ROPES & GRAY

PRIVATE EQUITY WATCH

JULY 2017

MARKET WATCH

PRIVATE EQUITY MARKET

At what point in a year can we no longer claim that "it is just too early to say"? If there was ever a year when the market would like more time before committing to the good year/bad year forecast, 2017 has been that year. Why?

Many factors encourage the bull. Deals have been delayed into 2017 from 2016 with its Brexit Referendum. Sellers surely are motivated to sell now, in 2017, given that the Brexit uncertainties will become more certain and in all likelihood more concerning as the negotiations get properly underway and businesses start to react. We are in an increasingly borrower–friendly credit market. Furthermore, bankers point to long term trends and to the fact that European M&A has been significantly down on the norm for a number of years, suggesting that strategics are likely to return to the norm and to buying and selling businesses in the short and medium term. The private equity sector has abundant dry powder to invest.

The above is reflected in our levels of activity, significantly up on a like-for-like basis from 2016. Clients are generally cautiously optimistic about their pipeline. The deals being discussed are across all sectors, include the usual collection of secondaries and tertiaries, but also, it would seem, a greater number of carve-outs from corporates.

So why not call the year now?

Because it remains a fragile and fickle market. And because it is a polarising market where it remains difficult for the majority of our clients to put their dry powder to work.

Geopolitical risks exist both in the UK and in many other European economies and are not reflected in price expectations, making some global funds give priority to the U.S. On a micro level, whilst anecdotes abound about a new deal momentum, deals do remain difficult to close. The behaviours of buyers reflect a desire for more certainty on outlook and less pragmatism if diligence unlocks issues. This is in part because many of the businesses being sold are themselves the products of cautious, unspectacular growth during the last 18 months, and there is evidence of corporate investment starting to slow down. Processes are evolving to allow more time to a much reduced field of bidders, acknowledging the work most buyers now seek to complete. Add to this the uncertainty of a hung parliament and weakened government, and the year remains more incomplete than the month of July would normally allow.

This could yet be a year that promises more than it ultimately delivers, but don't we all need more time? It is too early to say.

DEBT MARKET

Logic suggests that macro-political turbulence should translate to economic uncertainty, which in turn should result in a cautious debt market. However, notwithstanding the various disruptions of Brexit, the Trump administration,

ON THE HORIZON

- Following the introduction of the PSC regime, which saw the inception of a new publicly accessible register of corporate ownership in 2016, the Government has now made a commitment to introduce a new register of corporate ownership designed to show to show the beneficial owners of overseas companies that own or want to buy property in the UK.

  The rationale stated for the introduction of this register is to ensure that the UK property market is perceived as 'fair, transparent and clean', in order to attract the right type of overseas investment. The Government is currently consulting on aspects of how the framework of this regime may be introduced.

CONTENTS

Presidential elections across Europe and ongoing instability in the Middle East and beyond, global debt markets remain buoyant.

GDP growth in the UK and the USA has enhanced confidence, and the continuing low interest rate environment has resulted in an abundance of liquidity across debt markets as investors chase yield. Borrowers are able to turn to a wide variety of liquidity pools and, depending on the scale and nature of the credit in question, investors in the high yield, term loan B, USPP, European bank loan, direct lending and asset-backed markets all remain hungry for paper.

That appetite has resulted in high levels of activity, with many borrowers seeking to reprice and/or refinance existing debt packages in order to optimise pricing, operational flexibility and capital structures.

However, despite the profusion of investors keen to lend, many borrowers are reluctant to maximise leverage, perhaps because they feel that the political uncertainties mentioned above will crystallise into economic turbulence at some point. In the UK, recent surveys suggest that corporate risk appetites remain suppressed when compared to historic norms, and in the Private Equity context that aversion to risk remains reflected by relatively low levels of new deal completions.

Political events over the next few months may determine whether or not debt markets maintain current appetite levels (including the market's response to the recent UK election result, as the implications of this become clearer), but having shrugged off Brexit, the election of President Trump and a number of other "shocks" in recent times, it should not be assumed that debt markets will always follow a logical path.

