PSC REGIME — ARE YOU READY?

NEW RULES ON DISCLOSURE OF UK COMPANIES' ULTIMATE OWNERS

On 6 April 2016, changes to the Companies Act 2006 will introduce a new PSC regime. This will require unlisted UK companies to take reasonable steps to identify those people with significant control over them, and to record their details in a new statutory register (known as a PSC register). From June 2016, companies will have to file this information on the public register at Companies House, as part of the new annual confirmation process (which will replace the current annual return). The PSC regime aims to increase transparency around who owns and controls UK companies, and is part of a wider global initiative to tackle the criminal misuse of companies.

Who must keep a PSC register?

The PSC regime will apply to all unlisted UK companies. It will not apply to UK companies whose voting shares are admitted to trading on the London Stock Exchange, AIM, ISDX Growth Market, other regulated markets in the EEA or specified non-EEA markets (including the New York Stock Exchange and NASDAQ). However, it will apply to their UK subsidiaries.

Who is a PSC?

A "person with significant control" over a company (a "PSC") is an *individual* who:

- holds, directly or indirectly, more than 25% of its shares or voting rights;
- holds, directly or indirectly, the right to appoint or remove a majority of its board of directors; or
- otherwise has the right to exercise, or actually exercises, significant influence or control over it.

An individual will also be a PSC if he 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), if that trust or firm meets any of the above conditions in relation to the company.

There are a number of interpretation provisions which try to anticipate the various ways in which a person may hold an interest (eg joint holdings, chains of ownership, through nominees, temporary rights or "behind the scene" arrangements). These provisions add to the complexity of the PSC regime, but are key to ensuring that all forms of significant control are caught by it in order to improve transparency.

Meaning of significant influence or control

The Government has issued draft statutory guidance on the meaning of "significant influence or control" which must be referred to. Key points to note from the guidance for companies are:

- where a person can direct the activities of a company, this would be indicative of control; where he can ensure that it generally adopts the activities he desires, this is indicative of significant influence;
- rights to exercise significant influence or control may arise from provisions in a company's constitution, rights attached to its shares, shareholders' or other agreements, or in some other way;
- veto rights over decisions relating to the running of a company's business (eg changing the nature of its business; adopting or amending its business plan; appointing/removing a majority of the directors) may constitute a right to exercise significant influence or control. However, veto rights over fundamental matters to protect minority interests will not, on their own, usually do so;
- shadow directors are likely to have significant influence or control; and
- significant influence or control over a trust or firm which satisfies the PSC conditions is likely to arise when a person has the right to direct or influence its activities (eg power to direct investment decisions; to direct the distribution of funds or assets, etc).

Who should be registered on the PSC register?

When must an individual be registered?

The main purpose of the PSC regime is to ensure that UK companies disclose those *individuals* (UK or foreign) with significant control over them. So, any individual who satisfies the PSC conditions *directly* should be registered. However, the legislation recognises that an individual can satisfy the PSC conditions *indirectly* through, for example, a chain of companies. Here, it will often be details of a legal entity which must be entered on the company's register, instead of the individual.

Indirect interests

Broadly, a person is treated as holding the shares or rights *indirectly* if they are held through a legal entity (or a chain of legal entities) in which he (or another chain entity) has a majority stake (ie voting or board control) or over which he (or another chain entity) has the right to exercise dominant influence or control.

When must a legal entity be registered?

A legal entity should be registered (ie it is "registrable") when it is:

(a) a "relevant legal entity" ("RLE") - that is, a legal entity which (i) would satisfy the conditions for being a PSC if it was an individual and (ii) is required to keep a PSC register or satisfies disclosure requirements which have been deemed "equivalent"; **and**

(b) the *first* RLE in the corporate chain above the relevant company.

So, broadly, UK companies, UK LLPs and non-UK companies with voting shares admitted to trading on certain specified markets will be RLEs, and can be entered on a company's PSC register. However, unlisted non-UK companies will not usually be RLEs, and cannot be entered on a company's PSC register.

Group structures

In a group situation, this means that it will not usually be necessary to put the individual(s) who ultimately control the group on the PSC registers of ***all*** UK entities in the corporate chain. However, the provisions aim to ensure that it is possible to follow the ownership chain up to the ultimate individual PSC(s) (if any).

The practical effect of these provisions is illustrated in figures 1 and 2 on page 5.

How are PSCs identified?

Company's obligations

A company must take "reasonable steps" to identify its PSCs or registrable RLEs. There is no exhaustive list of steps which must be taken, but when a company does not already have the information it needs, it must give a formal notice to anyone it knows or believes to be a PSC or registrable RLE asking them to confirm the nature and extent of their interest.

