

Corporate Alert

January 25, 2016

If you read one thing...

- U.K. corporates required to identify and record identities (including home addresses) of 25%+ holders of economics/votes/control (“PSCs”) – exclusion for most U.K. listed issuers.
- Pro-active steps by U.K. corporates and their direct and indirect investors required to establish and maintain PSC register – non-compliance is a criminal offence and issuers may freeze all voting/dividend/transfer rights.
- Will require disclosure of nature and extent of interest and will extend to board control and shareholder veto rights.



The New U.K. Ownership and Control Transparency Regime (The PSC Regime)

Background

The U.K. government has committed to taking action to tackle the criminal misuse of companies and legal arrangements, including by increasing the transparency of company ownership and control. Pursuant to the Small Business, Enterprise and Employment Act (the “Act”), the U.K. government has sought to address its commitment by introducing the requirement for each applicable U.K. company to maintain a register of persons with significant control (“PSCs”) over the PSC company (a “PSC register”) and for a central public register of PSCs to be kept at Companies House. Separate regulations are intended to be introduced in early 2016 to require U.K. LLPs and SEs to comply with the PSC regime (with some modifications) on the same time scale as companies.

What do PSC entities have to do?

They must take reasonable steps to establish who their PSCs and “registrable relevant legal entities” are. To help satisfy this obligation, the Government has specified that, from April 2016, PSC entities (i.e. U.K. companies, LLPs and SEs) should send notices requesting information from anyone that the PSC entity either knows, or has reasonable cause to believe, is or knows the identity of (in relation to that entity) any PSC or any ‘registrable relevant legal entity’ or who knows someone who is likely to have that information. Non-compliance by a PSC entity with this duty will be a criminal offence (punishable by an unlimited fine and/or up to two years’ imprisonment) for that entity and its officers.

From 6 April 2016, PSC entities will be required to record the details (e.g. name, usual residential address, date of birth and nature and extent of their control) of their PSCs and ‘registrable relevant legal entities’ in a register and, thereafter, must ensure that their register contains up to date information at all

times and, on request, is available (other than PSCs' residential addresses - these will be protected in a similar way to how residential addresses of directors of U.K. companies are currently protected from public disclosure under the Companies Act) for anyone to inspect. From the end of June 2016, each PSC entity will be required to file its PSC information at Companies House and which information (other than PSCs' residential addresses and the day of their dates of birth) will be publicly available.

What do PSCs have to do?

From April 2016, PSCs (including individuals who live overseas and non-U.K. nationals) will be legally obliged to take pro-active steps to identify, and provide details (e.g. name, usual residential address, date of birth and nature and extent of their control) about, themselves to the entity of which they are a PSC. If a PSC fails to comply with this duty or to respond to an information request from the PSC entity, except in very limited circumstances, it will have committed a criminal offence (punishable by an unlimited fine and/or up to two years imprisonment) and it may also be possible for the PSC entity to 'freeze' any interest in the PSC entity, which is connected to that PSC (meaning, amongst other things, that the shares in the PSC entity connected to that PSC may not be sold or voted and (except on a liquidation) no dividends or other payments could be received in respect of those shares).

Who will be PSCs?

The rules for establishing who is and is not a PSC are complex and need careful consideration and application on a case by case basis, taking into account formal and informal arrangements and relationships of a PSC entity and its group and may well result in a much wider category of people being caught as PSCs than one might expect based on the face value linguistic meaning of significant control and influence.

Technically, a PSC of a company is any individual (regardless of whether or not they live within the U.K. and regardless of their nationality) who satisfies one or more of the following conditions (the "**Conditions**") in relation to that company:

- A.** holds, directly or indirectly, more than 25% of the shares in the company;
- B.** holds, directly or indirectly, more than 25% of the voting rights in the company;
- C.** has the right, directly or indirectly, to appoint or remove directors holding a majority of the votes that can be cast at a meeting of the board of directors;
- D.** has the right to (or actually does) exercise significant influence or control over the company; or
- E.** has the right to (or actually does) exercise significant influence or control over the activities of a trust or firm (which is not a legal entity under the law by which it is governed) but which would itself satisfy any of the Conditions listed in (A) to (D) if it was a natural person.

In addition, the following are treated as if they were natural persons, meaning that they will be recorded as PSCs of a company if they meet any of the Conditions in relation to that company:

- i.** corporation soles (i.e. legal entities consisting of one person only);

- ii. governments or government departments;
- iii. international organisations whose members include two or more countries or territories (or their governments); and
- iv. local authorities or local government bodies in the U.K. or elsewhere.

However, the meanings of the Conditions are not as straightforward or as narrow as the language might suggest. For example, joint arrangements between persons result in each of them being treated as holding the combined shareholding/rights of both of them and shares held by a nominee for another are treated as being held by that other person. Consequently, the Conditions must be interpreted in accordance with the series of rules and guidance which are to be finalised and published by the Government pre-April 2016. It is also worth noting that the conditions for LLPs are slightly different (e.g. Condition A is driven off surplus assets on the winding up of the LLP and Condition D could be triggered if a person is likely to receive more than 25% of the profits of the LLP).

