

New UK Law Will Require Public Disclosure of Individuals Anywhere in the World Who Control UK Companies

PENpoints

From April 6, 2016, most UK companies will be required to identify and keep a register of the individuals (of any nationality or domicile) who ultimately control them.

Recently the United Kingdom enacted a law that will require most UK companies to keep, beginning April 6, 2016, an up-to-date register of the individuals (i.e., human beings) who ultimately control them. Because the law is written broadly to capture a variety of different ownership structures, it is likely that a private equity fund with a significant direct or indirect interest in a UK company — even a wholly owned, non-operating subsidiary of a U.S. portfolio company — will be required to disclose the names of any individuals within the general partner (GP) who own or control a majority of the GP interests or have the right to exercise dominant influence over it.

Over the next two months, a UK company subject to the law must determine whether it has any so-called “persons with significant control” (PSC), and if so, obtain information about such individuals (as well as entities through which their interests are held) for inclusion in the company’s PSC register.¹ As a result, a GP with a UK company anywhere in its funds’ portfolio should expect to receive inquiries from such companies seeking information about potential PSCs. Preparing for and responding to these inquiries is important, because the consequences of non-compliance can be severe: non-compliant individuals, companies and their directors could face criminal sanctions, and holders of the company’s shares can be stripped of their rights to vote or transfer those shares.

Application to GPs

An individual is a PSC if he or she meets one of the following conditions:

- directly or indirectly² holds more than 25% of a UK company’s shares or voting rights; or
- directly or indirectly³ has the right to control a UK company’s board; or, otherwise
- has the right to exercise significant influence or control over the UK company (the “Sweeper Condition”).

Where a private equity fund owns a direct or indirect controlling interest in a UK portfolio company (including a wholly owned UK subsidiary of a non-UK company), it is possible that one or more principals of the fund’s GP will satisfy one of these conditions and thus be deemed a PSC. The law is unlikely to apply to a fund limited partner unless an LP has a large percentage interest in the fund or extensive governance rights.

Where a fund owns a minority interest in a UK portfolio company, or its indirect interest in a UK subsidiary

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1 The law applies to all UK companies — public or private — other than those whose shares are traded on the London Stock Exchange, on a European regulated market or on specified markets in the USA, Switzerland, Japan and Israel (on the grounds that they are already subject to rigorous transparency rules). There is no exemption for UK subsidiaries of a company whose shares are traded on a specified market, so, for example, the UK subsidiaries of a Fortune 500 company must maintain a PSC register (although it is likely that only one of the UK subsidiary’s direct or indirect parent companies would appear on the register).

2 In situations where a UK company is owned through a chain of one or more legal entities, the UK company’s immediate parent must hold more than 25% of its shares or voting rights (or have the right to control its board), and then each successive entity in the chain, as well as the potential PSC individual, must in turn hold a majority stake in the entity immediately below it, before the individual is deemed to have an “indirect” interest in (or right to control) the UK company.

3 See footnote 2 above for an explanation of what constitutes an “indirect” right.

or joint venture is diluted by investors at different levels of the ownership chain, determining whether any of the GP's principals will be deemed a PSC will most likely depend upon whether they are caught by the Sweeper Condition. Applying the law to such a case is complex and may be uncertain, particularly because the relevant UK regulator has only issued indicative, and not exhaustive, guidance as to the application of the Sweeper Condition.

In addition, the statute contains anti-avoidance provisions intended to capture efforts to structure around its application.

Accordingly, determining which, if any, GP principals will be deemed a PSC in a particular case will depend upon the GP's ownership structure and how it makes investment decisions. Any principal owning or controlling a majority of the GP interests or having the right to exercise dominant influence over it will likely be a PSC where a fund owns (directly or indirectly) a controlling interest in a UK company. In addition, a member of an investment committee or similar body within a GP may also be deemed a PSC if he or she satisfies the "significant influence or control" test of the Sweeper Condition, even if that person holds a small economic or voting interest in the GP.

Being an employee or director of (or legal, accounting or other advisor to) a GP by itself is not enough to qualify for PSC status. In the end, an individual must either own or control a majority of the GP interests or have the right to exercise dominant influence over it, or otherwise

be significantly involved in the management of the fund's direct or indirect investment in the UK company.

The rules for determining who is a PSC are complex. Those who are interested in the specifics can read our detailed memorandum, which can be accessed by clicking [here](#).

Required Information/Access to Register

Once a UK company identifies a PSC, it must record in its PSC register that person's name, date of birth, nationality, service and usual residential address, as well as other information regarding his or her status as a PSC. Members of the public acting with a "proper purpose" — a term that is expected to be interpreted broadly consistent with the public policy objectives of the legislation — are entitled to inspect or request a copy of the company's PSC register, but the PSC's usual residential address does not have to be disclosed.

Where there is a serious risk of harm to an individual PSC, that person or the relevant UK company may apply to keep all PSC information private.⁴ In all cases, however, all PSC information will be available to law enforcement agencies.

Conclusion

All GPs, wherever located, should review the ownership and control structure of any UK companies within their portfolio in readiness for implementation of the PSC regime on April 6, and prepare to provide the required information.