TAX | THE IMPACT OF BEPS ON UK DEAL STRUCTURES

It has been widely observed that private equity owners bring tax efficiency to the businesses in which they invest. A key component of this efficiency has been interest deductibility. Efficiencies arise both because private equity deals are often financed by a comparatively high level of third-party debt, and also because private equity funds make use of shareholder debt to fund their acquisition. A typical structure is set out at Appendix 1.

New rules being introduced in the UK will constrain the levels of efficiency that can be achieved by restricting interest deductibility in many common scenarios. This is likely to lead to changes in the way in which deals are structured. Changes are likely to include the replacement of shareholder debt by preference shares, and an increased focus on pushing third-party acquisition debt down into the target group. There may also be increased demand for third-party debt providers to take on riskier, more subordinated debt, possibly combined with a minority equity investment. An example structure is set out at Appendix 2.

A simplified numerical example of the impact of the new rules on the structure in Appendix 1 is to assume that UK Bidco pays five per cent interest on its loan and that Topco and Midco pay 10 per cent interest on the shareholder debt (which is all accepted as being on arm's length terms). This provides a shield from tax on £15 million of UK profits annually. Following introduction of the rules discussed below, that shield may drop to as little as £4.5 million, an increase in the annual tax bill of around £2 million.

BACKGROUND – THE BEPS PROJECT

The background to the UK's new rules is the OECD's base erosion and profit-shifting (BEPS) project. The primary focus of this project was multinational groups, who were perceived to be taking advantage of the interaction between the tax rules of different states to obtain low effective rates of tax. The OECD took a wide view of its mandate, and many of their proposals are expected to have an impact beyond their immediate target.

The UK has been very much at the forefront of the BEPS project and is now introducing, or has already introduced, new legislation implementing the OECD's proposals. While the UK is an early adopter, other jurisdictions are expected to follow shortly. The EU has introduced the Anti Tax Avoidance Directive, which will require EU member states to introduce a number of the BEPS recommendations, some by the end of 2018.

UK RULES – HYBRID MISMATCH RULES

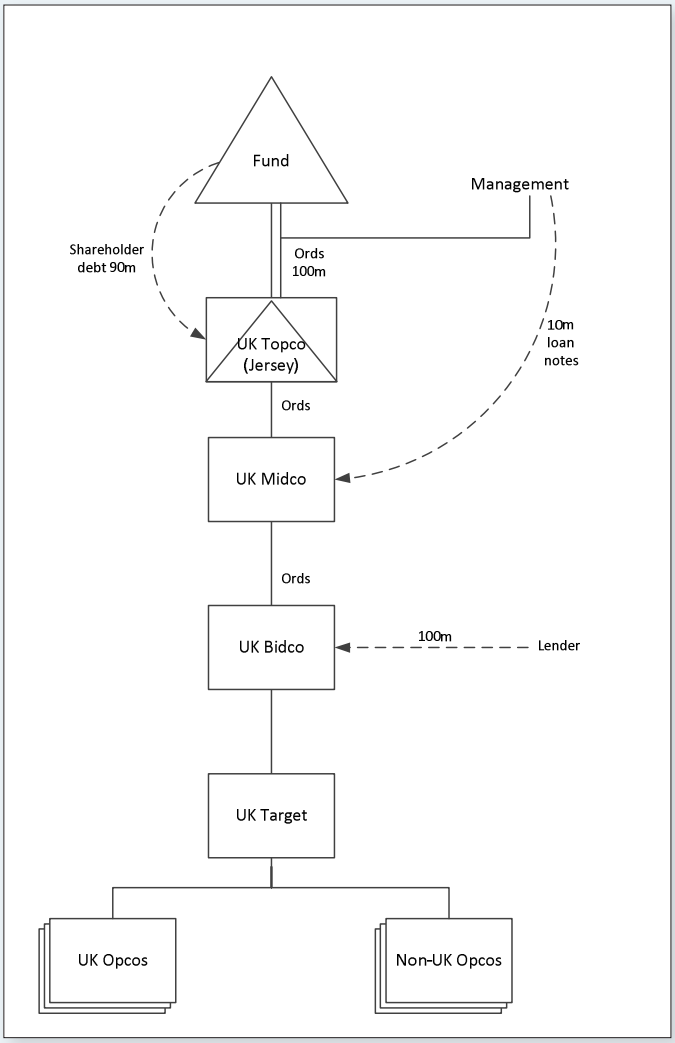
In the private equity context, these rules seem most likely to impact private equity funds with a material contingent of U.S. investors. As shown in Appendix 1, such funds will often make a check-the-box election for the upper tier holding companies to be treated as a partnership or disregarded for U.S. tax purposes. This means that Topco will be treated as a hybrid

