

The New PSC Register: Company Requirements

What?

The Small Business, Enterprise and Employment Act 2015 introduced a requirement for UK companies and limited liability partnerships (**LLP**) to prepare and maintain a register of the people with significant control over them (**PSC**).

Who?

All UK incorporated companies, LLPs and UK Societas Europaea have to comply with the requirements for a PSC Register other than those UK companies which are subject to specified disclosure requirements such as UK listed companies.

Overseas entities that operate in the UK, whether through a UK registered branch or otherwise, are not subject to the regime. However, having an overseas company in a group structure does not mean the trail of identifying PSCs stops with that company.

When and Where?

The PSC Register must be maintained from 6 April 2016. It must be kept by the company or LLP available for inspection. From 30 June 2016, the relevant UK companies and LLPs will need to file the PSC Register with Companies House when it delivers a confirmation statement. Confirmation statements are to replace annual returns from 30 June 2016.

Why?

The aims of the new PSC Register are to increase transparency of UK companies and build upon trust in investment in the UK.

By the introduction of the new PSC Register, the UK will be the first major jurisdiction to implement a public beneficial ownership regime, required by the Fourth Money Laundering Directive which needs to be implemented by EU members by June 2017.

LLPs

For the purpose of this note we have set out the requirements for a UK company. The PSC Register requirements apply largely in the same way to LLPs, although there are certain differences to reflect the structure of LLPs.

Who is a PSC?

In respect of a company, a PSC is an individual who meets one or more of the following five conditions (**PSC Conditions**):

1. directly or indirectly owns more than 25% of the shares of the company;
2. directly or indirectly holds more than 25% of the voting rights of the company;
3. directly or indirectly holds the right to appoint or remove the majority of the directors to the board;
4. otherwise has the right to exercise, or actually exercise, significant influence or control; and/or
5. holds the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm which is not a legal entity, but which would itself satisfy any of the first four conditions if it were an individual.

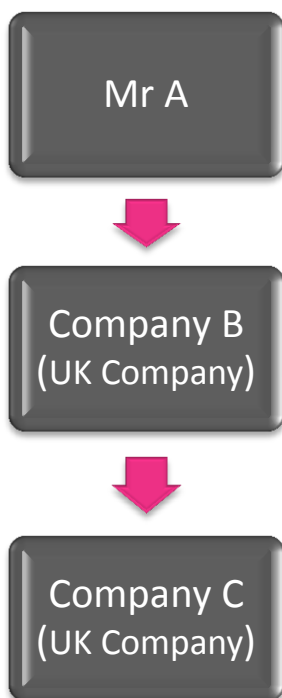
What is significant here is that the transparency of the PSC Register applied to individuals who have the power to direct a company's activities not just the ultimate major shareholders.

Considerations for a Group Company

Where a legal entity rather than an individual meets one or more of the PSC Conditions in respect of a company it will have to be put on that company's register if it holds: (i) its own PSC Register or (ii) is exempt from doing so because of other disclosure requirements that apply to it, i.e. it is a "Relevant Legal Entity" (**RLE**) and it is the first RLE in the ownership chain.

The company does not have to look beyond the first RLE in its ownership chain:-

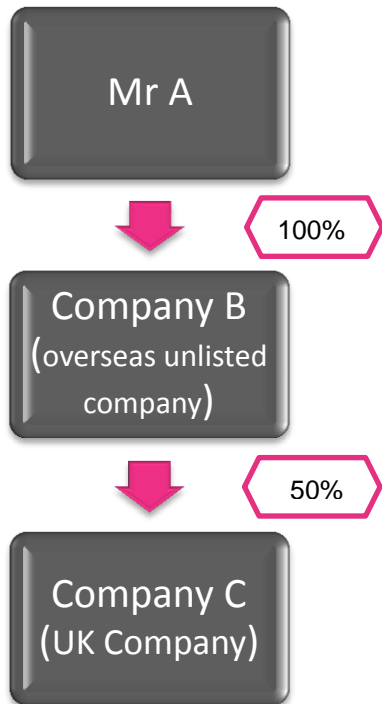
Example 1



- Company B will be included in the PSC Register of Company C as it is a RLE.
- No reference to Mr A is required in Company C's PSC Register.
- Company B will need to name Mr A in its PSC Register.

As a result, PSCs can be identified through the chain of companies. *PSC information will not have to be repeated in the register of each subsidiary in the chain.*

Example 2



- Mr A will need to be included in the PSC Register of Company C, even though he holds no direct interest.
- Company B, as an overseas un-listed company, is not a RLE and, therefore will not be included in Company C's PSC Register.

A company may have more than one PSC or it may have no PSCs. It could be difficult to establish the PSCs where ownership structure is not straightforward.

Information Requirements

The PSC Register must contain specific information about PSCs. For individual PSCs the PSC Register is to include their name, date of birth, nationality, address (service and usual residential), country of residence, the date he became a PSC and the nature of his control. The residential address and day of birth of the individual PSC will not be included in the public PSC Register at Companies House.

For RLEs, its corporate name, address (registered or principal office), legal form of the RLE, governing law, relevant register and number (if applicable), date it became a registerable RLE in respect of a company and the nature of its control need to be included on the relevant PSC Register.

In both cases there is prescribed wording describing the nature and consent of the control to be inserted in the PSC Register.

All of this information **must be** confirmed with the individual but not the RLE before inclusion in the PSC Register.

Please note that, as with directors, an application can be made to exclude certain personal details where the directors would be at serious risk of violence or intimidation if such information was made publicly available.

A PSC Register must never be empty. Even when a company is in the process of making enquiries to ascertain whether or not it has a PSC or RLE, that fact must be recorded.

Whose responsibility is it to identify the PSCs / RLEs?

The Company

A company must take reasonable steps to find out who its PSCs or RLEs are and identify them. If the company does not have the requisite information in respect of its PSCs or RLEs it must give a notice to anyone it knows or has reasonable cause to believe is registrable on behalf of the company.

A company may also give a notice to a person if it knows or has reasonable cause to believe that the person either knows the identity of someone that is registrable, or knows the identity of someone likely to have that knowledge.

PSCs and RLEs

PSCs and RLEs have an obligation to not only respond to a notice from a company to disclose information but also a positive obligation to notify their position to companies. This obligation is triggered by certain criteria and is time limited.

Both companies and PSCs and RLEs are required to keep the information on the PSC Register up-to-date.

Non-compliance Penalties

If companies do not comply with their duties in relation to the PSC Register they and their directors, face criminal liability. If found guilty, those in breach face up to two years imprisonment and/or a fine.

PSCs and RLEs must respond to notices and provide information, or volunteer such information where the company doesn't contact them. Failure to respond to a company's request for information will entitle the company to effectively freeze their interest in the company until compliance.

This may lead to a loss of dividend, voting and other rights while the interest is frozen. In addition, failure to comply with the legislation is a criminal offence.

Further Guidance

The Government has published guidance on its website on the new PSC regime, including statutory guidance on the meaning of "significant influence or control". A link to the guidance is here: <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>.

Contact

If you would like to discuss the PSC Register requirements or require additional advice or assistance with preparing your company for the requirements, then please contact Ciara Lagan,



CIARA LAGAN

Partner

Direct Dial: +44 (0) 28 9082 0511

Mobile: +44 (0) 78 2523 7736

E-Mail: Ciara.Lagan@tughans.com

Notes

While great care has been taken in preparation of the content of this article, it does not purport to be a comprehensive statement of the relevant law and full professional advice should be sought before any action is taken in reliance on any item covered.

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