Quoted Companies Alliance

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Transparency and Trust Team
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14 December 2016

Dear Sirs,

Implementing the Fourth Money Laundering Directive: beneficial ownership register

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation on the implementation of the Fourth Money Laundering Directive with regards to the beneficial ownership register.

We note that that this is an area where our members are going to be faced with a disproportionate obligation, for no tangible benefit, and have raised this with the Department for Business, Energy and Industrial Strategy (BEIS), its predecessor the Department for Business, Innovation and Skills (BIS), and HM Treasury on several occasions over the last three years.

We have responded below in more detail to the specific amendments from the point of view of our members, small and mid-size quoted companies.

Responses to specific questions

Q1 The Government welcomes views on this approach for determining the scope of Article 30 and on any alternative methods which could be considered.

We have no comments in this regard.

Q2 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 note that, since 6 April 2016, UK companies (including UK subsidiaries of overseas companies) must keep and maintain a register – the PSC register – that records all the people or legal entities that have significant influence or control over the company.

We believe that the establishment of the PSC register, introduced by the Small Business, Enterprise and Employment Act 2015, expressed the intention of Parliament to make a clear distinction between the tests to determine:

- people with significant control (a new UK test); and
- beneficial owners (based on successive EU Anti-Money Laundering Directives).

Therefore, we question how the Government would equate one with the other and would encourage further guidance explaining how this will work in practice. Moreover, we note that the definition of a "regulated market" in the Fourth Money Laundering Directive fails to equate to the definition provided in either MiFID, which is currently in force, or MiFID II, which is due to come into force on 3 January 2018.

We are concerned that the Fourth Money Laundering Directive could effectively bring in an obligation for AIM and ISDX companies to keep a register of beneficial owners if they have a shareholder who owns more than 25% of the company, in addition to the compliance with the Disclosure and Transparency Rules 5 (DTR 5). We note that listed companies (i.e. those on the Official List, so excluding AIM and ISDX) are exempt from this requirement in the text of the Directive.

We believe that it is disproportionate for small and mid-size quoted companies on multilateral trading facilities with a primary market function (such as AIM and ISDX) to have to obtain and hold information on their beneficial owners, as these companies are publicly quoted companies subject to the same ongoing disclosure requirements and transparency rules as their counterparts on regulated markets. Placing the obligation on these companies would result in unnecessary added costs and compliance burdens for no benefit.

Furthermore, this requirement could potentially create an unwanted situation whereby small and mid-size quoted companies on growth markets would have to report more information than their larger counterparts on regulated markets. We believe that this runs counter to the Government's prior commitment to support the growth of UK small and medium-sized enterprises.

Currently, in the UK, companies that have disclosure obligations under DTR 5 (listed and quoted companies) are exempt from the requirement to keep a PSC register. We note that the Directive, in its Article 3 (6) (a) (i), refers to "a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards". As DTR 5 represents the disclosure standard for listed companies in accordance with Union law, we believe that it would be inconsistent if this very standard was to be declared as insufficient.

We believe that DTR 5 is certainly equivalent to Union law standard, as it is sufficient for our regulated markets. Therefore, as companies listed on AIM and ISDX are subject to DTR 5, we believe that these

companies should not need to address the issue of beneficial owners and should, therefore, be exempt from the application of Article 30.

Q3 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 do not believe that there will be any benefits of companies on UK prescribed markets, such as AIM and ISDX, also having to comply with the UK PSC register requirements. Furthermore, we do not believe there will be any benefits to other stakeholders or interested persons.

We note that if companies on UK prescribed markets, such as AIM and ISDX, were required to comply with UK PSC register requirements from June 2017, then these would have to be complied with at the same time as, yet separately from, the DTR 5 requirements. As observed above, we question why it would be sufficient for companies listed on the Main Market to only comply with DTR 5, but, for companies listed on multilateral trading facilities with a primary market function, such as AIM and ISDX, this would be insufficient.

We also note that requiring companies on UK prescribed markets to comply with the UK PSC register requirements could result in a large number of applications to the Standard List to avoid the additional compliance burdens. The Standard List would then become potentially more attractive than AIM and ISDX, as it is a regulated market and would not fall into the scope of the PSC regime, which as prescribed markets, would fall within the regime. We note that compliance burdens are a particular concern for smaller quoted companies, who will carefully assess the comparative compliance time and costs of different markets both initially and periodically. They may then consider switching markets if their current market venue becomes comparatively less attractive.

Q4 If UK companies on UK prescribed markets were to be brought into scope, what transitional arrangements would be necessary or helpful?