entity, and it is therefore necessary to consider whether there is a deduction/non-inclusion mismatch for the shareholder debt. As the effect of the election is likely to be that the income from the shareholder debt is not taxed as ordinary income for U.S. tax purposes, such a mismatch is likely to be taken to arise for U.S. investors (including tax exempts due to the relevant assumptions required under the rules). Deductions will be denied (or at least postponed) to the extent of the mismatch.

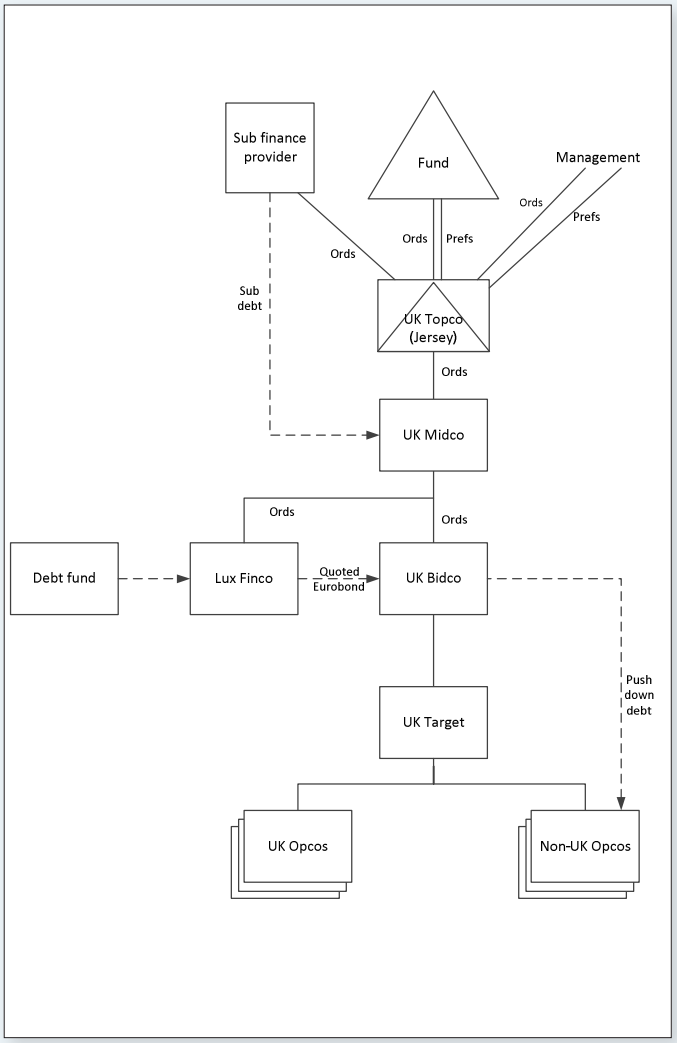
The situation could be rescued if there were any dual inclusion income, taxable in both the U.S. and the UK, but the UK rules and draft HMRC guidance take a restrictive view of the circumstances in which such income will arise. In any case, where, as here, the UK deductions will be surrendered by way of group relief into an unchecked operating subsidiary, such a rescue would not seem consistent with the purpose of the legislation.

Not all deals with a shareholder debt component will be structured in the same way. However, the structuring objective will typically be to make sure, so far as possible, that the interest arising for the recipient on the shareholder debt is not taxable on a current basis at the rates applicable to interest. This objective is likely to engage the hybrid mismatch rules, particularly as offshore mismatches, which are imported into the UK, are also caught.