The company is also given power to serve a notice requesting information on anyone that knows, or that it suspects may know, the identity of a PSC or registrable RLE (or of someone likely to have that knowledge). This power can be used, for example, to require foreign entities in an ownership chain to provide details of any registrable RLEs or PSCs further up the chain who should be recorded on a company's PSC register.

A company must keep its PSC register up to date. When it knows or suspects that the information on its register has changed (eg as to a person's status as a PSC, the nature or extent of his interest, or his details), it must take steps to verify the changes.

There are criminal sanctions for companies and their officers if they fail to comply with these duties, and for those who fail to respond to a company's request for information.

What are reasonable steps?

The Government has issued [draft non-statutory guidance] to help companies understand what actions they should typically take to satisfy the requirement to take "reasonable steps". These include reviewing their constitution, register of members, shareholders' agreements and statements of capital; considering whether voting patterns suggest some parties may be acting together (eg family members); and issuing notices to obtain the information they require from their PSCs/registrable RLEs. However, the guidance stresses that the key requirement is for a company to take *all* steps that a reasonable person would take armed with the facts or knowledge that the company has.

PSC's obligations

PSCs and registrable RLEs have corresponding proactive disclosure obligations which aim to ensure that PSCs and registrable RLEs who are not known to the company are identified, and that changes to the particulars of PSCs/RLEs on its register are notified to it. Again, there are criminal sanctions for those who do not comply with these duties.

Enforcement of PSC regime

In addition to criminal sanctions, there is an onerous default process to help ensure compliance with the PSC regime: a company can apply "restrictions" to shares or interests held by any person or legal entity who, without a valid reason, repeatedly fails to respond to its requests for information. Such restrictions effectively "freeze" their interests in the company until the information is received - so, they cannot sell, transfer or receive any benefit from their interests (including dividends) during the restricted period.

A company may need to impose such "restrictions" to satisfy its obligation to take "reasonable steps" to identify its PSCs/registrable RLEs.

Contents of PSC register

Details of PSCs/RLEs

The following information must be collected by the company and entered on its PSC register:

Particulars for PSC register	
For PSCs:	**For registrable RLEs:**
Full name	Name
Service address	Registered/principal office address
Country/state of residence/ part of UK where usually lives	Legal form and governing law
Nationality	Applicable companies register and registration number
Date of birth	
Usual residential address*	
Details of any current restrictions on using/ disclosing the PSC's information	
Date became registrable	
Nature (and, when relevant, extent) of control	

*Will not appear on public record or be open to inspection on company's PSC register

Note: all the above information on a PSC or registrable RLE must be obtained before entry on a company's PSC register and, for individuals, it must also be confirmed (eg supplied by him or with his knowledge, or confirmed by him as correct).

Nature of control

The register must show which of the conditions the PSC or registrable RLE satisfies through the use of prescribed statements (which are set out in supporting regulations). When the ownership or voting control conditions are satisfied, the register must also show the broad extent of the interest by reference to pre-set bands (ie over 25% up to 50%; over 50% but less than 75%; and 75% or more).

Status of investigations

The PSC regime aims to provide the reader of a company's PSC register with a good overall picture of the ownership and control of the company and the status of related investigations. So, a company's PSC register must never be empty. For example, when it has not reached a definitive position in relation to all of its PSCs/registrable RLEs (or holds unconfirmed information for PSCs), it must note this on its register; when a company knows or reasonably believes that it has no PSCs or registrable RLEs, this must be noted on its register.

Companies must use the applicable prescribed statements (which are set out in supporting regulations) which best reflect the status/results of their investigations.

Public and protected information

Access to information

A company must keep its PSC register available for inspection at its registered office or, provided that the necessary notifications have been made to Companies House, other inspection address. Subject to certain safeguards, any person may inspect a company's PSC register and, on payment of a prescribed fee (£12), request a copy of it (or any part of it).

From June 2016, as part of the new annual confirmation process (which replaces the current annual return), a company will also need to file its PSC information at Companies House, where the information will be made available on a central public register.

A PSC's residential address will not be placed on the public register at Companies House, and will not be available for inspection on the company's own PSC register. In addition, the day element of a PSC's date of birth will not be available on the public register at Companies House (unless a company elects to keep its PSC register there - see below), but will be accessible on a company's own PSC register.

Protection regime

While the main objective of the reforms is to improve transparency, the Government recognises that a degree of protection is required when disclosure of an individual PSC's details would put the individual (or someone they live with) at serious risk of violence or intimidation. The regime offers two categories of protection: (i) prevention of a PSC's residential address being shared with credit reference agencies; and (ii) suppression of all information relating to a PSC.