We believe that there would need to be a sufficient period to educate companies on UK prescribed markets such, as AIM and ISDX, on the impact of falling within the PSC regime, to allow them to assess how it will affect them. We note that it is a complex regime, which is particularly difficult for smaller companies as they do not have the same budget to access external advice and have smaller internal teams.

We also believe that there should also be an extension of the transitional period where companies are seeking shareholder or other approvals to switch to another market, which would make them exempt from the regime (e.g. a switch from AIM to the Standard List) provided that the process is started within the first transitional period.

Q5 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 have no comments 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.

Q6 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?

We believe that a register of beneficial owners is fundamentally different to a PSC register and therefore these PSC concepts are irrelevant for a register of beneficial owners.

Q7 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.

We agree with the proposed approach to ensuring the 'accuracy' and 'adequacy' of PSC information. We believe that the integration should be as simple and seamless as possible. Where PSCs are also beneficial owners, we believe that a "tick box" approach should be applied.

Q8 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 believe that it could be helpful to align the timing and process with the confirmation statements to try to reduce the number of times a company needs to update Companies House.

We note that the confirmation statement currently includes PSC information and has to be submitted at least every 12 months. We believe that it could be useful for companies to be required to submit a PSC confirmation statement at least every six months, with every other one being an omnibus version including an additional part covering the other areas currently contained within a confirmation statement in addition to the PSC confirmation statement. This would ensure that PSC information is never more than six months old and would put in place one clear regime.

We believe that it would be clearer to have a fixed deadline of six months from the last confirmation statement rather than six months from a change, especially given that companies may not be immediately aware of a change in their PSCs. We note that there are complexities about triggering the requirement when the change occurs, when it is known, when details have been confirmed and/or when the PSC register is updated. We believe that a fixed point in time to update from the entity's PSC register based on the last statement submitted to Companies House avoids those complications.

It would be very useful if the Government could make it clear that its interpretation of the word "current" will result in no action for breach by any company which follows it and to indemnify each company for doing so.

Q9 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?

We do not expect any changes on who within the corporate entity will be involved and how long it will take for the corporate entity to update PSC information as a result of changing the frequency of updates from 12 months to within six months of a change.

We note that there is currently an ongoing requirement to maintain an up-to-date PSC register for internal purposes in any case. As we mentioned in our answer to Q8, we believe that any changes to updating PSC register must be simple for companies to comply with.

Q10 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?

We have no comments with regards to any practical implications that publicly accessible information will have for any particular type of entity.

Q11 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?

We do not see any immediate implications for small and mid-size quoted companies. However, we are somewhat concerned about how wide "obliged entities" goes under Article 2 of the Directive and question the need for all of the entities to be able to access this information without proper safeguards.

Q12 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

We note that the UK protection regime is not as broad as would be permitted under the Fourth Money Laundering Directive.

Q13 Are there specific issues we should be aware of in allowing access of protected information to credit and financial institutions?

We have no comments with regards to allowing access of protected information to credit and financial institutions.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	**Wedlake Bell LLP**
Colin Jones (Deputy Chairman)	UHY Hacker Young
Nathan Leclercq	Aviva Investors
Jonathan Compton David Isherwood	BDO LLP
Kalina Lazarova	BMO Global Asset Management (EMEA)
Nick Graves	Burges Salmon
David Hicks	Charles Russell Speechlys LLP
Nicholas Stretch	CMS Cameron McKenna LLP
Louis Cooper	Crowe Clark Whitehill LLP
Nick Gibbon	DAC Beachcroft LLP
Tracy Gordon	Deloitte LLP
Melanie Wadsworth	Faegre Baker Daniels LLP
Rob Burdett	FIT Remuneration Consultants
Richie Clark	Fox Williams LLP
Michael Brown	Henderson Global Investors
Will Pomroy	Hermes Investment Management Limited
Alexandra Hockenhull	Hockenhull Investor Relations
Julie Stanbrook Bernard Wall	Hogan Lovells International LLP
Darshan Patel Niall Pearson	Hybridan LLP
Peter Swabey	ICSA
Jayne Meacham Carmen Stevens	Jordans Limited
Darius Lewington	LexisNexis
Anthony Carey	Mazars LLP
Peter Fitzwilliam	Mission Marketing Group (The) PLC
Cliff Weight	MM & K Limited
Caroline Newsholme	Nabarro LLP
Julie Keefe	Norton Rose Fulbright LLP
Amanda Cantwell	Practical Law Company Limited
Susan Fadil Philip Patterson	PricewaterhouseCoopers LLP
Marc Marrero	Stifel
Kevin Kissane	Vernalis PLC
Edward Beale	Western Selection Plc