CLIFFORD CHANCE

FUND STRUCTURES WITH SCOTTISH LIMITED PARTNERSHIPS: IMPACT OF CHANGES TO THE UK PSC REGIME

All Scottish limited partnerships and certain Scottish general partnerships are now subject to **PSC (persons with significant control) information filing requirements** at Companies House. The **PSC register regime** already applies to all UK companies and LLPs, subject to certain exclusions. These requirements do not apply to English limited partnerships.

The PSC register regime has been in force since 6 April 2016. On 26 June 2017 regulations that amend the current regime and regulations that apply the regime to Scottish partnerships came into force in order to bring the UK PSC regime into line with the Fourth Money Laundering Directive.

This note highlights the key changes relevant to private fund structures using Scottish Limited Partnerships ("**SLPs**"[1]):

- **All SLPs must file PSC information at Companies House from 24 July 2017 and must start investigating now whether they have any individuals/legal entities that have significant control over them ("PSCs" or "RLEs").**
- **The existing exemption that means that limited partners are not recorded on PSC registers of companies/LLPs[2] is not available to limited partners in respect of the PSC information filing requirements for SLPs.**
- **Fund structures that contain eligible Scottish partnerships[3] need to check PSC registers of underlying UK portfolio companies/LLPs and notify the underlying portfolio company/LLP of any changes.**

SLPs now required to provide PSC information to Companies House:

- SLPs are not required to keep a PSC register but are now required to provide PSC information to Companies House.
- The five tests to determine if a person is a PSC/RLE in relation to a SLP are as follows (one or more need to be satisfied):

[1] Although the term "eligible Scottish partnership" used in the legislation includes Scottish general partnerships that are "qualifying partnerships" under the Partnership (Accounts) Regulations 2008 (broadly those that have corporate partners), because general partnerships are rare in private fund structures this briefing only deals with SLPs.
[2] Exemption is only available as long as the limited partner does not meet condition 4, i.e. does not have the right to exercise, or actually exercises, significant influence or control over the underlying company/LLP, which would be very unusual in a limited partnership arrangement.
[3] See definition in footnote 1.

  - **Condition 1** – holds, directly or indirectly, the right to share in more than 25% of any surplus assets of the SLP on a winding up.
  - **Condition 2** – holds, directly or indirectly, more than 25% of the voting rights in the SLP.

    Both conditions 1 and 2 are likely to catch a limited partner with more than 25% limited partnership interest in a SLP.
  - **Condition 3** – holds, directly or indirectly, the right to appoint or remove the majority of the persons who are entitled to take part in the management of the SLP – *this condition will usually apply to the GP of a SLP*.
  - **Condition 4** – has the right to exercise, or actually exercises, significant influence or control over the SLP – *this condition will usually apply to the manager and/or GP of a SLP, but (as set out in the statutory guidance) would also include a limited partner that is likely to be entitled to 25% of the profits of a SLP*.
  - **Condition 5** – has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal entity which would itself satisfy any of conditions 1 to 4 in relation to the SLP if it were an individual.

  Note that an SLP can have more than one PSC/RLE. This is not uncommon in a private fund structure, where often the GP and the manager will be RLEs.

- The key point to note for SLPs is that under the regime for UK companies and LLPs, a limited partner in a limited partnership (whether an English limited partnership, SLP or foreign limited partnership) is not considered a PSC/RLE in relation to an underlying company/LLP held by the limited partnership unless it has the right to exercise, or actually exercises significant influence or control over the underlying company/LLP (which will be very unlikely given the role of a limited partner in a typical fund structure). **However, the Scottish partnership regulations have not incorporated this exemption**.

  The impact of this is that:

  - an **individual limited partner** in a SLP that holds more than a 25% limited partnership interest will need to be notified to Companies House as a PSC of the relevant SLP;
  - a **corporate limited partner** in a SLP that holds more than a 25% limited partnership interest will need to be notified to Companies House as an RLE of the relevant SLP if that limited partner is subject to its own disclosure requirements. If not an RLE, then its ownership chain must be investigated in order to identify any PSC or RLE using the majority stake test; and
  - changes to SLP PSC information will need to be notified to Companies House within 14 days and confirmed annually.

Action points for managers of SLPs:

- **Identify** all SLPs in your fund structures now. These changes will impact carried interest and co-investment vehicles, feeder vehicles and funds of funds in particular, as these arrangements are very often structured as SLPs.
- **Start investigating** now whether the SLPs have any PSCs/RLEs and start registering their PSC information at Companies House from 24 July 2017 (note that information on a PSC must not be registered with Companies House until it has been confirmed with the relevant PSC; RLE information does not need to be confirmed before filing).
- **Monitor** all LP transfers in your SLPs to ensure that any changes taking a limited partner over (or under) the 25% level are identified and notified to Companies House within the 14 day time limits.
- **Keep good, real time records** of all PSC information for SLPs so that changes can be monitored and the Companies House filings/the annual confirmation statement can be prepared as easily as possible[4].

Fund structures that contain eligible Scottish partnerships[5] need to check PSC registers of underlying UK portfolio companies/LLPs

- Eligible Scottish partnerships can now be recorded as RLEs on PSC registers of UK companies and LLPs.
- **Action point**: Where a PSC/RLE is registered on a PSC register of an underlying UK portfolio company/LLP and its controlling interest is held through an eligible Scottish partnership in that fund structure, you must recheck the PSC register analysis at the underlying portfolio company/LLP level. It is likely that the eligible Scottish partnership will need to be recorded as an RLE and the current PSCs/RLEs will need to be removed, but each case will be fact specific.

If you have any queries regarding the changes outlined above and how they may impact your fund structures, please contact us.

[4] SLPs are not required to maintain a PSC register in a statutory form, in the way that UK companies and LLPs are, but best practice would be to maintain something similar so that changes can be monitored effectively.
[5] See definition on footnote 1.

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