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Heightened Disclosure Obligations in Respect of Controllers of UK Companies and LLPs

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From April 2016, UK incorporated companies and LLPs will be required to maintain a register (a "PSC Register") and make certain public disclosures in respect of persons having significant control ("PSC") over them.

UK companies and LLPs have traditionally been required to adhere to a greater level of transparency than companies in many other jurisdictions, with annual accounts and details of officers and shareholders being filed with, and available online from, the Registrar of Companies.

The new PSC laws have been introduced to transpose into UK law the corresponding measures from the European Union's Fourth Money Laundering Directive which aims to increase transparency and is due to be implemented by all member states by June 2017.

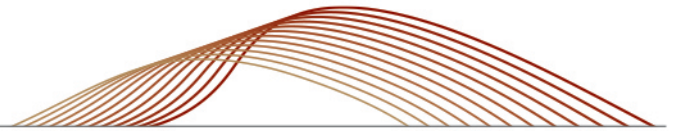
The new PSC laws require UK companies to take reasonable steps to identify any individuals who are the ultimate beneficial owners or controllers of the company, to maintain a register of PSCs and to make that register publicly available. The requirement to maintain a public register is a significant step toward corporate transparency and is targeted at curbing criminal activities such as money laundering and tax evasion. However, it also impacts legitimate unlisted UK companies, as they will now be required to record and publish information about their ultimate owners and controllers for the first time. Private equity firms with advisory entities or investee companies in the UK, might be required to disclose details of the individuals who own or control the private equity firm.

The introduction of the PSC register marks a significant step change in the UK's approach in that, historically, disclosure was only required in relation to officers and registered shareholders while, under the new PSC laws, UK companies which are not listed on certain public markets identified below (each a "relevant market") or LLPs (together, "UK Companies") will be required to record information about their ultimate owners or controllers for the first time. Furthermore, the new regime will be underpinned by the threat of serious criminal sanction for the UK Company, its officers, its PSCs and persons connected with the PSCs (including, in the case of individuals, imprisonment for up to two years).

Obligation on UK Companies to Identify PSCs

The new PSC laws (which are principally contained in Part 21A of the Companies Act 2006 (as inserted by the Small Business, Enterprise and Employment Act 2015) and the Register of People with Significant Control Regulations 2016) will require UK Companies to take reasonable steps to identify persons with significant control over the company or LLP. In this context, a PSC of a UK Company is defined as someone who satisfies one or more of the following five criteria (the "PSC Criteria") in relation to it:

1. holding, directly or indirectly, more than 25% of the shares;



2. holding, directly or indirectly, more than 25% of the voting rights;
3. holding, directly or indirectly, the right to appoint or remove a majority of the board of directors;
4. having the right to exercise, or actually exercising, significant influence or control over the company; and/or
5. having the right to exercise, or actually exercising, significant influence or control over a trust or firm which is not a legal entity and meets any of the above conditions.

For the purposes of determining whether the PSC Criteria are satisfied, rights held through a variety of means that are ultimately controlled by the same person should be aggregated. In addition, if various parties are acting together in a joint arrangement to exercise control over a UK Company (for example, members of the same family or groups of investors), each of them is deemed to hold the total shares held by all of them and if the arrangement covers more than 25% of the shares or voting rights in the UK Company or the appointment or removal of a majority of directors, each party to the arrangement should be separately entered on the PSC Register.

If shares in a UK Company are held indirectly through another legal entity (which is not another UK Company or a company listed on a relevant market), the UK Company must look at the ownership and control of that legal entity to identify any individuals who have a majority stake in that legal entity. A person will hold a majority stake in a legal entity if:

1. he is a shareholder in the legal entity and has the right to appoint or remove a majority of its board of directors;
2. he is a shareholder in the legal entity and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the legal entity; or
3. he has the right to exercise, or actually exercises, dominant influence or control over the legal entity.

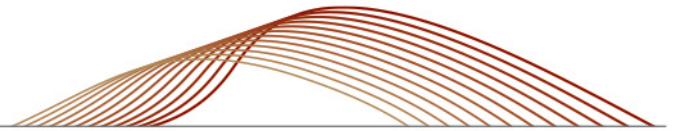
If there is another legal entity (which is not a UK Company or a company listed on a relevant market) which has a majority stake, the underlying UK Company must also look at the ownership and control of that legal entity and so on until it finds either an individual, a UK Company or a company listed on a relevant market with a majority stake.

Guidance on Significant Influence or Control

It is indicative of "control" if a person can direct the activities of a company, trust or firm. Where a person can ensure that a company, trust or firm generally adopts the activities which they desire, this would be indicative of "significant influence". In the context of a company, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances, including the provisions of a company's constitution, the rights attached to shares or securities which a person holds, a shareholders' agreement, some other agreement or otherwise.

A right to exercise significant influence and control could include having the right to determine key decisions affecting the business of the company (such as adopting or amending the business plan or appointing or removing the CEO). It could also include an absolute right to veto key decisions unless these are limited to certain fundamental matters necessary for the purposes of protecting minority interests.

The guidance also clarifies that a person who is significantly involved in the management and direction of a company exercises significant influence or control, and includes a person who is not a member of the board but who regularly or consistently directs or influences a significant section



of the board, or is regularly consulted on board decisions and whose views influence decisions made by the board (including, but not limited to, shadow directors).

There are a number of safe harbours for those people who will not, in the normal course, be considered a PSC. These include directors and employees, advisors and consultants and third party lenders who have a commercial or financial relationship with the company.

