A guide to the register of people with significant control (the “PSC register”)

Q: What is the PSC register and why has it been introduced?

A: The PSC register is a new statutory register that certain UK companies and LLPs will be required to maintain from 6 April 2016 as a result of changes introduced by the Small Business, Enterprise and Employment Act 2015 (the “Act”). These provisions are supplemented by regulations and both statutory and non statutory guidance.

It is a register of individuals or legal entities that have significant control over the company (“people with significant control” or “PSCs”) and is designed to (i) ensure that individuals who are the ultimate owners or controllers of a company are identified and details of their interests made public and (ii) deter and impose sanctions on those who hide their interests.

The new requirements follow the proposal made by the UK at the G8 summit in 2013 to increase the transparency surrounding the ownership of companies. The EU has also introduced similar measures in the Fourth Money Laundering Directive which must be implemented by all member states by 26 June 2017.

Q: Who needs to maintain a PSC register?

A: The obligation to maintain a PSC register applies to all UK companies (including dormant companies) and LLPs apart from:

- those subject to the disclosure requirements of the FCA’s Disclosure and Transparency Rules (i.e. London Stock Exchange main market and AIM companies)
- legal entities with voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel. (UK subsidiaries of such entities will however be required to keep a PSC register.)

There are criminal penalties for companies and their officers for non compliance.

Q: Where do I start?

A: You are required to take reasonable steps to find out whether there are people that have significant control or influence over the company:

- You must then contact these people, or others who might know them, to confirm they meet one or more of the conditions (see below) and obtain the relevant information to go on the PSC register.
- Once you have this information, you must then put the information on your PSC register.
- The information on the PSC register must be kept up to date.

1  The register must be kept either at the company’s registered office or at another location which the company has notified to Companies House. The register must be available for public inspection and information on the register will need to be filed with Companies House at least every 12 months via the annual confirmation statement.

2 The Register of People with Significant Control Regulations 2016 have been laid before Parliament for approval.

3 https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships

4 The Guidance outlines the steps a company should typically take to identify its PSCs or registrable relevant legal entities e.g. reviewing register of members, articles of association or any shareholder agreements. While the investigations are ongoing, you must enter this fact and the stage you have reached on the PSC register.
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Q: Who is a person with significant control?
A: A PSC is an individual who meets one or more of the following conditions:
- Directly or indirectly holds more than 25% of the shares
- Directly or indirectly holds more than 25% of the voting rights
- Directly or indirectly holds the right to appoint or remove the majority of directors
- Has the right to exercise, or actually exercises significant influence or control

Diagram 1

Diagram 2

Both the Act and regulations contain detailed provisions relating to the interpretation of the above conditions. The Government has also published draft statutory guidance on the meaning of significant influence or control.

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5 A person is treated as holding a share indirectly if it has a majority stake in a legal entity that holds the share or right itself or through a chain of legal entities each of which (other than the last) has a majority stake in the entity below it and the last of which holds the share or right in the UK company.

6 The Register of People with Significant Control Regulations 2016
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Q: What about corporate shareholders?

A: If the company is owned or controlled by a legal entity and not an individual, your PSC register may need to put the legal entity on the PSC register if it is both relevant and registrable.

A legal entity is relevant (i.e. a relevant legal entity (“RLE”) ) if it:

• Would have been classed as a person with significant control, had it been an individual; and
• Has to maintain its own PSC register or is subject to the FCA’s disclosure and transparency rules or has voting shares admitted to trading on a regulated market in the UK or EEA.

A relevant legal entity is registrable in relation to a company if it is the first relevant legal entity in the company’s ownership chain. If the legal entity in question is not a registrable and relevant legal entity, it will not appear on the register of the company and the company will need to look further up the chain of ownership to identify any registrable PSC.

So, for example in diagram 1 below, Company B is a registrable RLE in relation to Company A and must be entered on Company A’s PSC register. This is because Company B owns 100% of the shares in Company A and Company B is a UK company that keeps a PSC register. Company A is not required to look further at its chain of ownership for any indirect interests held via Company B as these are not registrable in relation to Company A. For this reason, Company C and Individual 1 will not be entered on Company A’s register.

Diagram 1

In diagram 2 above, Company C will be entered on Company B’s register as it is a UK Company and the first relevant legal entity in Company B’s chain of ownership. Company C is registrable in relation to Company B only. Individual 1 does not go on Company B’s register even though he holds an indirect interest in that company. Instead, individual 1 is only required to be entered on Company C’s register. However, if individual 1 were to hold a direct interest in Company A which met one or more of the Conditions, cumulative with an indirect interest through companies B and C, that individual’s details (in addition to Company B’s details) must be entered on Company A’s PSC Register. In those circumstances, there is a separate obligation on Individual 1 to inform Company A that he must be entered on Company A’s PSC Register.
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Q: What information needs to be included?
A: Once a PSC has been identified, you must obtain and then confirm the following details on the register about the PSC: (i) name (ii) date of birth (iii) nationality (iv) country, state or part of the UK where PSC usually lives (v) usual residential address (vi) the date the individual became a PSC in relation to the company (vii) which of the Conditions the individual meets and (viii) any restrictions on disclosing the PSC’s information that are in place.

Only confirmed information on individual PSCs should be entered on the register. Information is treated as confirmed if (i) the PSC supplied the company with the information or (ii) the information was provided to the company with the knowledge of the PSC or (iii) you asked the PSC to confirm the information was correct and they confirmed this or (iv) you hold previously confirmed information and have no reason to believe it has changed.

Q: What if I can’t find information to determine who the PSC is?
A: The company is entitled to serve notice on anyone it believes has information that will help identify a PSC or relevant legal entity. Notices require the addressee to respond within a month. If they fail to do so, they commit a criminal offence. If they fail to respond to an additional notice, you can impose restrictions on shares.

Q: What if there are no PSCs?
A: The requirements apply whether the company has a PSC or not. If reasonable steps have been taken to identify the existence of a PSC and the company is comfortable there are no individuals or legal entities which qualify as such, this fact must be noted on the PSC register. The Guidance states that the register must say: "The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company".

Q: Can I leave the PSC register blank if I don’t have the relevant information?
A: No. You must not leave the register blank. The Guidance sets out the official wording which must be entered both on the company’s own PSC register and when filing information on the central public register at Companies House. This wording is in addition to the relevant information entered on the register.

Note: Specific legal advice should be taken before acting on the subject matter of this note.