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Statutory PSC Register requirements for UK Companies and Partnerships

Most types of Companies incorporated under the Companies Act 2006 (limited by shares or guarantee, or unlimited) and certain partnerships (including Limited Liability Partnerships (“LLPs”)) are required to maintain an up-to-date Register of individuals with significant control over the organisation (“People with Significant Control”, or “PSCs”) and relevant organisations with significant control over the organisation (“Relevant Legal Entities”, or “RLEs”) (“the Register”).

They are also required to notify changes to their PSCs and RLEs to the Registrar of Companies within a certain time limit.

Failure to maintain the Register (even if the Register has no entries), or to notify changes, could result in criminal penalties for the organisation or its officers. Similarly, failure by PSCs or RLEs to respond to requests for information could result in criminal penalties for the PSC or RLE.

The requirements applying to companies and to certain forms of partnership (“organisation”) are:¹

¹ The requirements for eligible Scottish Partnerships vary slightly. Further information can be provided on request.

- Each organisation must maintain an up-to-date Register containing certain prescribed information about the organisation's PSCs and RLEs. There is an obligation to update the Register within 14 calendar days of receiving information about any changes to PSCs or RLEs.
- Even if the organisation does not have any PSCs or RLEs, or is in the process of obtaining information on its PSCs or RLEs, the Register must contain a statement to that effect, using specified statutory wording.
- PSC and RLE information from the Register is required to be made available at Companies House.
- Any changes to the organisation's Register should be notified to the Registrar of Companies within 14 days.

The PSC Rules were introduced to increase transparency of UK Companies and partnerships in order to help to combat tax evasion, money-laundering and terrorist financing by providing a fuller picture of both the legal, controlling and beneficial ownership of businesses.

This explanatory note focuses on the requirements for Companies. The same requirements largely apply to LLPs and other forms of partnership, although there are some differences. Further guidance should be sought from us when considering the requirements for LLPs and other partnerships.

Who are People with Significant Control ("PSC")?

An individual with significant control will meet at least one of the following conditions ("the Specified Conditions"):

1. directly or indirectly holds more than 25% of the nominal value of the share capital; or
2. directly or indirectly controls more than 25% of the company's voting rights at a General Meeting; or
3. directly or indirectly is able to control the appointment or removal of a majority of the Board of Directors; or

4. actually exercises, or has the right to exercise, significant influence or control over the Company in another way; or
5. actually exercises, or has the right to exercise, significant influence or control over any trust or firm (which is not a legal entity) which has significant control (under one of the 4 conditions above) over the Company.

Can a Company be regarded as a PSC?

A PSC is an individual, although, where companies are owned or controlled by one of more other legal entities, the company should consider whether the other legal entity is an RLE.

A legal entity will be required to be entered on the PSC register as an RLE if it is both **relevant** and **registrable**.

- A legal entity is **relevant** if:
 - it meets any of the Specified Conditions as if it were an individual; and
 - keeps its own PSC Register (or is a UK listed company or company with voting shares admitted to trading on a regulated market in any EEA State, which means it is subject to its own disclosure requirements).
- An RLE is **registrable** if it is the first relevant legal entity in the company's ownership chain.

Note that there is a separate provision for 'other registerable people' which includes local and national governments and their departments, amongst other entities. Other registerable people do not meet the test for RLEs but their information must be entered onto the Register.

Further details on how to deal with parent entities which do not fall within the above criteria can be found in the Guidance referred to below.

What are the requirements?

The Department for Business, Energy and Industrial Strategy has published non-statutory detailed guidance for Companies and Limited Liability Partnerships (“the Guidance”).

The Guidance can be accessed by copying and pasting the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505303/NON-STATUTORY_GUIDANCE_FOR_COMPANIES_AND_LLPS.pdf

In short, the officers of the Company:

- must take reasonable steps to find out if there are either people with significant control or RLEs which meet at least one of the five Specified Conditions;
- provide these individuals or RLEs with notice to confirm whether they meet one or more of the Specified Conditions and, if so, obtain the relevant details for the Register, (example notices can be found at Annex 3 of the Guidance);
- ensure that the PSC’s information is confirmed with the PSC before entering it on the Register (RLE information need not be confirmed prior);
- enter each PSC’s or RLE’s details on the Register, or alternatively make the appropriate entries using the official wording (referred to below); and
- ensure that the Register is kept up-to-date by taking a pro-active approach to monitoring PSCs and obtaining current information, and promptly notifying any changes to the Registrar of Companies in order that it can be made available on the central public register.

A PSC or RLE must respond to requests for information from the Company. Failure to do so can allow the Company (without a court order) to disenfranchise and impose other restrictions on any shares held by the PSC or RLE.

