

PEOPLE WITH SIGNIFICANT CONTROL REGISTER FACT SHEET

From 6th April 2016 all UK companies will be required to maintain a new register of People with Significant Control ("PSC register"). The information in the register must also be filed annually with Companies House from 30th June 2016 as part of the Confirmation Statement (the re-named Annual Return).

Failure to comply with these new legal requirements is a criminal offence and may result in a fine and / or a prison sentence of up to 2 years.

The register was introduced by the Small Business, Enterprise and Employment (SBEE) Act 2015 and the aim is to increase transparency and reduce financial crime such as money laundering.

MUST ALL COMPANIES HAVE A PSC REGISTER?

The requirements apply to UK incorporated companies limited by shares or guarantee, unlimited companies, Societates Europaeae as well as Limited Liability Partnerships (LLPs). From 6th April the register must be kept and should never be blank. If for some reason the PSC information cannot be provided then other statements will need to be made instead using the prescribed statutory wording.

LOCATION & INSPECTION OF THE REGISTER

The PSC register can be kept at the company's registered office, or at another location as long as Companies House has been notified accordingly. Anyone (an individual or organisation with a proper purpose) can have access to the register free of charge, or request a copy of it for an optional fee. It is therefore essential that the register is kept up to date. From 30th June 2016 companies can choose to keep the register at Companies House, however, as noted below this will mean that additional information will be available for public view.

DEFINITION OF A PSC

The register is required to provide details of anyone having significant control over the company (a "PSC"). A PSC is an individual who directly or indirectly meets one or more of the following conditions in relation to the company:

1. directly or indirectly owns more than 25% of the shares (LLPs: holds rights over more than 25% of the surplus assets on a winding up)
2. directly or indirectly holds more than 25% of the voting rights
3. directly or indirectly holds the right to appoint or remove the majority of directors (LLPs: holds the right to appoint or remove the majority of those involved in management of the LLP)
4. otherwise has the right to exercise, or actually exercises, significant influence or control
5. has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

CONTENTS OF THE PSC REGISTER

The register should include the name of the PSC, service address, home address, date of birth, nationality and the date when he or she became a PSC. In addition it will be necessary to state which of the above conditions for being a PSC are met. Full details are set out in the guidance referred to below and this also includes prescribed wording which companies must use in various circumstances.

WHAT TO DO IF THE COMPANY HAS NO PSC

The company will still need to keep a PSC register and include the prescribed statutory wording to note that the company has no PSC. Care must be taken to check whether the constitution or other contractual documents such as a shareholders' agreement or an LLP agreement contain any special provisions regarding control which might not be immediately obvious.

WILL ALL INFORMATION BE MADE PUBLIC?

The full PSC information will be made public at Companies House, with the exception of the day element of the date of birth and the residential address. If a company chooses to maintain the PSC register at Companies House (possible after 30 June 2016) then full dates of births will also be available to the public. Despite the emphasis on transparency and openness, the Government recognises that there may be situations where public disclosure of PSC information could put individuals at serious risk of violence or intimidation. Procedures are being put in place for such individuals to apply to prevent some or all of their details from being made public.

WHAT ABOUT SUBSIDIARIES?

If a company is controlled by a legal entity then this entity can be put on the PSC register if it is both *relevant* and *registrable*. An entity will be *relevant* if it meets one of the conditions for being a PSC and:

- it holds its own PSC register; or
- it is a "DTR5 issuer" (i.e. a listed company subject to Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules); or
- it has voting shares admitted to trading on a regulated market in the UK or European Economic Area or on specified markets as set out in the Register of People with Significant Control Regulations 2016.

A relevant legal entity ("RLE") will be registrable if it is the first RLE in your company's ownership chain. If a company is controlled by a legal entity which does not fall within the definition of a RLE then you must look at the ownership and control of that legal entity to identify any individuals or RLEs who have a majority stake in that legal entity and who might therefore need to be registered as a PSC. Further details and examples can be found in the guidance referred to below.

WHAT MUST THE COMPANY DO?

Officers of companies must take reasonable steps to identify the people with significant control and also formally confirm the relevant details with the PSC before entering them on the PSC register. Once confirmed, the relevant details must be recorded on the register. The PSC information must be filed with Companies House as part of the Confirmation Statement. The PSC register must be updated as and when changes occur. Failure by the company to comply with the relevant provisions means that an offence is committed by the company and every officer in default and this is punishable by fines or imprisonment.

UNABLE TO IDENTIFY THE PSC?

If the company believes there is a PSC but has not been able to identify him or her then the company should consider serving a formal notice requesting the necessary information. The PSC should respond to the company within one month and failure to do so is a criminal offence. If no response is received

the company can send a further warning notice. As a last resort, the company can place restrictions on the shares so that the holder is unable to exercise voting rights, receive dividends or sell the shares. Complying with this process will mean that company officers have discharged their statutory duties, however, the detailed steps set out in the Regulations must be adhered to. The PSC register will also need to be updated with the prescribed wording throughout this process.

WHAT MUST THE PSC DO?

PSCs are required to notify the company in certain circumstances. As noted above, an offence is also committed if they do not comply with notices issued by the company or if they try to exercise any rights once a restriction notice has been served. The Department for Business, Innovation & Skills (BIS) will provide separate guidance for PSCs in due course.

WHAT GUIDANCE IS AVAILABLE?

The Department for Business, Innovation & Skills (BIS) has produced guidance on the PSC requirements for companies and LLPs as well as separate statutory guidance on the meaning of "significant influence or control". These guides are available from the [gov.uk website](http://gov.uk/website).

For further information and advice please contact Linn-Marita Sen.

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