APPENDIX 1



APPENDIX 2



UK RULES – CAP ON INTEREST DEDUCTIBILITY

Following hot on the heels of the hybrid mismatch rules, the UK has also committed to introducing a cap on interest deductibility generally. From April 1, 2017 (although this measure has been pushed due to the election, this still seems the most likely date), restrictions apply for groups with net annual interest deductions in the UK in excess of £2million. The basic rule is that deductions for interest above that amount will be restricted to the extent that they exceed 30 per cent of the group's UK EBITDA as calculated for UK tax purposes. If the worldwide group has a higher level of external leverage, this threshold may be raised to that level (the group ratio test).

For many private equity groups, this is likely to mean that any shareholder debt that survived the introduction of the hybrid mismatch rules is no longer deductible.

Deductions on third-party debt may also be restricted, particularly where UK debt is used to fund the acquisition of groups with some operations outside the UK. In the example in Appendix 1, all of the group's external debt is in the UK, but half of the group's EBITDA is attributable to its non-UK operations. As a result, the group ratio test will not assist and the 30 per cent cap will apply.

This is likely to put an increased premium on pushing debt down into the non-UK target group where possible. Techniques include lending money down to fund the repayment of existing debt, declaration of dividends that are left outstanding on intercompany account, bridging and post-acquisition refinancing, and structuring acquisitions to allow non-UK targets to be acquired into debt-funded non-UK Bidcos (which may then merge or form a fiscal consolidation with the relevant target). A number of factors, including local rules restricting deductibility and tax charges on disposals and upstreaming proceeds, may constrain a group's ability to do this.

THE FUTURE FOR SHAREHOLDER DEBT

The result of the changes mentioned above is that the circumstances in which shareholder debt will produce a benefit for the group in terms of tax will be limited in future, and may well be exceeded by the disadvantages, which will include the need to manage withholding tax (which often requires loan notes to be listed) and the need for some recipients, for example, management and potentially UK carryholders, to pay top rates of tax on the interest receipts. Unlike transfer pricing disallowances, corresponding adjustments will not be available for interest recipients where deductions are disallowed under the new rules. These factors may mean that some groups will see a benefit in restructuring shareholder debt in existing deals.

Preference shares are the obvious alternative to shareholder debt due to the fact that they can be structured with broadly similar economic terms, and, also, they are already a feature of many recent deals.

Advantages of preference shares include that they are not subject to withholding tax, and, in some cases, that they benefit from taxation at preferential rates, particularly where they can be sold cum div, although in many cases the UK's tax rules will assimilate them to debt and cause the coupon to be taxed in the same way as interest.

Disadvantages of preference shares include stamp duty on transfer, and the need to comply with company law requirements applicable to share capital when making payments (for example, the need for reserves) rather than the more flexible rules applicable to debt. In addition, the restrictions on asset stripping in the AIFMD may impose further restrictions in practice (where an AIFM is within scope of these provisions).

While the disadvantages are often surmountable, hybrid solutions may be worth considering. For example, it may be possible to make an interest-free loan combined with preference shares carrying a higher coupon (to compensate for the lack of interest on the loan). The difficulty with interest-free loans is that a tax authority would typically seek to argue that interest should be treated as arising on transfer pricing principles. However, it is not clear this argument would be correct where the totality of the arrangement is on arm's length terms (with the lack of interest being compensated by the higher coupon on the preference shares). Similarly, it may be arguable that the arm's length comparator would be additional preference shares (but with a lower coupon) and no debt. There is potentially also an issue under IFRS, which may require the lender to recognise interest-free debt at its fair value, resulting in a day one loss but profit over the life as the loan gets written back to its face value. This can result in tax inefficiencies, if the lender's jurisdiction does not have rules that iron this out for tax purposes (as the UK does in most situations).

TAX | THE IMPACT OF BEPS ON UK DEAL STRUCTURES

The structure in Appendix 2 does not restore the historic position. Preference shares do not give rise to deductions. The demise of shareholder debt may open up space for more flexible debt providers to provide deeply subordinated finance, whose value to borrowers will now be increased as it could be expected to provide deductible interest.

It may be possible to make this a more attractive investment for such debt providers by also allowing them to make a minority investment in the equity without prejudicing the deductibility of their debt piece. This will depend on whether even a small equity investment could cause such lenders to become related parties for the purposes of the group ratio rules as finally drafted. Related party debt is excluded for the purposes of calculating the group ratio. In any case, care will be needed with transfer pricing rules and rules recharacterising interest on stapled debt as a non-deductible distribution.

