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Practice Group(s):

Corporate

*Investment
Management*

New Mandatory and Publicly Available Registers Will Disclose Ultimate Individual Controllers of Most UK Companies and All English Law LLPs

By Philip Morgan, Craig Fraser and Pratik Shah

The Small Business, Enterprise and Employment Act 2015 introduces important reforms by the UK Government aimed at increasing transparency over the ownership and control of UK companies and English law LLPs¹. One of the most significant changes, being introduced on 6 April 2016, is a requirement on companies and LLPs to maintain a mandatory statutory register of certain "people with significant control" ("registrable PSCs"), who are generally individuals². This PSC register is also required to contain details of so-called registrable relevant legal entities ("registrable RLEs"). Registrable PSCs and registrable RLEs are persons who are deemed to have significant control by virtue of meeting one or more of five conditions in relation to the relevant company or LLP and who satisfy certain other conditions. Similar requirements are being introduced on the same date for Societas Europaea.

Most of the information recorded on a company's or LLP's PSC register, including the identity of any registrable PSC or registrable RLE, must be made publicly available by way of the company's or LLP's first annual Confirmation Statement (which is replacing the current annual return with effect from 30 June 2016).

The new statutory regime is complex, and a detailed process is mandated for the gathering and confirming of necessary information by companies and LLPs. In addition, the regime creates many new criminal offences for breach.

Whilst certain details of the PSC regime for companies and LLPs remain to be finalised, there is no provision for a transitional period for compliance when the rules take effect on 6 April 2016. Accordingly all companies and LLPs required to have a PSC register should now be taking steps to ensure that they will have a properly completed PSC register from that date.

We have summarised another related reform banning corporate directors of many UK companies [here](#).

Will my company or LLP be required to keep a PSC register?

The PSC register requirements will apply to most UK-incorporated companies and all English law LLPs. They will not apply to overseas entities operating in the United Kingdom, although overseas entities or individuals may have other obligations under the PSC regime in their capacity as registrable PSCs or registrable RLEs of UK entities.

¹ i.e., LLPs registered under the Limited Liability Partnerships Act 2000. The PSC requirements as they apply to LLPs will come into force under the [Limited Liability Partnerships \(Register of People with Significant Control\) Regulations 2016](#) (currently in draft form) ("LLP PSC Regulations") by amending the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009.

² Or can also be local or national governments or corporations sole.

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A UK company will fall outside the scope of the PSC regime, and will therefore not need to keep a PSC register, if (and for as long as) it is:

- a) already subject to the disclosure requirements of Chapter 5 of the Disclosure and Transparency Rules ("DTRs") in the FCA Handbook, which will be the case, broadly, if it is a company listed on an EEA regulated market³ (e.g., the London Stock Exchange main market) for which the United Kingdom is its home state or is a UK public company with shares admitted to trading on a prescribed market (e.g., the Alternative Investment Market ("AIM") or the ISDX Growth Market); or
- b) a company with voting shares admitted to trading on a regulated market³ in an EEA state other than the United Kingdom or on certain specified markets in the United States, Israel, Switzerland and Japan (a "Relevant Listed Company"). The U.S. markets specified for this purpose, according to recently published draft regulations, include The NASDAQ Stock Market LLC, New York Stock Exchange LLC, and 16 other markets.

What are the five control conditions that must be met by registrable PSCs and registrable RLEs?

The five conditions are different in relation to companies and LLPs. A person will have "significant control" over a company if they:

- a) directly or indirectly hold more than 25% of the shares in the company; or
- b) directly or indirectly control more than 25% of the voting rights in the company; or
- c) directly or indirectly have the right to appoint or remove a majority of the board of directors of the company; or
- d) have the right to exercise, or actually exercise, significant influence or control over the company; or
- e) have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm⁴ that has significant control (of the type in the above four conditions) over the company.

