LAW360

Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

A Timely Review To Enhance UK's Company Register

By **Ian Hargreaves and Deirdre Lyons Le Croy**
(July 16, 2019, 4:34 PM EDT)

Ian Hargreaves

Deirdre Lyons Le Croy

Three years after the U.K. first set up its register of persons of significant control, companies continue to avoid revealing their real owners or have money laundering risks associated with them. The root of the problem is that the U.K.'s company register, Companies House, does not currently possess sufficient powers or resources to scrutinize and challenge the information that it holds.

To address these ongoing issues, the U.K. government has launched a consultation on improving Companies House and a statutory review of the PSC register is now underway. This will assess the effectiveness of the PSC measures, particularly on whether they have resulted in improved law enforcement outcomes, and consider if the measures need to be strengthened further. This is a timely step to avoid the PSC register becoming a blunt tool in assisting with the tackling of money laundering and other nefarious activity.

In recent years, U.K. companies and partnerships have been in the spotlight for some of the worst money laundering scandals, including the Troika Laundromat case, which saw at least $20 billion of tainted money flushed out of Russia, made possible by alleged corruption in Moldova and the ease at which its organizers could create ghost companies to receive payments, especially in Scotland.

While the U.K. government pioneered the world's first fully open PSC register, large information gaps around PSCs remain. It is a matter of public record in the U.K. that many companies have misunderstood the requirements and have therefore provided incomplete or incorrect information, or have deliberately provided false information, or no information at all. This could be to cover fraud or money laundering activities.

However, it is no small feat for the registrars to monitor information reliability; the U.K.'s Companies House has 3.9 million companies on its register and is woefully understaffed.

Problems and common areas of misunderstanding in implementing the rules around the PSC register include:

- Companies claiming that they have no beneficial owner (i.e. no individual or legal entity owns more than 25% of the company or otherwise triggers any of the five tests for being a PSC);

- How to deal with nominee shareholders;

- Circular ownership structures;

- PSCs that control hundreds of companies;

- PSCs recorded using common or slightly different names (which can mean PSCs are sometimes treated as being the same person when they are not, and in other cases are not identified as being the same person when they are); and

- PSC register entries where entities and individuals in the chain of ownership are based in another jurisdiction. A company preparing its PSC register should "look through" any entities in its ownership chain or structure that are not required to keep a PSC register or similar register under the laws of their place of incorporation (i.e. any jurisdiction outside of the European Union) and record the next entity or individual that is relevant and registrable in accordance with the PSC regime. However this is clearly not happening in every case.

While these issues may not indicate wrongdoing in themselves, they should serve as a starting point for further scrutiny.

In order to close further loopholes, the U.K. government has applied significant pressure on British overseas territories and the crown dependencies to encourage them to adopt measures similar to the U.K.'s PSC regime. Toward this end, British overseas territories will have to create public beneficial ownership registers for companies registered in their jurisdiction by Dec. 31, 2020. The crown dependencies of Jersey, Guernsey and the Isle of Man announced on June 19, 2019, that they would:

- Merge their registers with EU member states in 2021;

- Allow businesses conducting due diligence exercises access to the register before the end of 2022; and

- Legislate to make their beneficial ownership data completely public within 12 months of the AML review due in January 2022.

Some commentators have met this news with a fair degree of cynicism stating that the 3-year plan comes with no real commitments or details but is simply to keep the debate going.

A separate development in Jersey has seen Lloyds Banking Group freeze the accounts of about 8,000 offshore banking customers as part of a crackdown on money laundering, after allegedly asking them for 3 years to prove their identity (as reported in the Financial Times on June 24, 2019).

Despite the ongoing information gaps to plug, the PSC register has already had an important positive impact in the U.K. Some beneficial ownership information is readily available, collaboration between Companies House and law enforcement has increased and the number of new Scottish Limited Partnerships being created has dropped sharply.

An analysis of the recent annual reports and accounts of Companies House shows that from 2017-2018, the U.K. company register was accessed more than 2.2 billion times. This is a 650% / 7.5-fold exponential increase from when paywalls were still in place. By contrast, in 2014-2015 the U.K. company register was accessed 3 million times.

Meanwhile, according to the U.K. government's U.K. Anti-Corruption Strategy 2017-2022 — 1 Year Update 2018 report, inquiries from law enforcement to Companies House for help in investigations increased from an average of 11 requests per month to 125 per month from 2015 to 2018.

As a result of these efforts, in 2017/18, police and National Crime Agency requests to Companies House for information more than doubled. And yet, according to the U.K.'s Department for Business, Energy and Industrial Strategy, as at September 2018, only five individuals and six companies have been convicted for PSC-related offenses, with fines amounting to only £7,000.

Unquestionably, the reliability of information entered on the registers remains an issue. This information is often provided to registrars without oversight from regulated professionals and is unverified; the quality and usefulness of such information therefore may be compromised. Needless to say, information held on these registers is vital in building a picture of corporate transparency and to help ensure that money laundering is tackled effectively.

While a review of the PSC register will undoubtedly provide a useful further yardstick on progress and identify areas for improvement, a crucial next step for Companies House is to continue to take a more meaningful role in verifying the data that it receives, including PSC information.

However, some progress has been made in this respect and it has been noted by legal practitioners that Companies House is now, in some cases, following up with companies where PSC information is missing or incomplete. Companies House is in a unique position to detect, identify and prevent illegal conduct by the very nature of the dataset that it holds. This will help to close the loopholes and improve the quality and reliability of the information. After all, once incorporated through Companies House, akin to a private individual, companies can control bank accounts, own property and move money around the world.

Ian Hargreaves is a partner and Deirdre Lyons Le Croy is an associate at Covington & Burling LLP.