

Client Update

UK Private Company and LLP Beneficial Ownership: New Disclosure Requirements from April 2016

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From 6 April 2016, all UK-incorporated companies and LLPs will (unless exempt)¹ be required to keep and maintain a register of natural persons with significant control (“PSCs”). Such register (the “PSC Register”) must be open to public inspection from 6 April 2016, and any failure of a company or LLP to comply with the new requirements will expose its officers or designated members to the possibility of a criminal charge, fine and/or up to two years’ imprisonment. There is no defence available to a company, LLP or its respective management for any inadvertent or minor breach of the new provisions.

A PSC need have no link (whether by nationality, residence or otherwise) with the United Kingdom, and may simply hold an indirect interest in a UK-incorporated company or LLP. As a result, from 6 April 2016, foreign individuals who use UK entities within their group structures may be surprised to find their identity disclosed, as a matter of law, on publicly-available registers in the United Kingdom. Scottish limited partnerships are not caught by this new regime, though they are expected to be brought within it in 2017.

PERSONS WITH SIGNIFICANT CONTROL

Under the Small Business, Enterprise and Employment Act 2015 (the “SBEE”), a PSC of a company or LLP is defined as an individual that:

- in respect of a company, holds, directly or indirectly, more than 25% of the shares or voting rights in that company;

¹ Any company with shares trading on a regulated market in the United Kingdom, European Economic Area and/or certain other jurisdictions (including the United States, Japan and Switzerland) will already be subject to material disclosure requirements in respect of beneficial ownership and, as such, is exempt from the further requirement to maintain a PSC Register.

- in respect of an LLP, has the right, directly or indirectly, to share in more than 25% of any surplus assets of that LLP on a winding up or holds, directly or indirectly, more than 25% of the voting rights in that LLP;
- has the right to replace a majority of the board of directors; or
- otherwise exercises significant influence or control over the company, the LLP or its respective management.

Statutory guidance has recently been published on the meaning of ‘significant influence or control’ and it is clear that individuals (i) with a right to exercise significant influence or control (e.g. with veto rights in a shareholders’ agreement/articles over fundamental business matters), or (ii) who actually exercise significant influence or control (e.g. a founder or significant executive whose instructions are routinely followed by a board or majority shareholder) will be caught.

For further information on the definition of PSCs (in the context of both a company and an LLP) and on the requirements of the SBEE generally, please see our earlier Client Update: *“Important New Public Disclosure Requirements for Major Shareholders of English Private Companies”*.

CURRENT ACTION REQUIRED

Under the SBEE, a relevant company or LLP **must** take reasonable steps to identify any (and all) PSCs, and to collect all information required to be included on the PSC Register.² As a minimum, officers (or members) must circulate notices to all individuals they know, or have reasonable cause to believe, to be PSCs, seeking confirmation of both (i) their status as a PSC, and (ii) the information to be included on the PSC Register. They **may** also circulate notices to individuals they know, or have reasonable cause to believe, hold information on the identity of a PSC. All entities caught by the new requirements must maintain a PSC register, even if (at any particular time) they have no PSCs.

In group structures, where multiple companies (and/or LLPs) are required to maintain PSC Registers, entities lower down the chain will (in most cases) simply enter the details of their parent on their PSC Register. Only those entities whose parent (i) does not maintain a PSC Register of its own, and (ii) does not

² In respect of each PSC, the PSC Register must display his (or her) name, nationality, date of birth, service address, residential address, date on which (s)he became a PSC, and the nature of his (or her) control. An individual’s residential address and date of birth will be omitted from the public register.

have shares listed on a regulated market³ will need to include the details of the individual(s) with ultimate control.

Whenever there is any change to the information recorded on the PSC Register, the relevant company or LLP must ensure that its PSC Register is updated accordingly.

A PSC of a UK-incorporated company or LLP is himself (or herself) subject to a statutory duty to identify himself as a PSC, and to provide all necessary information to such company or LLP. Any failure to comply with such obligation, or recklessly to provide information that is false in any material particular, is again a criminal offence and may incur a fine and/or up to two years' imprisonment.⁴

FURTHER DEVELOPMENTS

From 30 June 2016, all information on PSCs will also be recorded at Companies House, on a public register searchable by both individual and corporate name. All companies and LLPs will be required to provide details of their PSC Register on their first confirmation statement⁵ filed post-30 June 2016, and to update such information in each subsequent annual confirmation statement. As a result, by mid-July 2017, Companies House will hold a full, public register of the PSCs of all companies and LLPs required to maintain a PSC Register.

From 30 June 2016, any new company or LLP will be required to deliver a "statement of initial significant control" to Companies House, alongside its other documents of registration.

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If you have any questions on the SBEE or PSC Register, or on the current action to be taken by your institution, please do not hesitate to contact us.

³ See footnote 1, above.

⁴ In addition, if a shareholder (or member) does not respond to a notice from a company (or LLP) requesting information on PSCs within a fixed period of time, such company (or LLP) may serve notice on such shareholder (or member) suspending all of his rights in respect of the shareholding - essentially disenfranchising him - for as long as he does not respond to the notice.

⁵ The annual filing set to replace the current annual return.