Register of people with significant control

From 6 April 2016 most UK companies and LLPs will be required to maintain a Register of People with Significant Control (a "PSC Register"). In many cases this requirement will be an additional administrative burden that companies and LLPs should be considering now from a compliance perspective. Broadly, a person with significant control (a "PSC") is someone who owns or controls a company or LLP.

The requirement for companies to maintain a PSC Register was introduced by the Small Business, Enterprise and Employment Act 2015 ("SBEEA") and the provisions of the SBEEA are being brought into force in stages.

The rationale for the new PSC regime is to promote transparency in how companies are run and by whom. The aim is to reduce financial crime (such as money laundering, tax evasion and terrorist financing) by requiring companies and LLPs to disclose details of their major shareholders or those who have significant control. The regime will also assist prospective investors.

What companies and LLPs are required to do

From 6 April 2016, companies and LLPs (see further below regarding LLPs) are required to maintain a PSC Register. From 30 June 2016, companies and LLPs are required to file their PSC information at Companies House with the Confirmation Statement (or on incorporation) and to keep the information up to date. The Confirmation Statement replaces the Annual Return from 30 June. The registrar will maintain the PSC information in a publically available central register. The PSC information that must be provided includes, amongst other things, a name, service address, residential address, date of birth, nationality and the nature of their control over the company or LLP. Some information about a PSC can be protected from disclosure.

Companies and LLPs will have to take steps to establish who their PSCs are and note them on their PSC register (and subsequently file that information at Companies House).

Companies will also be required to make a note on their PSC register where the company:

1. Does not have any PSCs;
2. Has reason to believe it has PSCs but has not been able to confirm details; or
3. Has made investigations but has not received a response or doesn't possess relevant information.

PSCs themselves are obliged to provide information to the company or LLP of which they are a PSC.

Information

There are criminal penalties for non-compliance with the requirements by companies, LLPs and PSCs. Furthermore, PSCs who fail to provide PSC information where required to do so can have restrictions placed on their shares and rights.

The table below provides a summary compliance schedule for companies and LLPs.

Now	Companies should be collating information about and establishing their PSC's
6 April 2016	Companies and LLPs are now required to maintain a PSC register Applications can be made from this date for PSCs to not appear on the register from 30 June where they are in the process of divesting themselves of their interest n the company/LLP that makes them a PSC. PSCs have 12 weeks to cease being a PSC from 6 April if they so choose.
30 June 2016	Companies and LLPs are now required to file PSC information at Companies House.

When is a person a 'PSC'?

A person is a PSC of a company if they meet at least one of the five conditions for significant control (see further below for the LLP PSC conditions). The five conditions are that the person:

1. Owns more than 25% of the shares directly or indirectly;
2. Holds more than 25% of the voting rights directly or indirectly;
3. Has the power to appoint or remove the majority of the board;
4. Has the right to exercise or actually exercises significant influence or control over the company; or
5. Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity which itself satisfied any of the first four conditions.

By definition, a PSC is an individual but if a company or LLP is controlled by a legal entity that (broadly) would have come within the PSC definition had it been an individual, then the company or LLP will need to note that entity on its PSC register.

'Significant influence & control'

On 21 December 2015 the long awaited draft statutory guidance on the meaning of "significant influence and control" and how companies and LLPs should interpret this phrase in determining who is a PSC was published. The guidance is a must read for all those involved in and/or responsible for the legal compliance of their company or LLP [i.e. company directors and secretaries, LLP members and designated members and advisors). It provides a set of non-exhaustive situations and principles which are indicative of there being significant influence or control and therefore in determining whether a person is a PSC for the purposes of the fourth and fifth conditions. It also provides some "safe harbours" where a person will not be considered to have significant influence or control.

The four guidance documents can be accessed on the Institute of Chartered Secretaries and Administrators website here:
https://www.icsa.org.uk/about-us/policy/psc-register-guidance-consultation

Once finalised, the guidance will be effective from 6 April 2016.

Clarification of the proposes PSC rules from BIS

On 17 December, the Department for Business, Innovation and Skills published its response to the PSC Register consultation. The response contains the following clarifications:

1. UK registered companies that are required to comply with Chapter 5 of the Disclosure and Transparency Rules (i.e. Companies on the LSE Main List or AIM who are required to disclose major shareholdings) are exempt from having to keep a PSC register.
2. UK companies with voting shares admitted to trading on a regulated market in the EEA or in the USA, Japan, Switzerland and Israel are also exempt from having to keep a PSC register.

Companies will be required to show in their PSC records:

1. Which of the five conditions for control the PSC meets; and
2. The extent of the control by reference to three bands. For share ownership and voting rights, the bands are ownership of (a) more than 25% up to and including 50%, (b) more than 50% and less than 75% and (c) 75% or more of the share capital.

If a person meets the first three PSC conditions (see above under "When is a person a PSC?"), the company is not required to record if and how the fourth condition is met.

A company's PSC register can be inspected for free. When a copy of the register (or any part of it) is requested a company can charge a fixed fee per request of £12.

It will be possible to apply to have all or some of the information about a PSC withheld from the public register or from being shared with credit reference agencies {CRAs) if the PSC is at serious risk of harm or intimidation due to the activities of the company or as a result of the PSC's association with the company.

There will be a transitional period within which time a person can divest itself of its interest in a company so that it can cease to be a PSC and avoid appearing on the PSC Register from the outset of the new regime. As a result of the consultation, a person has 12 weeks (instead of the originally proposed 28 days) to cease to be a PSC.

It is likely (given the changes to the implementation timetable for the PSC regime) that the 12 weeks will apply starting from when a person is entered onto a PSC register on 6 April and the application to not appear on the register is made before 30 June. Outside this transitional period provision, clearly ownership and control of companies will change over time and this information needs to be updated on the PSC Register as and when appropriate.

Where an English or foreign limited partnership holds shares or rights in a UK company, limited partners that do not take part in the management of that limited partnership will not meet the first three conditions for significant control just by virtue of being a limited partner.

LLPs will be subject to the same requirement to maintain a PSC Register as companies. The draft PSC regulations applicable to LLPs were published on 25 January 2016. It is proposed that the conditions to establish whether a person has significant control of an LLP will be based on:

1. The right to share in more than 25% of the surplus assets on a winding up;
2. Holding more than 25% of the voting rights conferred on members;
3. Having the right to appoint or remove a majority of those involved in the management of the LLP;
4. The right to exercise significant influence or control over the LLP; and
5. The right to exercise significant influence or control over the trustees or members of a trust of firm that is not a legal person, where those trustees or members would meet any of the conditions above (or would do if they were individuals).

For further information or advice please contact the Ensors Audit & Assurance team
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