

Group Briefing

May 2016

The Small Business, Enterprise and Employment Act 2015: The Persons of Significant Control Register

INCOMING COMPANIES HOUSE FILING REQUIREMENTS

The Small Business Enterprise and Employment Act 2015 (the "Act") has recently created a new administrative obligation for UK companies, whereby a register of the people with "significant control" must now be maintained as part of the statutory registers and minute book of all such UK entities.

In addition; **commencing from 30th June 2016:**

- a) **existing UK companies will be required to include PSC Register information within their Companies House annual returns (or "confirmation statements" as they will become known); and**
- b) **all new companies must include a "statement of initial significant control" within its incorporation application to Companies House.**

Thereafter, changes must be made to the PSC Register as and when they have been confirmed, and such changes should be notified to Companies House on an annual basis as part of the annual return/confirmation statement (as applicable).

WHAT IS A "PERSON OF SIGNIFICANT CONTROL"?

In terms of identifying a PSC, this is defined as an individual that (either alone or as one of a number of joint

holders of the share or right in question) meets one or more of the following criteria:

- a) the individual holds, directly or indirectly, more than 25% of the company's shares or voting rights in the company;
- b) the individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company;
- c) the individual has the right to exercise, or actually exercises, significant influence or control over the company; or
- d) the trustees of a trust or the partners of a partnership meet one or more of the other specified 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.

WHO IS AFFECTED?

Corporate entities may also be deemed to be "persons of significant control" and these are known as "Relevant Legal Entities". A corporate entity will only be taken to be a PSC/Relevant Legal Entity if:

- a) it satisfies one of the PSC criteria we have outlined above; and

- b) it is subject to its own transparency obligations, either because it is UK-listed, or maintains its own PSC.

"REGISTRABLE" OR "NON-REGISTRABLE"?

After identifying a person or entity as a PSC or Relevant Legal Entity, it is to be determined whether such person/entity is "**registrable**" or "**non-registrable**" in relation to the relevant company.

In essence, all PSCs and Relevant Legal Entities are registrable persons unless they fall within the definition of "non-registrable".

A PSC or Relevant Legal Entity is **non-registrable** if they do not hold any interest in the company except through one or more other legal entities over each of which they have significant control and each of which is a "Relevant Legal Entity".

In other words, where there is a chain of ownership, and each of the companies in the chain are Relevant Legal Entities, only the Relevant Legal Entity **directly above** a company will be registrable in relation to it. As long as they are traceable up through the chain, indirect owners will not be registrable in relation to that company.

OBLIGATION TO IDENTIFY PERSONS WITH SIGNIFICANT CONTROL

Pursuant to the Act, companies are under a duty to investigate, obtain

KEY CONTACTS

For further information please speak to your usual Arthur Cox contact or one of the following lawyers:



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and update information on registrable PSCs and registrable Relevant Legal Entities. As such, companies must take all reasonable steps to identify those with a beneficial interest in their shares by serving notice on anyone whom it knows or has reasonable cause to believe is a PSC or Relevant Legal Entity requiring them to confirm the precise nature of such interest.

In addition, registrable PSCs and Relevant Legal Entities are under a reciprocal obligation to notify the relevant company of its interest within one month of acquiring it if they have not, during such period, received the appropriate notice from that company.

In terms of sanction, an offence is committed by the company and every officer in default (punishable by imprisonment of up to 2 years or a fine) if the company fails to take the required steps or give notice.

The failure by a registrable PSC or Relevant Legal Entity to respond to a notice within one month of receipt may result in the share rights enjoyed by it (including, but not limited to, voting and dividend) being suspended via a restriction notice. Furthermore, a PSC or Relevant Legal Entity who provides false or misleading information in their response to a notice commits a criminal offence and may be punished as follows:

- a) person: punishable with up to 2 years' imprisonment and/or a fine; and
- b) legal entity: directors will be criminally liable.

INFORMATION TO BE INCLUDED IN THE PSC REGISTER

The PSC Register must include certain required particulars, namely:

- a) For Individuals: name, service address, country or state of usual

residence, nationality, date of birth and usual residential address.

- b) For registrable relevant legal entities: its 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).
- c) Date and nature of control: In all cases, the PSC Register must also contain details of the date on which a person became a registrable person or registrable relevant legal entity and the nature of his or its control.

Please note there is also a form of protection included within the Act, whereby the residential address of all PSCs will be kept by the company but will not be disclosed to the public (except to certain public authorities and credit reference agencies). In addition, those who can show that they are at serious risk of violence or intimidation can apply to Companies House to prevent all of their PSC information appearing on the public register.

NEXT STEPS

In summary, positive action is now required of all UK companies whereby a PSC register must be drafted and the appropriate disclosures made to Companies House going forward.

Please do not hesitate to contact us (or your usual Arthur Cox contact) should you require assistance in identifying your "persons of significant control", assembling your PSC register or making Companies House filings following the **30th June 2016** commencement date. We would also welcome your call should you have any questions or wish to discuss this topic in greater detail before carrying out your statutory obligations.

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