⁴ The parties can also apply for a PSC individual's residential address not to be shared with credit reference agencies.

If you have any questions about the matters addressed in this *KirklandPEN*, please contact the following Kirkland authors or your regular Kirkland contact.

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Norm Champ Joins Kirkland

Kirkland & Ellis is pleased to announce that Norm Champ, former director of the U.S. Securities and Exchange Commission's Division of Investment Management, has joined the Firm's New York office as a partner in the Private Funds Group. Click [here](#) to read our announcement and [here](#) to read Norm's full biography.

Constituency Directors — Controlling the Information Flow

A growing number of public companies have recently added directors who are designees of activist hedge funds or other financial investors, often following a proxy contest or as a result of the settlement of a threatened or pending contest. These companies are now facing difficult questions about the flow of confidential information to and through these “constituency” directors, complicated by the perception or reality that these designees may be acting on behalf of or favoring the interests of their sponsors. A number of recent Delaware decisions have addressed this information flow and highlight key questions that companies must grapple with. To learn more, see our recent [M&A Update](#).

PENnotes

6th Annual Global Fund Finance Symposium New York, New York, March 2, 2016

Kirkland is a sponsor of the 6th Annual Global Fund Finance Symposium, an annual event that brings together members, legislators, regulators and other constituents. The symposium will include panels and speakers from industry experts addressing many of the key developments and trends in the subscription credit facility and fund finance markets. Kirkland partners Bruce Ettelson and Jocelyn Hirsch are panelists. Click [here](#) for more information.

11th Annual Stern Private Equity Conference New York, New York, March 4, 2016

Kirkland will sponsor New York University’s Stern School of Business’ 11th Annual Stern Private Equity Conference. The conference will provide a forum for industry leaders to discuss the opportunities and risks of today’s private equity and venture capital environment. Kirkland partner Stephen Tomlinson will moderate the Real Estate panel, partner Christopher Torrente will speak on the LBO panel and partner Andrew Calder will be on the Energy panel. Click [here](#) for more information.

22nd Annual Harvard Business School Venture Capital and Private Equity Conference Boston, Massachusetts, March 5, 2016

Kirkland will sponsor Harvard Business School’s 22nd Annual Venture Capital and Private Equity Conference, held on the Harvard campus. The panels will address a range of today’s most relevant topics,

from growth equity investing and fundraising to geography-specific investment opportunities. Kirkland partner Jeffrey Kaplan will speak on the Fundraising panel, partner Nicole Washington will speak on the Diversity in Private Equity panel and partner Armand Della Monica will speak on the State of the Private Equity Industry panel. Click [here](#) for more information.

17th Annual IBA International Conference on Private Investment Funds London, England, March 6-8, 2016

Kirkland is a sponsor of the International Bar Association’s International Conference on Private Investment Funds, which brings together top legal, business and fund professionals from around the globe to analyze the current market and future of private investment funds, among other topics. Kirkland partner Daniel Lavon-Krein is on the planning committee for the event. Click [here](#) for more information.

36th Annual Ray Garrett Jr. Corporate and Securities Law Institute Chicago, Illinois, April 28-29, 2016

The Ray Garrett Jr. Corporate and Securities Law Institute is the pre-eminent securities law conference in the Midwest. It is the only Midwest conference that brings together senior officials from the U.S. Securities and Exchange Commission and leading securities practitioners. Kirkland partners Scott Falk, Robert Hayward and Keith Crow are members of the Executive Committee. Scott will also chair a session on “Hot Topics in M&A.” Click [here](#) for more information.

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Kirkland & Ellis' nearly 400 private equity attorneys have handled leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 400 private equity firms around the world.

Kirkland has been widely recognized for its preeminent private equity practice. The Firm was named "Private Equity Group of the Year" in 2012, 2013, 2014 and 2015 by *Law360* and was commended as being the most active private equity law firm of the last decade in *The PitchBook Decade Report*. Kirkland & Ellis was named "Law Firm of the Year" in Mergers and Acquisitions Law by U.S. News Media Group and Best Lawyers in their 2014 "Best Law Firms" rankings. The Firm was named "Best M&A Firm" at *World Finance's* 2014 Legal Awards, "Law Firm of the Year in North America: Fund Formation" at Private Equity International's 2013 Private Equity International Awards and "Private Equity Deal of the Year" at the 2014 IFLR Americas Awards.

In 2012, 2013, 2014 and 2015, Chambers and Partners ranked Kirkland as a Tier 1 law firm for Investment Funds in the United States, United Kingdom, Asia-Pacific and globally. The Firm was ranked as the #1 law firm for both Global and U.S. Buyouts by deal volume in Mergermarket's *League Tables of Legal Advisors to Global M&A for Full Year 2011, 2012, 2013, 2014 and 2015*, and has consistently received top rankings among law firms in Private Equity by The Legal 500, the Practical Law Company and IFLR, among others.

The Lawyer magazine has recognized Kirkland as one of its "Transatlantic Elite," having noted that the Firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

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