A person will have "significant control" over an LLP if they:

- a) directly or indirectly hold a right to more than a 25% share of any surplus assets of the LLP on winding up; or
- b) directly or indirectly control more than 25% of the voting rights in the LLP; or
- c) directly or indirectly have the right to appoint or remove a majority of the persons who are entitled to take part in the management of the LLP; or
- d) have the right to exercise, or actually exercise, significant influence or control over the LLP; or

³ As defined in Article 4(1)(14) of the European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC)

⁴ A firm without legal personality under the law by which it is governed.

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- e) have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm⁴ that has significant control (of the type in the above four conditions) of the LLP.

Statutory guidance⁵ on the detailed meaning of “significant influence or control” for the purposes of the fourth and fifth conditions in relation to both companies and LLPs is currently undergoing a Parliamentary approval process.

Additional conditions that must be met for an entity to be a registrable RLE

An entity will only be a registrable RLE if (in addition to meeting one or more of the relevant control conditions) it:

- a) is a body corporate or a firm that is a legal person under the law by which it is governed; and
- b) is either:
 - i. required to keep its own PSC register under UK rules; or
 - ii. an issuer subject to Chapter 5 of the DTRs (as to which see above); or
 - iii. a Relevant Listed Company, and
- c) is the first entity meeting the conditions in paragraphs (a) and (b) of this section in a chain of ownership above the entity whose PSC register is under consideration.

Additional condition that must be met for an individual² to be a registrable PSC

A person is not a registrable PSC in relation to a company or LLP if their only interest in the relevant entity is held indirectly through a registrable RLE or through a chain of entities at least one of which is a registrable RLE. By contrast, if the person holds both direct and indirect interests in the relevant entity, regardless of the size of the direct interest, they will be a registrable PSC if they are an individual² who meets at least one of the relevant control conditions on the basis of the aggregate of their direct and indirect holdings.

An explanation of relevant indirect interests for the purposes of the control conditions

Indirect interests are only relevant for the purposes of the control conditions if they are held by a person through one or a chain of legal entities where at each level (except in respect of direct interests in the company or LLP whose PSC register is under consideration) a majority stake is held.

A person is considered to hold a majority stake in a legal entity if:

- they hold a majority of the voting rights in the legal entity; or

⁵ Available as a draft at <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

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- they are a member of the legal entity and have the right to appoint or remove a majority of its board of directors; or
- they are a member of the legal entity and control a majority of the voting rights by agreement with other shareholders or members; or
- they have the right to exercise or actually do exercise dominant influence or control over the legal entity.

Nominees, joint interests and joint arrangements

If shares or rights in the company or LLP are held by a nominee, they should be treated as if they were held by the person for whom the nominee is acting. If this person is a registrable PSC, their details must be entered on the PSC register.

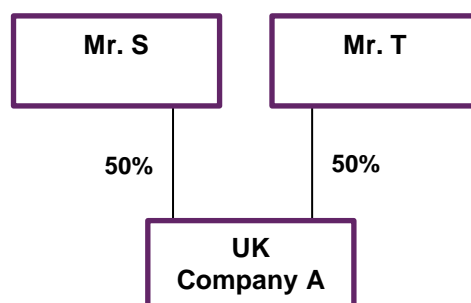
If two or more people hold the same shares or rights in the company or LLP, for the purposes of calculating control each joint holder is regarded as holding the total number of shares or rights held by all of the joint holders. For example, if two or more people jointly hold more than 25% of the shares or voting rights in a company or LLP, each of them must separately be entered on the PSC register.

Similarly, where two or more people arrange to exercise all or substantially all of their rights (including rights conferred by shares) jointly in a way that is predetermined, each of them is deemed to hold the total rights held by all of them. For example, if the arrangement is in respect of more than 25% of the shares or voting rights in a company or LLP, each party to the arrangement must separately be entered on the relevant PSC register.

Practical examples

We have set out below four examples that serve to illustrate some of the points summarised above in relation to the identification of registrable PSCs and registrable RLEs. We have illustrated the operation of the rules by reference to UK companies, but the rules also work similarly for English law LLPs.

