Chba Response To Discussion Paper On The Transposition Of Article 30: Beneficial Ownership Of Corporate And Other Legal Entities

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Chancery work is that which is traditionally dealt with by the Chancery Division of the High Court of Justice, which sits in London and in regional centres outside London. The Chancery Division attracts high profile, complex and, increasingly, international disputes. The Companies Court itself deals with some 12,000 cases each year.

Our members offer specialist expertise in advocacy, mediation and advisory work including across the whole spectrum of company, financial and business law. As advocates members are instructed in all courts in England and Wales, as well as abroad.

Question 1: The Government welcomes views on this approach for determining the scope of Article 30 and on any alternative methods which could be considered.

We agree with the proposed approach.

Question 2: Do you agree with this analysis regarding the types of entity that should and should not be considered to be in scope of Article 30 of the Directive? Are there entities not listed above which should be considered in the context of determining the scope of Article 30?

We agree that the entities listed should be included in the implementation provisions.

However, we do not see any reason in principle why the inclusion of Scottish Partnerships should be restricted to partnerships in which each partner is a limited company. Such partnerships are capable of having beneficial owners in that under the joint arrangement provisions of CA 2006, Sch. 1A, para. 12, the partners could come to a joint arrangement whether or not they were natural persons. Moreover, there might well be administrative advantages in ensuring that all Scottish Partnerships were RLEs within the meaning of s. 790C of CA 2006.

Question 3: What would be the potential costs and benefits of companies on UK prescribed markets also having to comply with UK PSC register requirements (from June 2017)? Please provide evidence where possible.

We are unable to comment beyond pointing out the additional administrative costs in ensuring compliance.

Question 4: If UK companies on UK prescribed markets were to be brought into scope, what transitional arrangements would be necessary or helpful?

The experience of members of the association who have advised on the existing PSC Register regime has been that at the implementation date there was very poor awareness of compliance requirements among companies, trustees and individual PSCs. The result was that both individual PSCs and companies were in default of their obligations.

We would suggest that the compliance requirements apply to registering companies only and that the timetable for coming into compliance be

synchronised with the regular filing date for the annual confirmation statement.

Question 5: We welcome views as to the nature of the modifications to these conditions that would be required in respect of any of the different types of entity listed at paragraph 40 above.

We are not able to identify any necessary modifications.

Question 6: Do you have views on the definition of 'significant control' and the requirement to record the 'nature and extent of control' for the additional types of entity to be brought within scope? Are there particular issues to which you would draw our attention regarding the application of this approach to any of the types of entity listed at paragraph 40?

In the current implementation of the mechanism for identifying PSCs there is significant scope for over-inclusion, which dilutes the accuracy of the register. In particular, under the fourth condition an individual will be a PSC if they do not meet any of the other conditions, but nevertheless exercise significant influence or control or have the right to. However, there is no corresponding exception for an individual who does meet one of the first three conditions but in fact does not exercise significant influence or control.

At present, we are only able to comment in general terms, but would welcome the opportunity to comment on draft legislation.

Question 7: Do you agree with our proposed approach to ensuring the 'accuracy' and 'adequacy' of PSC information? Namely, to retain the arrangements as they are for entities already covered by the PSC register and extend the same approach to those brought within scope by the Directive.

As mentioned above, we do not consider that it is appropriate to place the same duty on PSCs as on the registering entities. Experience has shown an extremely low level of awareness of registration obligations on the part of companies subject to the regime. Individuals, particularly those based overseas, are even less likely to be aware of an obligation to take proactive steps to register.

We would suggest that the obligation to register not be extended to individual PSCs (and such an obligation would be out of scope of the directive) unless it were made clear that any corresponding criminal offence had a *mens rea* element requiring knowledge of a registration obligation.

Question 8: Do you agree with our analysis on the need for change to ensure that information is 'current'? Is six months an appropriate period to allow an entity to update its PSC information following any change? If not, why not?

We would suggest that a more nuanced approach is appropriate. Where a change in PSC status comes about as a result of a change in beneficial ownership such as a transfer of shares or a change in membership of a partnership, we consider that the register could be updated at the same time.

On the other hand, where the change in arrangements comes about in some other way, we consider that preparation of the annual compliance statement is the appropriate time for a review of the registering entity's situation.

Question 9: For entities which already fulfil domestic PSC requirements: Do you expect any changes in terms of who within the corporate entity will be involved and how long it will take to the corporate entity to update PSC information as a result of changing the frequency of updates from 12 months to within 6 months of a change?

The impact of any change in the frequency of updates would depend on the existing compliance responsibilities in the registering entity and the complexity of any ownership arrangements in which it might be involved. The experience of members who have advised in relation to the current PSC Register regime has been that in a complex case it can take as long as 6 months to complete the investigations into the ownership structure and identify the relevant PSC's for registration. Adopting a six-month reporting period could place some entities in a position in which they are under almost constant review.

Question 10: Are there any practical implications that publicly accessible information will have for particular types of entity that you would like to draw to our attention?

No.

Question 11: Are there any practical implications for extending access to usual residential address information to financial intelligence units, competent authorities and obliged entities as defined in the Directive, and those with legitimate interest?

Yes. As a result of the continuing implementation of the Common Reporting Standard, there is a substantial possibility of the export of sensitive personal data to third countries. In circumstances in which an individual may have fled a third country due to considerations of personal safety, we suggest that it would be undesirable to permit unfettered access to URAs without further safety mechanisms, at least where the protection regime is applied to that individual.

Question 12: Are there specific issues we should be aware of regarding the application of this approach to beneficial owners of the new entities brought within scope by the Directive?

No.

Question 13: Are there specific issues we should be aware of in allowing access of protected information to credit and financial institutions?

Our view is the same as that relating to FIUs, competent authorities and obliged entities. As a result of the continuing implementation of the Common Reporting Standard, there is a substantial possibility of the export of sensitive personal data to third countries. In circumstances in which an individual may have fled a third country due to considerations of personal safety, we suggest that it would be undesirable to permit unfettered access to URAs without further safety mechanisms, at least where the protection regime is applied to that individual.

Josh Lewison
13th December 2016