For deals with no or limited leverage, new structures for shareholder debt involving finance companies in no or low tax jurisdictions may still be worth exploring.

DATA PROTECTION AND PRIVACY | THE GDPR AND ITS PENALTY REGIME

THE GDPR

When the General Data Protection Regulation (**GDPR**) comes into effect on 25 May 2018, it will strengthen, harmonise and supplement the current EU data protection regime. The GDPR has a much wider jurisdiction than the current regime and will impact on all businesses established within the EU that process personal data, as well as non-EU businesses processing personal data that offer goods or services to individuals within the EU or that monitor such individuals' behaviour.

A key concern for many businesses that are subject to the current EU data protection regime (as well as for those additional businesses that will now fall under the GDPR's jurisdiction) relates to the potential level of fines that may be imposed for a breach of the GDPR, which increases substantially under this new regime. The GDPR prescribes the maximum administrative fines, and states that in every case fines must be effective, proportionate and dissuasive and contemplates that liability may be attributed to an economic unit that encompasses but extends beyond the company in breach, which could be liable for the greater of either: €10,000,000 or two per cent of the undertaking's global annual turnover, or €20,000,000 or four per cent of the undertaking's global annual turnover, depending on the type and seriousness of the infringement.

The current EU data protection regime does not seek to attribute liability to 'undertakings'. The inclusion of this more expansive concept of 'undertaking' within the GDPR has the potential to extend liability for data protection breaches beyond the offending company to parent or controlling companies, as well as to asset managers and institutional investors. The recitals to the GDPR indicate that the concept of 'undertaking' is to be interpreted in accordance with the approach taken in the Treaty on the Functioning of the European Union (TFEU). Notably, anti-trust regulators have demonstrated an increasing willingness to bring parent companies and private equity investors within the scope when attributing liability for breaches of Articles 101 and 102 TFEU, and to base fines on group (as opposed to individual company) turnover. Against this backdrop, it seems entirely likely that a similarly expansive approach will be taken in respect of liability under the GDPR.

WHAT IS COMPETITION LAW'S INTERPRETATION OF AN UNDERTAKING?

European case law has established that a group of entities needs to function as a single economic unit in order to be defined as an undertaking. According to the CJEU, a two-part cumulative test must be satisfied to demonstrate the existence of a single economic unit:

(i) ***does a company exercise decisive influence over another company, such that the latter is unable to determine its own conduct independently on the market; and***

(ii) ***has this influence has been exercised?***

Case law has shown that an entity may be held liable for the anti-competitive activities of another entity, if it exercises 'decisive influence' over the infringing entity based on any economic, organisational or legal connection.

Where a parent company has a total or 'quasi-total' ownership of shares in a subsidiary company, this will be sufficient for a presumption of decisive influence to arise, which, in practice will be extremely difficult to rebut.

However, 'decisive influence' can arise even where an entity has less than a 'quasi-total' ownership of shares in another. Case law indicates that 'decisive influence' does not have to be in the form of direct instruction or practical influence over the day-to-day operations of a subsidiary, but can be established by other means. In practice, an entity may be seen to exercise decisive influence over another in situations where (on a non-exhaustive basis), (i) it has significant involvement at board level; (ii) it has the right to appoint senior managers of the other entity; (iii) it has veto rights over matters such as the annual budget or business plan of the other entity; and (iv) there are shared systems, employees and assets.

Importantly, the basis for assessing and determining that an entity exercises decisive influence over another does not have to relate to the infringement in question; it is sufficient that the 'parent' entity exercises influence over the infringing entity's commercial policies in general.

Of course, private equity investors are not typically 'parent' companies from a corporate law perspective. That said, the test for determining whether an entity has influence over another does not require a parent-subsidiary relationship to be established (albeit, as mentioned above) that where a company is a wholly owned subsidiary a rebuttable presumption of decisive influence will arise.) If the controls that a private equity investor has over a portfolio company meet certain of the established criteria for establishing 'decisive influence', then case law has shown that a 'single economic unit' may be established between the investors and the portfolio company as it would for a parent and subsidiary.