What does “significant influence or control” in Conditions D and E really mean?

The important point to note is that these concepts are not necessarily interpreted in the manner that one might ordinarily expect. For example, it is not just controlling or influencing a PSC entity's policies/activities with a view to gaining an economic benefit that would be caught; every PSC entity policy and activity could be relevant. Also, veto rights over decisions related to the running of the PSC entity (e.g. adoption of a business plan, the appointment of a majority of a board) regardless of whether or not the right is held directly or indirectly or whether or not it has actually been exercised are likely to be caught, and all relationships (whether or not documented in a written agreement) that a person has with the PSC entity or other individuals who manage the PSC entity must be considered to identify whether the cumulative effect of those relationships places the individual in a position where they exercise significant influence or control over that PSC entity.

What happens if a company is controlled by another legal entity?

If a company is controlled by another legal entity and that other legal entity: (i) would have fallen within the definition of a PSC had it been an individual; and (ii) is subject to its “*own disclosure requirements*”, the details of that other legal entity should be entered in the company's PSC register (known as a “*registrable relevant legal entity*”). For these purposes, a legal entity subject to its “*own disclosure requirements*” means any U.K. company that is required to comply with Chapter 5 of the U.K. Disclosure and Transparency Rules (known as a “**DTR5 issuer**”) (e.g. U.K. companies listed on the LSE or trading on AIM) and any legal entity which is required to keep its own PSC register (i.e. U.K. companies, LLPs and SEs). The Government has recently confirmed that this definition will be expanded (pre-April 2016) to include U.K. and non-U.K. legal entities that have voting shares admitted to trading on a regulated market in an E.E.A. state or on certain markets in Japan, the U.S.A., Switzerland and Israel (a definitive list of these markets is expected to be published in ancillary regulations before April 2016).

However, there is an exception to this rule which applies if a legal entity holds its interest in the company via a chain of other legal entities over which it has significant control (via voting rights or shares) and each of which are subject to their “*own disclosure requirements*”. In these circumstances, only the legal entity

subject to its “*own disclosure requirements*” immediately above the PSC company in the chain (i.e. Company B and not Company C in Example 1) needs to be entered in the company’s PSC register (i.e. Company A in Example 1). But if, for example, there was a Cayman company within a chain which had a U.K. company at the bottom of it and a U.K. company at the top of it, the U.K. company at the top of the chain (i.e. Company C in Example 2) would need to be entered in the PSC register of the U.K. company at the bottom of the chain (i.e. Company A in Example 2) (because Cayman companies do not fall within the meaning of being subject to their “*own disclosure requirements*”).

Click [here](#) to view examples.

Which U.K. entities will be exempt?

The Government believes that companies which are already required to provide substantial information about their major owners should not also be required to maintain a PSC register. For this reason, DTR5 issuers will be exempt from having to keep a PSC register. In addition, the Government has confirmed that it also intends to exempt U.K. companies with voting shares admitted to trading on a regulated market in an E.E.A. state or on certain markets in Japan, the U.S.A., Switzerland and Israel (these exemptions and a definitive list of the exempt overseas markets are expected to be published in ancillary regulations before April 2016).

Next Steps

Detailed guidance will be published by the Government pre-April 2016 for: (A) companies and LLPs; and (B) PSCs on how the regime works and what steps they should take in order to comply with their duties under the regime. A draft of the guidance for companies and LLPs has been published ([available here](#)) and is currently going through a consultation process. A draft of the guidance for PSCs is expected to be published shortly. The Government will also finalise the statutory guidance on the meaning of “significant control or influence”, which will need to be considered when determining whether someone is a PSC because they fall within Conditions D or E. Drafts of the statutory guidance for: (A) [companies](#); and (B) [LLPs](#) are available here.

U.K. companies, LLPs and SEs should start to consider who their PSCs are likely to be and the process that they will adopt to comply (from April 2016) with their obligations to send information requests to PSCs and others. People who think that they might be a PSC should consider whether they have any concerns with their details being made publicly available and if so, what steps they may wish to take to address such concerns (e.g. restructuring or divesting of their relevant U.K. investments). PSCs should also consider the process that they will adopt to comply (from April 2016) with their obligations to inform companies and LLPs of their details.

Contact Information

If you have any questions concerning this alert or on steps that you might want to think about taking in order to identify PSCs and comply with the new regime, please contact:

Sophie Jermine Partner
sophie.jermine@akingump.com
+44 20.7661.5332
London, 41 Lothbury

John Clark Partner
John.clark@akingump.com
+44 20.7661.5376
London, 41 Lothbury

Vance Chapman Partner
Vance.chapman@akingump.com
+44 20.7661.5333
London, 41 Lothbury

Sebastian Rice
Partner
srice@akingump.com
+44 20.7012.9618
London, Ten Bishops Square

Harry Keegan Partner
hkeegan@akingump.com
+44 20.7012.9658
London, Ten Bishops Square