

Take note! PSC Registers are Coming Soon

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Take Note! From April 2016 English companies must create and maintain a "PSC Register" of persons with significant control over them. Failure to do so would be a criminal offence and may result in a fine and/or a prison sentence of up to 2 years. Similar rules will also apply to LLPs.

The task of identifying who should be disclosed in a PSC Register is complicated. To assist, here are the answers to a few of the questions being asked of our lawyers.

Who or what is a "person with significant control"?

It is an individual (NOT a legal entity) who:

1. Either alone or with others, holds directly or indirectly more than 25% of the company's shares, or the right to more than 25% of the company's capital or profits; or
2. Either alone or with others, holds directly or indirectly more than 25% of the voting rights of the company; or
3. Either alone or with others, holds directly or indirectly the right to appoint or remove a majority of the board of directors; or
4. Has the right to, or actually exercises, significant influence or control over the company; or
5. Has the right to, or actually exercises, significant influence or control over any trust or firm (which is not a legal entity) which has significant control over the company under one of the four conditions mentioned above.

The "PSC" is by definition an individual, and not a legal entity. If your company is owned or controlled by a legal entity (such as another company or LLP) things can become complicated.

The PSC criteria are not always easy to apply in practice, and guidance is being developed.

My company is a group company, owned by another company ("HoldCo"). What must I do?

Firstly, does HoldCo maintain a PSC Register? If so, then HoldCo may be considered "relevant" and "registrable" (a "RLE") and you can record it on your PSC Register. However, there are a number of tests that need to be met before you can consider HoldCo a RLE.

It can become especially difficult where funds, trusts or off-shore entities are involved.

I am an AIM listed PLC. Do I need to do anything?

As you are subject to disclosure obligations under DTR 5, you are not required to maintain a PSC Register and you may be a RLE.

Note, however, your subsidiary companies are still required to maintain PSC Registers.

What must the PSC Register record?

You must record each PSC's personal details such as name, date of birth, nationality and address. You must record when they become a PSC and which of the five "significant control" conditions they met. If they are a PSC because they satisfy conditions 1 or 2, then you must record the percentage of their share and voting rights. Certain other details must be disclosed if your PSC is a RLE.

The PSC Register can never be left blank and companies are obliged to gather and update relevant information.

Next steps

The statutory guidance on the PSC regime has only recently been laid before Parliament. The government has indicated that additional guidance of a non-statutory nature will be forthcoming shortly, including a summary guide for companies, guidance for companies and LLPs and guidance for PSCs. Now is the time that companies should start to prepare, if they have not

already done so.

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