This underpins the approach taken by the EC in its decision in the Prysmian cartel case in 2014. In this case, Goldman Sachs were held jointly and severally liable for the anti-trust behaviour of a portfolio company, by virtue of the fact that they were considered to exercise 'decisive influence' through the control that the fund was seen to have over the board, management and strategy of the portfolio company. In this case, a fine of €37 million was imposed on the investment bank, in addition to the €67 million fine for the portfolio company.

The EC (and other national competition regulators) have shown themselves to be increasingly likely to take a more expansive approach to the attribution of liability and likely to find private equity firms jointly and severally liable with their portfolio companies for the actions of those companies. This trend looks set to continue. Moreover, the early indications are that this approach could be mirrored under the GDPR.

REDUCING THE RISK

There are two stages when the risk of data protection breaches can be evaluated in relation to group, investment and portfolio companies. The first of these is prior to any acquisition, and the second is as part of an ongoing compliance regime.

First, thorough pre-acquisition due diligence will bring any gaps in a target's data protection compliance to light. These can be rectified by remedying the non-compliance prior to the acquisition or, where appropriate, be addressed through contractual warranties (or specific indemnities) from the seller to give the buyer comfort against the risk of litigation and regulatory action for data protection breaches post-completion.

As a second line of defence, private equity firms and asset managers should remain alert to the data protection obligations that apply across their portfolio group by conducting continuing assessments of the risks for data protection breaches and ensuring that there is a comprehensive data protection compliance regime in place. Carrying out and evaluating risk assessments of group, portfolio and investment companies should help to identify where the risks are greatest, and action can be taken to minimize these.

On 6 April 2017, a new suite of measures were introduced that are designed to make the payment practices of larger businesses more transparent (The Reporting on Payment Practices and Performance Regulations 2017). Under this new regime, qualifying businesses are now obliged to publish a report twice a year, which will include a raft of information designed to show how prompt they are in paying their suppliers as well as highlighting other aspects of how they engage with their suppliers. According to reports, recent figures show that nearly half of the UK's small-to-medium-sized businesses experience late payment and the problems associated with this. The new regulations aim to tackle this by providing small businesses with the resources they need to make informed decisions about whom they do business with.

KEY FACTS

1. Who needs to prepare a report?

Companies (and LLPs) that exceed certain size criteria will need to report under the new regime. The criteria apply irrespective of whether they are private, public or quoted entities. Companies (and LLPs) have to report on an individual basis.

A company or LLP will be in scope of the new regime if, on its last two balance sheet dates, it **exceeded** two or all of the thresholds for qualifying as a **medium-sized** company under the Companies Act 2006. At present, these thresholds are:

- Annual turnover of £36 million
- Balance sheet of £18 million
- 250 employees

Key points to note on scope:

- These size criteria will be updated periodically in line with changes made to the Companies Act.
- No company is required to report in its first financial year, but it will be required to report in its second financial year if it exceeded two or all of the thresholds in its first financial year.
- Specific rules (and adjusted thresholds) apply to parent companies. In summary, a parent company would need to report under the new regime if both the parent itself and the group it heads exceed two or all of the thresholds.

2. When does the new regime come into effect?

The new regime came into effect on 6 April 2017. Companies within scope of the regime will have to report in relation to financial years that commence ***on or after*** that date.

3. What information will need to be included in a report?

Companies within scope will need to analyse which of their contractual arrangements count as 'relevant contracts' and then collate data in respect of these contracts. A relevant contract for the purposes of this new regime is a contract (i) for goods, services or intangible assets; and (ii) entered into in connection with the carrying on of a business. Contracts must have a significant connection with the United Kingdom, and specific rules apply to determine this. Financial services contracts are specifically excluded.

Companies will be required to collate data on contracts that fall within this scope, and provide information on the following:

- **Narrative commentary:**
  - Details of their standard payment terms (including details of the standard contractual length of time for payment of invoices);
  - Details of their process for resolving disputes relating to payment.
- **Statistical data:**
  - The average number of days taken to make payment of an invoice;
  - The percentage of invoices settled within 30 days, between 31 and 60 days, and in 61 days or longer (respectively) of the day of receipt;
  - The percentage of invoices not settled in accordance with the agreed terms.
- **Tick box statements:**
  - Confirmation of whether e-invoicing and supply chain finance are available;
  - Confirmation of whether the business charges to remain on a supplier's list;
  - Confirmation of whether the business is a member of a payment code.