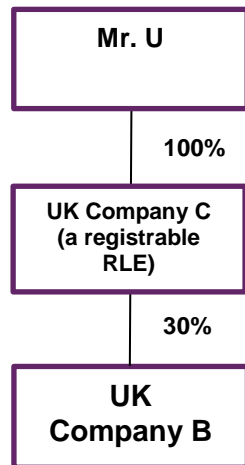
Example 1: Direct ownership by individuals



- Here, Mr. S and Mr. T are both registrable PSCs in respect of Company A because they each hold 50% of the shares in Company A directly.
- Company A must therefore enter both Mr. S and Mr. T on its PSC register.

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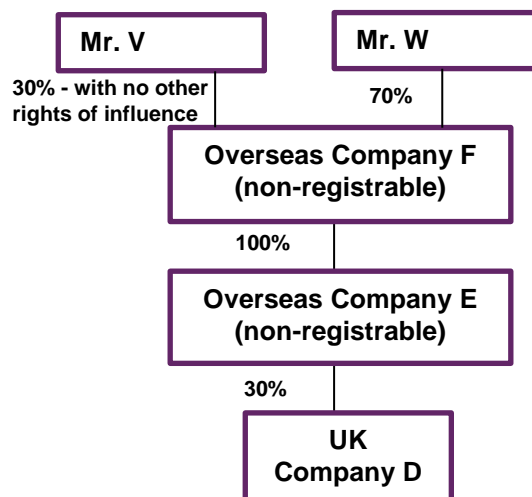
Example 2: Indirect ownership by an individual via a registrable RLE



- In this scenario Company B’s PSC register is relatively straightforward as it needs only to include Company C as a registrable RLE.
- Mr. U is not a registrable PSC of Company B as his interest is held only indirectly through a registrable RLE (by contrast, if Company C were an unlisted overseas company, and therefore not a registrable RLE, Mr. U would be a registrable PSC in relation to Company B).
- Mr. U is a registrable PSC of Company C (assuming that Company C is required to produce a PSC register) and will therefore need to be included on the PSC register of Company C.

(Note: As regards Company B, the search for the owner/controller of the company stops with Company C, as it is a registrable RLE in relation to Company B. The rationale for this is that information as to the owners and controllers of Company C will be available on Company C’s own PSC register (or other publicly available information in relation to Company C, for example if it is listed) and, accordingly, does not need to be duplicated on Company B’s PSC register.)

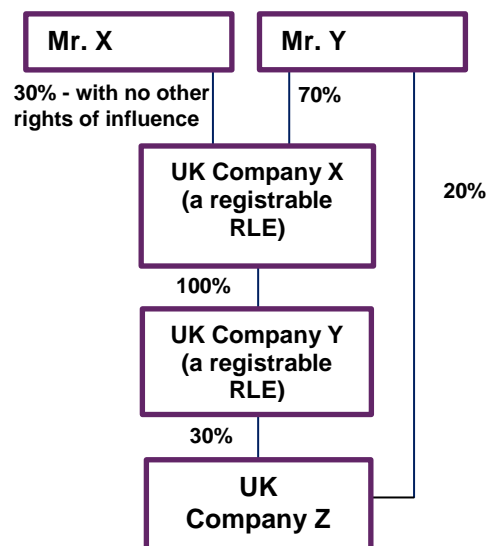
Example 3: Indirect ownership by individuals via non-registrable entities



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- Mr. W is a registrable PSC in relation to Company D. This is because his ownership interest in non-registrable Company F and Company F's interest in non-registrable Company E are both majority stakes, and Company E's interest in Company D, in which Mr. W is deemed to have an indirect interest, meets one of the control conditions.
- If either Company E or Company F had been a registrable RLE (for example because it was listed on a relevant exchange), Mr. W would not have been a registrable PSC in relation to Company D.
- Provided that Mr. V does not in fact exercise dominant influence or control over Company F, he is not a registrable PSC in relation to Company D as his interest in Company F is not a majority stake.