Where a Company has not sent the necessary notices requesting PSC information the PSC or RLE has an obligation pro-actively to inform the Company of their interest (or any changes to it).

What does the PSC Register require to contain?

For individuals, the required information is:

- name
- service address
- country or state of usual residence
- nationality
- date of birth
- usual residential address (will not be publicly accessible)
- if any of the individual's details are protected from disclosure to the public, that fact.

For RLEs, the required information is:

- 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)

For both individuals and RLEs, in addition:

- details of the date on which the person become registerable and the nature of their control
- which one or more of the specified conditions they meet
- the level of their interest by reference to specified bands
- certain other information indicating what the company knows or does not know about its PSCs.

The official wording which should be used for these purposes is contained at Annex 2 of the Guidance. The PSC Register must never be blank even where no PSCs have been identified. It must exist, and if it has no PSCs it should state this in the specified wording.

What type of situations would be regarded as an individual having significant influence or control over the Company?

Separate draft Statutory Guidance on the meaning of “significant influence or control” in the context of companies is available and can be accessed by copying and pasting the following link into your browser window address bar:

<http://www.step.org/sites/default/files/Policy/PSC-register-Draft-Statutory-Guidance-3-December-2015.pdf>

With respect to Specified Conditions 4 and 5, the situation is not clear cut and so every arrangement requires to be considered on its own merits.

An example is as follows: Company 123 Ltd is a private limited company which provides software services. The Company is owned by four individual shareholders: Mr A (50%), Mr B (30%), Mr C (10%) and Mr D (10%). Mr C’s shares allow him to appoint or remove over one-half of the Directors and approve or reject the Company’s business plan. Mr D owns Intellectual Property (“IP”) rights which he has licensed to the Company and which the Company requires in order to provide its software services. The Company regularly consults and follows the advice of an independent accountant on financial matters.

- Mr A and Mr B are PSCs because they each hold over 25% of the shares (and voting rights) in Company 123 Ltd. directly.
- Mr C is also a PSC because he has the right to appoint or remove a majority of the Board.
- Mr D will also be a PSC if he is able to exercise significant influence or control because of his ownership and/or licensing of the IP on which the Company is reliant.
- Provision of advice in a professional capacity in the normal course would not usually result in the professional provider being considered to be exercising significant influence or control and, therefore, the accountant is unlikely to be a PSC.

How will this affect charities and other community bodies?

Charitable Companies limited by Guarantee, charities which have a wholly-owned trading companies, and Community Interest Companies, will required to comply with the new requirements.

The requirements will not apply to SCIOs, Co-operative Societies and Community Benefit Societies, unless they own a trading company (see below).

As mentioned, a PSC Register should never be blank, even where no PSCs have been identified.

If a Charitable Guarantee Company has only three Trustees/Directors (who are also the members), then each will have more than 25% of the voting rights and accordingly would meet condition 2 of the Specified Conditions and each be deemed to be a PSC.

Trading companies will also require to have their own PSC Register. Where the trading company is wholly-owned by a Guarantee Company limited by Guarantee (whether or not charitable) or by a Company limited by Shares, the parent company would be regarded at a RLE and its details would require to be entered into the trading company's Register.

Where the parent entity is a non-company such as a SCIO or a Trust, then the trading company would require to consider and investigate whether any individual or legal entity controlling the parent entity would be regarded as a PSC or RLE within that entity i.e. would meet at least one of the Specified Conditions. If so, the PSC Register of the trading company would require to contain the details of those PSCs or RLEs.

For example, where a SCIO has 3 Trustees who are also the members (all with equal voting rights) and the SCIO owns a trading company to carry out its non-charitable activities, the details of each of the SCIO Trustees would require to be entered in the

trading company's PSC Register as each would be regarded as a PSC of the parent entity (by each having more than 25% of the voting rights).

Another example is where another entity, or perhaps a Local Authority, is entitled to appoint and remove the majority of the Trustees/Directors of the Company. This would meet Condition 3 of the Specified Conditions and, accordingly, details of the appointing entity, if they are an RLE or 'other registerable person', would require to be entered into the Register. The Local Authority is an 'other registerable person' and will be treated as a PSC. If the appointing entity is not an individual, RLE or 'other registerable person', it would then be necessary to examine whether any PSCs or RLEs are present within that entity and enter their details on the Register.

*Although carefully prepared, this Fact Sheet is intended as a guide only
and is not intended to be comprehensive.*

*If you require any further information, would like assistance in setting up and
maintaining a PSC Register, filing PSC information with the Registrar of
Companies or have any other queries in relation to Company Law, Charity Law or
partnerships, please contact us as one of our Solicitors who would be happy to
advise you.*

This is one of a series of Fact Sheets by J & H Mitchell, W.S.

Others can be found at www.jandhmitchell.com

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