4. How often will businesses have to report?

Companies (and LLPs) within scope will be required to report twice in relation to each financial year. The first report is due 30 days after the end of the first six months of a business's financial year (and must be published on the designated website within that time frame). The second report will need to be published within 30 days after the end of the business's financial year. Separate rules apply for companies that have extended or shortened their financial years.

5. Where will the reports be published?

Companies will have to upload and publish their reports on a designated central website managed by the government. Companies may also choose to publish their reports on their own websites, but this will not be sufficient to discharge the obligation to publish the report.

6.Who is responsible for the report?

A director will be required to approve the information before it is published on the central government website.

7. What are the consequences of failing to comply with the regime?

Both the directors and the company will commit a criminal offence and may be liable for a fine if they fail to publish a report or if they publish a false or misleading report. A director may avoid liability if he can show that he has taken all reasonable steps to ensure compliance.

However, the Department of Business, Energy and Industrial Strategy (**DBEIS**) has indicated that it will generally seek to encourage a business to comply with the reporting requirements before steps are taken to prosecute a company or its directors.

8. What practical steps should businesses be taking?

The following is a high level summary of steps that businesses should consider taking:

- Ensure that you have assessed whether the company or LLP in question is within scope of the new regime;
- For qualifying companies (or LLPs), assess which contracts fall within scope for the relevant company (or LLP);
- Assess when the regime will start to apply for qualifying companies and LLPs and determine the reporting periods in each financial year (and timeline for submission of the reports);
- For qualifying companies or LLPs within group structures, assess whether any steps will need to be taken to ensure that the necessary data can be extracted within the requisite time frames where group financial controls are operated on a centralized basis.

CHANGES TO THE UK PSC REGIME

Last year saw the implementation of the UK PSC regime, which requires most companies (and limited liability partnerships) incorporated in the UK to collect and keep information on those who own and control them, and to file that information on a central register of beneficial ownership. As from 26 June 2017, a number of changes have been made to the UK PSC regime. In overview, the changes that have been introduced (i) will require entities within scope of the PSC regime to update their PSC information at Companies House more frequently than they are currently required to do; and (ii) will also bring more types of UK entities within scope of the PSC regime. The changes are being made to the regime in order to bring it into line with the provisions of the Fourth Anti-Money Laundering Directive. An overview of the changes is set out below.

Obligation to update PSC register

With effect from 26 June 2017, new rules will govern both the timing and method of filing PSC information. Companies now need to update their PSC registers within 14 days of obtaining confirmation about any changes about the details of their persons with significant control or relevant legal entities, and will then be obliged to file that information with Companies House within a further 14 days. The relevant entity will need to complete the requisite form to notify Companies House of the change (as opposed to notifying the change as part of the Confirmation Statement). A new set of Companies House forms (PSC01 to PSC09) are to be used for these notifications. It is worth noting in this regard that, if a change has arisen in a company's PSC information prior to 26 June, which has been updated in a company's register, but which has not yet

been notified to Companies House as part of the company's confirmation statement, then the company will need to notify Companies House of this change within 14 days of 26 June 2017.

Impact on AIM companies (and other companies listed on prescribed markets) and other types of company

With effect from 26 June 2017, the UK PSC regime will now extend to companies listed on UK 'prescribed' markets, such as the Alternative Investment Market (AIM) and NEX Exchange (although obviously the PSC regime does not extend to non-UK companies that are listed on AIM and other prescribed markets); companies listed on 'regulated' markets will continue to be exempt. For companies listed on prescribed markets, which are coming within scope of these arrangements for the first time, the PSC Amendment Regulations provide for a four week transitional period ending on 24 July 2017, after which such companies will be subject to the same obligations to obtain and file information on people with significant influence or control over them. Companies that are now in scope will need to use this time to start the process of identifying any persons with significant control and relevant legal entities at this stage. Unregistered companies will also now come within scope of the regime and will benefit from the same transitional period until 24 July 2017.