Exemption for Listed Companies

Companies with shares listed on certain markets, including the London Stock Exchange, AIM or those admitted to trading on a regulated market in an EEA state (including Euronext Paris, Irish Stock Exchange, Borsa Italiana and Deutsche Borse) are exempt from the obligation to identify PSCs and to maintain a PSC Register, as information on their significant shareholders is already disclosed to the public under existing transparency rules. Companies listed on all principal markets in Japan, the USA, Switzerland and Israel which have sufficiently similar disclosure regimes will also be exempt.

Although a UK Company which is a subsidiary of a company listed on any of these markets will still need to comply with the new PSC laws and maintain a PSC Register, in preparing the PSC Register they will not need to look above the listed parent company.

Considerations for Private Equity Funds

Many private equity funds will be established as limited partnerships. An individual who is a limited partner in (or who controls a limited partner in) a limited partnership will not qualify as a PSC under criteria 1, 2 or 3 of the PSC Criteria by virtue only of being (or controlling) a limited partner. Therefore, unless the limited partner has the right to exercise or actually exercises significant influence or control over the UK Company, he is unlikely to qualify as a PSC.

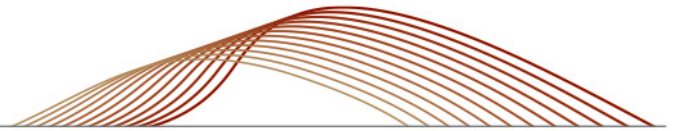
For these purposes, a limited partner is a limited partner in a limited partnership registered under the UK Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business) or a foreign limited partnership. Accordingly, where shares in a UK Company are held (directly or indirectly) as assets of a limited partnership without legal personality, generally only the details of the general partner(s) or the individuals who control the general partners(s) will be included on the PSC Register.

There are detailed guidelines on determining whether a partnership is a “foreign limited partnership”, including a requirement that the limited partners do not take part in the management of the foreign limited partnership’s business. Careful consideration is required where a limited partner relies on a “safe harbour” provision in the laws of the jurisdiction of registration of the limited partnership, as the safe harbour acts may constitute involvement in the management of the limited partnership in the UK, with the consequence that the identity of the limited partner may need to be included on the PSC Register.

Obligation on UK Companies to Contact PSCs and Maintain a PSC Register

If a UK Company identifies any PSCs, it is required to contact those people or others who know them (such as family members, business partners or associates), intermediaries or advisors known to act for them (such as lawyers, accountants, banks or corporate service providers) by serving a notice in the prescribed form (a “S790 Notice”) to confirm whether they meet any of the PSC Criteria and, if they do, to obtain the necessary information to maintain a PSC Register.

The PSC Register must contain personal information, including the name, residential and service address, date of birth and nationality of a PSC, regardless of whether they are a resident inside or outside the UK. It must also include the nature of control exercised and the date the person became a PSC.



The PSC Register must be kept at the company's registered office (or other disclosed address at which the register can be inspected). From June 2016 onward, the information on the company's PSCs will have to be submitted as part of the return filed annually by UK Companies at Companies House from where it can be publicly accessed.

Enforcement by Companies and Penalties for Non-Compliance

Non-compliance by UK Companies and their officers with their duties under the new PSC laws (including the requirement to take reasonable steps to identify a PSC) is a criminal offence. UK Companies are recommended to keep a record of the steps taken by it to identify PSCs.

In addition, in the case of a non-complying individual, the company has the power to disenfranchise the shareholder by imposing restrictions on the underlying shares held by the person or cancelling the payment of dividends on the shares by following a set procedure and a timeline, including the issue of a warning notice and restrictions notice. A UK Company may also apply to court to sell a restricted interest.

Individuals who are or who become a PSC are, except in limited circumstances, under an obligation to contact the underlying UK Company over which they have significant control within one month if they are, or ought reasonably to have been, aware that they are required to be on the PSC Register but are not. Failure to do so is a criminal offence. In addition, anyone who fails (without valid reason) to respond to an s790 Notice within a month commits a criminal offence.

The penalties in respect of a criminal offence committed under the new PSC laws range from the imposition of a fine to imprisonment for up to two years.

Recommended Actions

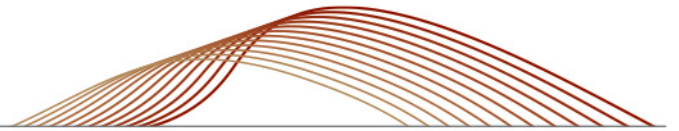
UK Companies which are subject to the new requirements, or overseas companies which have a subsidiary or investee company which is a UK company, must establish a PSC Register alongside their existing statutory registers 6 April 2016.

As the new PSC laws also cover dormant or non-trading subsidiaries, if disclosure is triggered as a result of dormant or non-trading subsidiaries, consider whether it will be possible to dissolve these companies before the disclosure obligation arises.

If a notice is received from a UK Company seeking information under the new PSC laws, ensure that the requested information is provided within 30 days to avoid committing a serious criminal offence and if in any doubt as to how to respond seek prompt legal advice.

Individuals who have direct or indirect interests in a UK Company should take steps now to ascertain whether or not they will be a PSC and any such PSC, should liaise with the underlying UK Company to ensure that it establishes and maintains a PSC register or such individual should reorganise his affairs by 6 April 2016 (or such later date as may be determined under transactional arrangements in the new PSC laws) that they do not need to be registered as a PSC.

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