



Briefing

Beneficial Owners – from the Shadows, into the Light

Understanding your Obligations

by Sumaira Choudary

One of the aims of The Small Business, Enterprise and Employment Act 2015 (**Act**) is to increase transparency around company ownership and control. This is to be done by imposing a requirement to publish information concerning those with control. Additionally, the Act discourages and looks to sanction those who seek to hide significant controlling interests.

The law is still in its infancy and presently only accompanied by a draft set of regulations entitled “The Register of People with Significant Control Regulations 2015” (**draft PSC Regulations**), which is currently under consultation.

The Act introduces a new Part into the Companies Act 2006 (**Companies Act**), which introduces (amongst other provisions):

- a requirement to keep and maintain a public statutory register of ‘**persons with significant control**’ (**PSC Register**); and
- duties on each company to collate and obligations on others to supply information, in order to enable the maintenance of the PSC Register.

This article focuses on the requirements introduced to keep and maintain the PSC Register.

When will the requirements be in force?

The obligation to keep a PSC Register is scheduled to come into force from April 2016 and the requirement to send information on the PSC Register to Companies House from 30 June 2016.

Who do the requirements apply to?

Broadly, the requirements apply to all UK companies other than publically listed companies.

Although the requirements do not presently extend to limited liability partnerships (**LLPs**), the Government has indicated it intends to extend the requirements to LLPs in January 2016.

What is “significant control”?

A person with significant control (a **PSC**) over a company is an individual that meets (either solely or jointly) **one or more** of the following conditions:

1. holds, directly or indirectly, more than (in the case of a company with a share capital) 25% of the nominal share capital of a company and (in the case of a company without a share capital) a right to share in more than 25% of the company’s capital or profits; or
2. holds, directly or indirectly, more than 25% of the voting rights in the company; or
3. holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company; or
4. has the right to exercise, or actually exercises, **significant influence or control** over the company; or

5. (in the case of trustees of a trust or the members of a firm that is not a legal person) meets one or more of the above conditions in their capacity as such or would do if they were individuals, and the individual has the right to exercise, or actually exercises **significant influence or control** over the activities of that trust or firm.

Guidance about the meaning of '**significant influence or control**' is still awaited from the Secretary of State.

Points to note

By way of interpretation of the extent of the above conditions, it is worth noting that:

- in the case of any jointly held shares, each person is treated as holding that share or right; and
- nominee arrangements will be ignored. Therefore, a share held by a person as nominee for another is to be treated for the purposes of new Schedule 1A of the Companies Act as being held by the beneficiary (and not by the nominee).

Which PSC's are obligated to provide information?

The obligation to provide the information set out below falls upon PSCs (i.e. individuals and relevant legal entities) that are '**registrable**' (section 790M(2) of the Companies Act).

All individuals and relevant legal entities are registrable unless they fall within the definition of **non-registrable**. The statutory definition of **non-registrable** is complex, paraphrasing for the present purposes, an individual or relevant legal entity is **non-registrable** if their interest in the company in question is held through one or more other legal entities over each of which they have significant control and each of which is a '**relevant legal entity**'. A **relevant legal entity** is a legal entity that would have been a PSC had it been an individual and it is subject to its own disclosure requirements (for example, it is under an obligation to have and maintain its own PSC Register).

It is also worth noting that the Act also contains anti-avoidance provisions.

Effect on Group Structures

Worked Example:

Where a company (**Target**) has a PSC who is a legal entity (a **Corporate PSC**) and the Corporate PSC is required to maintain its own PSC Register, a PSC of the Corporate PSC (**Ultimate PSC**) need not be registered as a PSC in relation to the Target. In such a case

- the Corporate PSC will be recorded in the Target's PSC Register as a relevant legal entity; and
- the Ultimate PSC will be recorded in the Corporate PSC's PSC Register.

Therefore, it will be necessary to trace through the PSC Register of the Corporate PSC to determine the ultimate control of the Target.

What information must the PSC Register contain?

In the case of all PSCs:

- details of the date on which a PSC became a registrable person/relevant legal entity (as applicable); and
- the nature of his, her or its control.