However, when protection is granted, all PSC information will still be available to law enforcement agencies.

Option to keep PSC register at Companies House

From June 2016, private companies will be able to keep their PSC register (and certain other statutory registers) at Companies House. If a company does so:

- it will still need to make its historical PSC register available for inspection;
- a PSC's full date of birth will be shown at Companies House; and
- it will have to file changes to its PSC information at Companies House in real time (rather than annually).

Application to LLPs

The PSC regime will also apply to UK limited liability partnerships (LLPs) from 6 April 2016. It will operate in much the same way as it will for companies (eg LLPs must identify their PSCs; PSCs of LLPs will have the same proactive disclosure obligations as PSCs of companies, etc), but with changes to reflect the different nature and structure of LLPs. For example, the > 25% ownership condition will be by reference to rights to share in surplus assets on a winding up; the > 25% voting rights condition will be by reference to matters decided by votes of members; and the board control condition will be by reference to those involved in the management of the LLP.

Action required

On 6 April 2016, companies subject to the PSC regime must have a PSC register which includes details of identified PSCs (to the extent that they hold confirmed information) and registrable RLEs, and/or a statement (in the prescribed form) that they are taking reasonable steps to find out if they have any.

For companies with simple ownership structures, compliance with the regime should be straightforward, as their PSC register will generally reflect the information in their register of members. However, for companies with complex ownership structures, groups which include foreign entities and for private equity backed companies, this may not be the case. These companies should consider taking preparatory steps - for example:

- review their register of members, constitutional documents and any "behind the scenes" arrangements, such as shareholders' agreements;
- make informal enquiries of those they think may be PSCs/registrable RLEs or who may have relevant knowledge; and
- put in place internal processes and systems to ensure that they can comply with the new PSC regime from April (eg preparing draft notices to request the necessary information if this has not already been provided).

Companies with individual PSCs who are not registered shareholders may also wish to forewarn them that their details will soon have to be made available on a publicly accessible register.

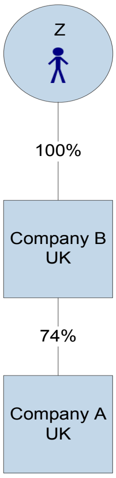
Further guidance

The Government has published draft guidance to help companies understand and comply with the PSC regime, which includes specimen notices for requesting PSC information. This is accessible here.

For further guidance and advice on your particular company's or group's requirements, please get in touch with your usual Corporate contact at DLA Piper.

SOME EXAMPLES ...

Figure 1 - UK companies in group



Who appears in the register of ...?

Company A

Z is a PSC of Co A (he is an individual who has indirect ownership and control of 74% of the shares of Co A via his majority stake in Co B); but he should **not** be entered on its PSC register, as his interests in Co A are held indirectly through a RLE[1].

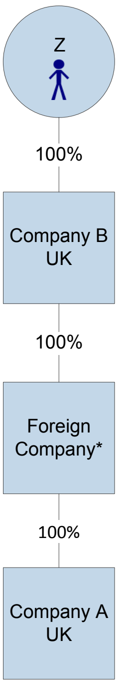
Co B is a registrable RLE in relation to Co A (it is a UK company with direct ownership and control of 74% of the shares of Co A); so, **Co B should be entered on the PSC register of Co A**.

Company B

Z is a PSC of Co B (he is an individual who has direct ownership and control of 100% of the shares of Co B); so, **Z should be entered on the PSC register of Co B**.

Notes:
[1] If, in addition to his indirect interests, Z held 26% of the shares in Co A directly, Z would need to be entered on the PSC register of Co A in relation to his combined direct and indirect interests.

Figure 2 - non-UK company in group



* Not a "Relevant Legal Entity"

Who appears in the register of ...?

Company A

Z is a PSC of Co A (he is an individual who has indirect ownership and control of 100% of the shares of Co A); but he should **not** be entered on its PSC register, as his interests in Co A are held indirectly through a RLE (Co B).

Co B is a registrable RLE in relation to Co A (it has indirect ownership and control of 100% of the shares of Co A, and is the first RLE in the chain of ownership above Co A (Foreign Co is not a RLE)). So, **Co B should be entered on the PSC register of Co A**.

Foreign Co is **not** a registrable RLE in relation to Co A, as it is a non-UK private company which is not subject to the PSC regime or "equivalent" disclosure requirements. So, Foreign Co should **not** be entered on the PSC register of Co A.

Company B

Z is a PSC of Co B (he is an individual who has direct ownership and control of 100% of the shares of Co B); so, **Z should be entered on the PSC register of Co B**.