Guide to: People with Significant Control

The People with Significant Control (PSC) regime aims to provide public transparency over the beneficial ownership of certain organisations.

Beneficial ownership

In relation to shares, the legal owners are found in a company's register of members which records who is entitled to exercise the legal rights attaching to the shares. The beneficial owners have the right to the economic benefit of the shares which is held on trust by the legal owner. Often the legal and beneficial owners are one and the same person.

Some company structures, however, may involve the use of trusts. Trusts are generally not a legal entity which can hold shares in its own right. Instead, the trustees collectively hold the legal interest to shares in their names on trust for the benefit of the beneficial owners.

The PSC regime attempts to prevent shareholders from concealing their beneficial interest in a business through using trusts or other structures.

Which entities does the PSC regime cover?

The PSC regime applies to many UK entities, including private companies limited by shares or by guarantee, unlimited companies, limited liability partnerships, companies admitted to AIM and unregistered companies.

The PSC regime does not cover, for example, UK companies listed on a regulated market or trading on certain overseas markets (which already have disclosure obligations) or general partnerships or unlimited partnerships.

What do entities need to do?

Entities under the PSC regime need to:

1. Keep a PSC register together with their statutory books (which are records required to be kept by law and sometimes retained by accountants or solicitors).
2. Take reasonable steps to identify their registerable PSCs.
3. Confirm its PSC's details by sending out notices.
4. Keep its PSC information up-to-date; sending out notices within 14 days where required.
5. Update its PSC register within 14 days of the identity of its PSCs changing or a change being made to their details.
6. Notify Companies House within a further 14 days of making the entry on its PSC register.

Therefore, after a change to the beneficial ownership has happened, there is a maximum of 28 days to publicly disclose the change to the registrar of Companies House. This can be done by electronic filing or using the hardcopy forms PSC01 to PSC09.

Various offences are committed by the company and each of its officers for failing to comply with its PSC requirements. Offences are punishable by a fine and some offences can even by punished by imprisonment.

Who can be PSCs?

PSCs can either be an individual person or a Relevant Legal Entity (RLE). An RLE is a legal entity (a corporate body or firm) which has its own disclosure requirements. This means that it either is required to keep a PSC register or is subject to certain market requirements. In general, non-traded overseas companies will not be RLEs.

Conditions

To be entered on to a PSC register the individual or RLE has to satisfy one of five conditions. In relation to companies with a share capital these are:

1. Holding more than 25% of the company's share capital (as determined by nominal value and including preference shares which are commonly overlooked).
2. Holding more than 25% of the company's voting rights.
3. Holding the right to appoint or remove a majority of the Board.
4. Having the right to exercise, or actually exercising, significant influence or control (this is relevant for individuals or RLEs which don't satisfy the first 3 conditions).
5. In relation to a trust or firm which would otherwise meet conditions 1 to 4 if it had a legal personality, having the right to exercise, or actually exercising, significant influence or control over that trust or firm.

Generally, the majority of SMEs will have only registrable PSCs falling under the first three conditions. The fourth and fifth conditions are more complicated areas of the regime (especially the interaction of trusts) and advice should be sought if these are applicable.

Company chains

The first three conditions apply to direct and indirect holdings and rights. In brief, an indirect holding relates to a chain of company ownership where an individual or parent company holds a majority interest in the intermediary company beneath it.

A company is required to review its chain upwards until it finds a registerable individual or RLE (if any). Where a company has a simple chain of ownership, generally only the first direct or indirect individual or RLE is registerable in the company's PSC register. Therefore, if the direct parent company is itself an RLE then only that company is recorded in the PSC register and to obtain details of the beneficial ownership higher up the chain you would need to look at the parent company's PSC register.

Companies with a complex or more detailed chain of ownership should seek specialist advice.

What do PSCs need to do?

PSCs have obligations to supply information to the company.

If a PSC doesn't receive a PSC notice from the company within a month of becoming a PSC then it is required to notify its own information within one month.

Alternatively, if they do receive a PSC notice from the company and fail to comply with it then the company can serve a further one-month warning notice threatening to placing a restriction on its shares, followed by a restriction notice. A restriction notice limits the rights attaching to the shares, meaning that the PSC cannot vote, receive dividends or transfer the shares.

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T: 0116 289 7000 E: info@bhwsolicitors.com W: www.bhwsolicitors.com

1 Smith Way, Grove Park, Enderby, Leicestershire, LE19 1SX

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