Scottish Partnerships and Scottish Limited Partnerships

With effect from 24 July 2017 (after a transitional period that starts when the new rules come into effect on 26 June 2017), Scottish limited partnerships (which are active) and also general Scottish partnerships (where all of the partners are corporate bodies) will also come within scope of the PSC regime. Separate legislation has been passed to deal with these entities.

CORPORATE GOVERNANCE REFORMS

Overview

In keeping with the direction of travel signalled by the Prime Minister's inaugural speech in July 2016, the Government continues to emphasize that corporate governance reforms are a key priority on its agenda for 2017 and beyond.

In a discussion paper published at the end of November, the Government identified three key areas that will underpin its approach to enhancing big business through better corporate governance, as part of its broader goal of ensuring that the country has an economy that works for everyone. The discussion is framed around initiatives that will (i) ensure that executive pay is aligned to long-term performance; (ii) give greater voice to employees and consumers in the boardroom; and (iii) improve corporate governance standards in the largest held companies with the possible introduction of a corporate governance code. Views have been sought in respect of a number of possible approaches that could be taken in respect of these issues; this process is ongoing.

The question of executive pay in quoted companies remains contentious. However, perhaps of more immediate relevance to private companies are the second and third areas of review: namely, stakeholder engagement and the introduction of a corporate governance regime for private companies.

As a separate but thematically related endeavour, the House of Commons Select Committee (The UK Business, Energy and Industrial Strategy Committee) has recently published a report as part of its ongoing review of UK corporate governance (prompted by the alleged high profile corporate governance failures of BHS and Sports Direct and the related issue of executive remuneration). In this report, the committee makes a number of recommendations. The report indicates that these recommendations are not intended to represent a fundamental overhaul of the existing regime; that said, if implemented, they would introduce some significant changes. For now, perhaps the most relevant change to underline from the perspective of the private equity sector is the proposed development and introduction of a corporate governance code for larger private companies. The committee has recommended that the Financial Reporting Council, the Institute of Directors and the Institute for Family Business develop, with private equity and venture capital interests, a corporate governance code appropriate for the largest privately held companies. The proposal is that in the first instance this should be a voluntary compliance regime, with the possibility of a mandatory regime being introduced in due course, if compliance with the voluntary regime fails to raise standards.

PRIVATE EQUITY WATCH

LONDON PRIVATE EQUITY PARTNERS

Peter Baldwin
Partner
peter.baldwin@ropesgray.com
T +44 20 3201 1604
M +44 7515 198 003

Helen Croke
Partner
helen.croke@ropesgray.com
T +44 20 3847 9035
M +44 7772 225 783

John Newton
Partner
john.newton@ropesgray.com
T+44 20 3201 1640
M+44 7968 787 596

Will Rosen
Partner
will.rosen@ropesgray.com
T +44 20 3201 1644
M +44 7747 601 845

Phil Sanderson
Partner
philip.sanderson@ropesgray.com
T+44 20 3201 1646
M+44 07775 671 904

Kiran Sharma
Partner
kiran.sharma@ropesgray.com
T +44 20 3201 1647
M +44 7979 150 827

OTHER CONTRIBUTORS

Brenda Coleman
Partner (Tax)
brenda.coleman@ropesgray.com
T+44 20 3201 1625
M+44 7775 904 003

Andrew Howard
Partner (Tax)
andrew.howard@ropesgray.com
T+44 20 3201 1538
M+44 7741 314 565

Fay Anthony
PSL Counsel (Private Equity Transactions)
fay.anthony@ropesgray.com
T+44 20 3201 1511
M+44 7741 272 557

Rohan Massey
Partner (Privacy & Data Security)
rohan.massey@ropesgray.com
T+44 20 3201 1636
M+44 7469 854 198

Malcolm Hitching
Partner (Finance)
malcolm.hitching@ropesgray.com
T+44 20 3847 9030
M+44 7753 832 410

LONDON OFFICE LOCATION

60 Ludgate Hill, London EC4M 7AW
T +44 20 3201 1500 | F +44 20 3201 1501

ROPES & GRAY

ropesgray.com

LONDON | NEW YORK | WASHINGTON, D.C. | BOSTON
CHICAGO | SAN FRANCISCO | SILICON VALLEY
HONG KONG | SEOUL | SHANGHAI | TOKYO