The draft PSC Regulations also provide each PSC Register is to stipulate:

- which of the 5 conditions (see above at '*What is significant control*'?) each PSC in question meets;
- (in cases where the ultimate control of a company has not yet been ascertained) the status of the company's investigations in this respect and details of any restriction notices served; and
- in addition to the type of control, an indication of the extent of each PSC's control. For companies with a share capital, the proposal is to record such extent by indicating within which of the following bands the PSC's interest falls:
 - from more than 25% up to 50%
 - more than 50% up to 75%
 - 75% or more

AND AS REGARDS EACH PSC:

In the case of individuals:

- name
- service address
- country or state of usual residence
- nationality
- date of birth
- usual residential address; and
- if, restrictions on using or disclosing any of the individual's person with significant control particulars are in force under regulations under section 790ZG of the Companies Act, that fact.

OR

In the case of entities treated as individuals:

- name
- principal office
- legal form and law by which it is governed

OR

In the case of registrable relevant legal entities:

- corporate or firm name
- registered or principal office
- legal form of the entity and law by which it is governed
- register of companies in which it is entered and registration number (if applicable)

Note: The Companies Act includes provisions (see section 790ZF) to safeguard particular personal information by excluding certain parts of the information available to the public. Such provisions are outside the remit of this article. However, they broadly follow those, which are applicable to directors.

Obligations to investigate and obtain information

A company subject to the requirement to maintain a PSC Register must:

- take reasonable steps to ascertain if there is anyone who is a registrable person or registrable relevant legal entity in relation to it, and to identify such persons/entities (as applicable);
- give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or registrable relevant legal entity requiring them to confirm whether this is the case and provide or confirm their particulars;
- give notice to a person it knows or has reasonable cause to believe knows the identity of a registrable person, a relevant legal entity (or entity that would be a relevant legal entity but for the fact that it is not subject to its own disclosure requirements), or a person likely to have such knowledge, requiring that person to confirm whether it has such knowledge and provide or confirm particulars; and
- give notice to a registrable person/relevant legal entity (as applicable) as soon as reasonably practicable if the company knows or has reasonable cause to believe that such person/relevant legal entity (as applicable) has ceased to be registrable or there has been a change in their particulars requiring confirmation of such change.

SANCTION FOR FAILURE: It is a criminal offence to fail to comply with the above obligations. Each non-compliant company and every officer in default is liable to imprisonment or a fine.

Obligations to provide information

All registrable persons once relevant are not only required to provide the above information, but also to keep such information updated. However, in practice, such obligations should not arise unless the company in question has failed to comply with its obligations to identify.

SANCTION FOR FAILURE: Failure to comply with such obligations or respond to a company's enquiries will give the company the ability (without a court order) to disenfranchise, impose restrictions on any the shares held by them or in which they hold an interest provided certain requirements are met. In particular, the service of warning and restrictions notices in accordance with the provisions of Schedule 1B of the Companies Act.



Save in a very limited set of circumstances, it is also a criminal offence for a person/relevant legal entity (as applicable) to fail to comply with a company's enquiries. However, commercially, the risk of exposure to disenfranchisement is likely to discourage PSCs from withholding information in practice.

What happens to the information?

The PSC Register must be kept available for inspection at the company's registered office (or at a place specified in regulations made under section 1136 of the Companies Act). Alternatively, companies may elect to keep the PSC information on the public register at Companies House rather than by way of a separate PSC Register.

New section 9(4)(d) of the Companies Act also requires a statement of initial significant control to be included in a company's incorporation paperwork.

Protection of information

The Act, Companies Act and the draft PSC Regulations contain protection provisions on the publicity of certain personal information in certain circumstances. Such circumstances centre on a PSC being at serious risk of violence or intimidation due to the publication/disclosure of their personal information.

Get ready

To conclude, it would be prudent for companies and PSCs to take this opportunity to start collating the relevant information in readiness for the implementation of the new requirements in the New Year.

If you have any questions regarding this article or you would like to discuss any of the issues raised, please contact:

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