Example 4: Indirect ownership by individuals via registrable and non-registrable entities combined with direct ownership



- Company Y should be included on the PSC register of Company Z as a registrable RLE.
- Mr. Y is a registrable PSC of Company Z as he collectively holds a 50% stake in Company Z, through a 30% indirect interest and a 20% direct interest. He is registrable in relation to Company Z notwithstanding the registrable RLE below him in the indirect ownership chain because of his direct interest in Company Z, even though that direct interest on its own does not meet the control conditions.
- If Company Y is subject to the requirement to produce a PSC register, Company X should be included on the PSC register of Company Y as a registrable RLE.
- Mr. Y is not a registrable PSC in relation to Company Y because his only interest is an indirect interest and it is held through a registrable RLE. Provided that Mr. X does not exercise dominant influence or control over Company X, he does not meet the control conditions in relation to Company Z or Company Y as his interest in Company X is not a majority stake.

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- Mr. X and Mr. Y are registrable PSCs of Company X (assuming again that Company X is required to produce a PSC register).

What information is required to be recorded on the PSC register?

The following information must be recorded in relation to a registrable PSC:

- a) name of PSC;
- b) service address;
- c) usual country or state of residence;
- d) nationality;
- e) date of birth;
- f) usual residential address;
- g) date they became a registrable person (which for persons that are registrable PSCs when the new regime comes into force is 6 April 2016);
- h) any applicable restrictions on using or disclosing the PSC's particulars.

The following information must be recorded in relation to a registrable RLE:

- a) corporate or firm name;
- b) address of registered or principal office;
- c) legal form of the entity;
- d) the law by which the entity is governed;
- e) the register of companies in which it is entered (if any) together with its registration number;
- f) date it became a registrable RLE (which for persons that are registrable RLEs when the new regime comes into force is 6 April 2016).

The PSC register will also record the nature of the control exercised by the registrable PSC or registrable RLE by reference to one of the five conditions of control as described above. Where a "condition" relates to the holding of shares or voting rights (including by way of a trust or via a firm), the subcategory of the condition must also be disclosed on the register by reference to one of three bands of the interest that is held, i.e., if it is:

- a) greater than 25%, but less than or equal to 50%; or
- b) greater than 50%, but less than 75%; or
- c) greater than or equal to 75%.

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A company or LLP's PSC register cannot be blank. Applicable guidance issued by the Department for Business Innovation and Skills⁶ ("BIS guidance"), and the relevant Regulations, prescribe official wording to be used in the PSC register (for example, when describing the nature of the control exercised by a registrable PSC or registrable RLE). When the company or LLP is in the process of taking reasonable steps to identify, and gather and confirm the relevant information in relation to, its registrable PSCs and registrable RLEs (if any), it must also include in its PSC register the official wording describing the reasonable steps that have been taken to date with respect to each such person.

For example, a company or LLP may not enter information relating to a PSC on its register immediately if that information was not either provided by the PSC concerned or with his or her knowledge. It will therefore often be necessary for the company or LLP first to seek confirmation of the information directly from the registrable PSC themselves before the information itself may be added to the PSC register. In the meantime, official PSC register wording must be used to indicate (for example) that the company or LLP has identified a registrable PSC but is awaiting confirmation of relevant information from them.

Where a company or LLP has not reached the point of knowing, or having reasonable cause to believe, that there is any registrable person in relation to the company or LLP, this can be recorded on the company or LLP's PSC register. In addition, the company or LLP must at the same time be taking reasonable steps to determine whether any person is a registrable PSC or a registrable RLE in relation to a company or LLP. This opportunity presents some potential breathing space for entities that are required to have a PSC register but are unable to make any clear determinations as to their possible registrable persons by 6 April 2016.

What information on registrable PSCs will be publicly available?

All recorded information in relation to a registrable PSC will (after it has been filed via an entity's Confirmation Statement) be available on the central public register maintained at Companies House, except for:

- a) the usual residential address of the registrable PSC (unless the PSC's residential address has also been provided as the service address); and
- b) the day (but not the month or year) of the date of birth of the registrable PSC.

