2689
E: Clare.swirski@cliffordchance.com

Martin Griffiths
Senior Associate

T: +44 20 7006 1971
E: Martin.griffiths@cliffordchance.com