

## Register Discrepancy Reporting Summary

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## Contents

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<b>INTRODUCTION.....</b>	<b>3</b>
<b>KYC/CDD AND REGISTRY INFORMATION .....</b>	<b>4</b>
<b>KYC/CDD DISCREPANCIES .....</b>	<b>5</b>
<b>DISCREPANCY NOTIFICATIONS: COMPANIES HOUSE GUIDANCE .....</b>	<b>6</b>
<b>HOW TO MAKE A DISCREPANCY REPORT .....</b>	<b>8</b>
<b>AFTER A REPORT IS MADE .....</b>	<b>9</b>
<b>CONCLUDING COMMENTS.....</b>	<b>10</b>

## Introduction

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There's been much discussion over the last two years about the creation of company registers that were introduced under Articles 30 and 31 of the 5<sup>th</sup> Anti-Money Laundering Directive (“**5AMLD**”). These amendments were geared towards improving the level of **transparency** about and access to information about the **ultimate beneficial owners (“UBOs”)** of **legal entities**.

In December 2019, several amendments were introduced to the United Kingdom’s **Money Laundering Regulations**<sup>1</sup> that took effect on **10 January 2020**.

**“NEW MLR AMENDMENTS REQUIRE THAT OBLIGED ENTITIES MUST EVIDENCE THEY HAVE CHECKED COMPANIES HOUSE’ REGISTRY AS PART OF KYC ONBOARDING PROCESS”**

Some of these amendments now requires that relevant persons<sup>2</sup> **check information** on the Companies House register (“**Register**”) as part of their KYC/CDD onboarding processes in relation to the **UBOs of legal entities**. In the UK, this applies to **limited liability companies, unregistered companies, limited liability partnerships, Scottish limited or qualifying partnerships (collectively, “legal entities”)** and information about individuals identified as **persons with significant control (“PSCs”)**.

## KYC/CDD and Registry Information

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The new Regulation 30A (1) of the MLRs requires that **at the time of establishing a business relationship**, a relevant person must **collect proof of registration** or an **excerpt of the registration** of customers who are legal entities. This means that KYC/CDD processes must be updated to incorporate:

- (a) Verification of a legal entity's registration with Companies House, and
  - (b) Collection [and retention] of information to demonstrate that this verification took place.
- However, the MLRs make it clear that relevant persons may not rely solely on the information recorded on the Register to identify and verify the identity of a UBO's beneficial owner (Regulation 28(9)).

## KYC/CDD Discrepancies

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The KYC/CDD undertaken by a relevant person will, in some instances, identify KYC information about a UBO that is inconsistent that that recorded on the Register. Under Regulation 30A(2) of the MLRs, a relevant person must now **report to Companies House any discrepancy** it finds between the KYC/CDD information it has about the UBO(s) of a legal entity customer and any other information that becomes available to it in the course of carrying out its duties under these Regulations (“**Notification Obligation**”).

Regulation 27(8) of the MLRs has also been amended to require that a relevant person also apply CDD measures to existing customers where there is a legal obligation to contact the customer to review any information that relates to a customer’s UBO and understanding its ownership or control structure.

**“AMENDMENTS TO REGULATION 27(8) OF THE MLRS SUGGEST THAT THE NOTIFICATION OBLIGATION ALSO APPLIES WHEN DISCREPANCIES IN EXISTING CUSTOMER CDD IS DISCOVERED.”**

This would appear to suggest that the Notification Obligation also applies when discrepancies in relation to UBO information are identified during the ongoing monitoring customers or from periodic KYC reviews of existing customers.

## Discrepancy Notifications: Companies House Guidance

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On 10 January 2020, Companies House published further guidance on the Notification Obligation.

➤ **Obligation to Report a Discrepancy**

A Discrepancy Report must be made when a **new business relationship** is being established. As noted above, this obligation would likely also extend in relation **existing customers**.<sup>3</sup> Discrepancy Reports submitted to Companies House are excluded from public inspection under the Companies Law.

➤ **When to Report a Discrepancy (“Discrepancy Report”)**

A Discrepancy Report should be submitted to Companies House **as soon as reasonably possible**. Bulk reporting on a periodic basis is not permitted.

➤ **What Must Be Reported**

The focus is on clear factual errors, not typing errors. It does not include any additional KYC/ CDD that a relevant person holds about a customer or its UBOs that would otherwise not be recorded on the register (e.g. the individual’s source of income or country of birth). Reportable discrepancies include inconsistencies in relation to:

### Individuals

- Name
- Service address
- Part of the UK (or country or state) where they usually live
- Nationality
- Day and month of birth
- Date they became a registrable person for the company
- Nature of control over the company
- restrictions regarding the disclosure of their identity as a PSC
- Missing PSC or Incorrect PSC type

### Relevant Legal Entities (RLEs)

- Corporate or firm name
- Registered or principal office
- Legal form and law by which it’s governed
- Register of companies in which it is entered (including details of the state) and registration number
- Date that it became the company’s RLE
- Company statement
- Nature of control over the company

Other registrable person (ORP)

- Name
- a principal office
- Legal form and the law by which it is governed
- Date they became a registrable person for the company
- Nature of control over the company

**“DISCREPANCIES MUST BE REPORTED AS SOON AS POSSIBLE USING  
COMPANIES HOUSE ONLINE REPORTING FORM”**

## How to Make a Discrepancy Report

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Companies House has introduced an online reporting template to use when submitting a Discrepancy Report:

# Report a register discrepancy with Companies House

## Your information

Your organisation, or your name if acting as an independent \*

The reporting template can be accessed here:

Url: <https://www.smartsurvey.co.uk/s/report-a-discrepancy/>

The Discrepancy Report must include detailed information about the relevant person reporting the discrepancy and the and the legal entity for whom the discrepancy has been identified:

- Name and type of business of the obliged entity making the report
- date when the discrepancy was first noticed
- Full name, email address and contact telephone number of the person making the report
- Business address of the obliged entity making the report
- company name and number of the entity being reported as having a discrepancy
- Type of discrepancy - for example if it relates to a person, an RLE, a statement or a missing PSC
- Details of the discrepancy - I.e. incorrect address or an invalid PSC statement

### Suspicious Activity Reporting Not Affected

The Guidance makes it clear that reporting a discrepancy about a legal entity's UBO is not a substitute for submitting a Suspicious Activity Report ("SAR").

The POCA requirements for submitting a SAR, where appropriate, continue to apply.

## After a Report Is Made

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Companies House will investigate the Discretionary Report. If the inconsistency is found to be “valid”, Companies House will contact the legal entity involved, ask for its comments and request that it resolve the discrepancy on the Register. It will not tell the legal entity about the report itself, although it is likely that it will discern from the new reporting requirements that a discrepancy about its information has been reported to Companies House.

Companies House will inform the relevant person about the outcome of its investigation.

## Concluding Comments

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**“FINANCIAL INSTITUTIONS WILL NEED TO REVIEW THEIR PROCESSES AND DETERMINE HOW DISCREPANCIES WILL BE IDENTIFIED, REPORTED, TRACKED AND RESOLVED”**

Financial institutions will need to incorporate these new requirements into their onboarding and existing customer KYC/CDD review processes. They will need to consider not only the reporting requirements set out by Companies House, but also how they will ensure that their customer records are maintained and updated where discrepancies have been identified, and in determining the materiality of any inconsistencies.

For financial institutions with operations in other European jurisdictions, they will also need to consider the reporting requirements of other Member States and how they will also be satisfied as part of their KYC/CDD processes.

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