

# NEW REGISTER FOR UK COMPANIES OF PERSONS WITH SIGNIFICANT CONTROL

**There are new legal requirements applying to all UK companies concerning their ultimate individual control. The broad framework of the new provisions are contained in the Small Business Enterprise and Employment Act 2015 (SBEE).**

One of the most notable new provisions is the requirement to maintain a register of persons with significant control (PSC) which the majority of UK companies will be required to maintain from April 2016, identifying its ultimate beneficial owners and controllers. The PSC register is one of a number of measures aimed at increasing company accountability through improved transparency of ownership.

Much of the detail on the PSC register is to be provided by secondary legislation. The government published a consultation paper on the current proposals, along with draft regulations (the Register of People with Significant Control Regulations 2015) in June 2015. The draft Register of People with Significant Control Regulations 2016 (PSC Regulations) were published and laid before Parliament on 25 January 2016 for approval and BIS published its final amended statutory guidance on 11 February 2016.

The Act is currently scheduled to be implemented following the timetable below:

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**6 April 2016** Companies will need to keep a PSC register from this point, in preparation for the requirement to file this information at Companies House.

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**30 June 2016** Companies will need to keep and file information from their PSC register at Companies House either on incorporation or when filing an updated check and confirm statement, which will replace the current annual return obligation (the Public PSC Registry).

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## Application of the PSC register

The new PSC Regulations will apply to all UK companies (including LLPs) with the exception of those subject to DTR5 disclosure obligations, such as companies traded on the LSE or AIM



markets, as these companies are already required to provide substantial information for the public record in relation to their major shareholding.

The draft regulation extends this exclusion to companies that have shares admitted to trading on any EEA state regulated market and certain other markets.

### Persons with significant control

Significant control is defined by the Act as an individual that meets one or more of the following conditions:

- Directly/indirectly owns more than 25% of the shares in the company.
- Directly/indirectly holds more than 25% of the voting rights.
- Directly/indirectly has the power to appoint or remove the majority of the board.
- Actually exercises, or has the right to exercise, significant influence or control over the company.
- Actually exercises, or has the right to exercise, significant influence or control over any trust or firm that is not a legal entity, which in turn satisfied any of the first four conditions over the company.

### Completing the PSC register

Each company will be under a duty to take reasonable steps to find and identify any registrable person or legal entity. Enquiries to potential PSCs are to be made by notice, the requirements for which are set out in the Companies Act 2006 as amended by the SBEE and the PSC Regulations (the Act). Where a company has not complied with these notice requirements, registrable individuals or legal entities have a proactive obligation under the draft regulations to inform the company of their interest.

If individuals or legal entities do not respond to a company's request or notice, the company can freeze the relevant holding or interest until the information is received. Companies and PSCs that fail to gather or provide the required information may have committed an offence punishable by a fine or imprisonment.

The PSC Regulations propose that the register record the following information:

- Personal information for individuals – including their name, service address, nationality, date of birth. However, it should be noted that the draft regulations contain a protection regime to limit the amount of sensitive personal information included on the Public PSC Register.
- Details of nature of control exercised – this will be by reference to one of the five conditions as above. Where the condition relates to shares or voting rights, a percentage band setting out the extent of the holding must also be disclosed (above 25% but less than 50%).
- Status of investigations – where a definitive position as to the ultimate control of a company has not been established (or a company has concluded that there are no PSCs), the company must include certain statements on the register and confirm the steps taken to identify registrable persons or legal entities.

A company's PSC register must be kept at its registered office and be available for public inspection (akin to the register of members). A copy of a company PSC register can also be requested for a fee.

From June 2016, information from a company's register will then be

included on the Public PSC Register, a publicly searchable database held at Companies House.

### Group structures

Where a legal entity is regarded as having significant control over a company, the company is required only to enter the details of that legal entity on the PSC Register rather than providing a full corporate ownership chain until an individual is identified (providing that the legal entity is itself required to maintain its own PSC Register).

### The Fourth Money Laundering Directive

The EU Fourth Money Laundering Directive was adopted in June 2015 and requires all EU member states to hold registers on company beneficial ownership from 2017. Whilst similar to the UK model, the directive may require further revision to the Act before the 2017 deadline. For example, the directive requires that entries on the central register are current, rather than being submitted annually as required under the proposed regime.

### Next steps

It is key for all UK companies and LLPs who do not fall within the "listed entity" exemption set out in the PSC Regulations to commence the process of putting together their new PSC Register in readiness for the April 2016 deadline. Initially this will involve identifying your PSCs and sending them notifications to that effect seeking confirmation of the details required. Once the register is compiled, it will need to be regularly updated. We would be happy to advise if there is any doubt as to the identity of your PSCs or in respect to the compilation process.



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