In addition, the PSC register must be available for public inspection either (i) at the company's or LLP's registered office or (ii) at another location that has been notified to Companies House or (iii) at Companies House (this third option is only available from 30 June 2016). In this case, the full date of birth, but not the residential address, of a registrable PSC does need to be made available on request. The company or LLP is permitted to charge up to £12 for a copy of the PSC register.

In exceptional circumstances, such as where there is a serious risk of violence or intimidation, there is a regime under which it is possible to suppress the public's access to all information relating to a registrable PSC.

⁶ Available at <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

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Actions that need to be taken by affected companies and LLPs

Broadly, as a result of the new regime, companies and LLPs will have to:

- a) maintain a PSC register;
- b) take reasonable steps to identify if there is anyone who is a registrable PSCs in relation to the company or LLP;
- c) contact any registrable PSCs (or persons who they have reasonable cause to believe may be registrable PSCs) and seek their confirmation (i) as to whether they are registrable PSCs in relation to the company or LLP, and (ii) as to the prescribed information for PSCs, and to enter that information in the PSC register. There are examples of the forms of notice that should usually be used for this purpose at Annexes 3 and 5 of the BIS guidance⁶. These notices require a response from the recipient within one month⁷;
- d) take reasonable steps to determine whether anyone is a registrable RLE in relation to the company or LLP and, if so, to include the prescribed information with respect to each registrable RLE in the PSC register. If the prescribed information is not known, it may be necessary to send a notice to a registrable RLE similar to the notice described in paragraph (c) of this section in relation to registrable PSCs;
- e) make the necessary filings at Companies House in relation to the information contained in the PSC register;
- f) take reasonable ongoing steps to ensure that the company or LLP's PSC register is kept up to date (and in this regard the company or LLP has a duty to act as soon as reasonably practicable after it learns of a relevant change or first has reasonable cause to believe that such a change has occurred); and
- g) take other reasonable steps required under the PSC regime to obtain the necessary information to complete the PSC register properly. Such other steps may include, without limitation:
 - i. sending a statutory notice to a person if the company or LLP knows or has reasonable cause to believe that that person knows the identity of a registrable PSC or registrable RLE, or knows the identity of someone likely to have that knowledge; and/or
 - ii. enforcing the requirements of the PSC regime, including by means of the placing, in certain circumstances, of certain restrictions on the transfer and voting of the relevant shares or interests.

Consequences of breach

Failure by the company or LLP to comply with its duties under this regime is a criminal offence, and the company and its directors or other officers, or (as the case may be) the LLP and its designated members, may be subject to an unlimited fine or imprisonment of up to two years, or both.

⁷ The recipient of the notice commits a criminal offence if they fail to respond to it within this period.

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Failure by an individual or legal entity to respond to a notice from the company or LLP requesting information relating to its registrable PSC or registrable RLE is also a criminal offence (in the case of an entity, on the part of the entity's officers as well as the entity itself). In certain circumstances, failure of a registrable PSC or a registrable RLE to volunteer to the relevant company or LLP required information that does not appear on the relevant entity's PSC register is also a criminal offence on the part of that registrable PSC or registrable RLE. If an individual or legal entity fails to respond to a follow-up warning notice from the company or LLP, the company or LLP may also apply restrictions on the individual's or legal entity's interest in the relevant company or LLP.

Timeline

From 6 April 2016, companies and LLPs must keep and maintain a completed PSC register at their registered office or at an alternative address notified to Companies House.

From 30 June 2016, the information contained on a company or LLP's PSC register must be filed at Companies House in the company's or LLP's next annual Confirmation Statement.

From 30 June 2016, a company or LLP may elect to keep its PSC register at Companies House.

Next steps

Whilst certain details of the PSC regime for companies and LLPs remain to be finalised, there is no provision for a transitional period for compliance when the rules come into effect on 6 April 2016. Accordingly, all companies and LLPs required to have a PSC register should now be taking steps to ensure that they will have a properly completed PSC register from that date.

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