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PSC Register

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Introduction

The *Small Business, Enterprise and Employment Act 2015* amends the Companies Act 2006, by inserting a new Part 21A, to require companies to keep a register of people with "significant control" over the company and to make that register public (the "PSC Register"). This requirement comes into effect on 6 April 2016.

The new Part 21A applies to all companies, including UK Societas Europaea, other than an issuer to which Chapter 5 of the Disclosure and Transparency Rules sourcebook applies (i.e. publicly traded companies). The *Register of People with Significant Control Regulations 2016* also includes an exemption for companies that have voting shares admitted to trading on a regulated market in an EEA state other than the UK or on any of those markets in Israel, Japan, Switzerland or the U.S., as specified in Schedule 1 of those Regulations.

The new PSC provisions in the Companies Act 2006 do not extend to LLPs; however, the *Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016* apply an adapted version of the new Part 21A to LLPs, so requiring them to keep a PSC Register from 6 April 2016 as well.

The following summary of the PSC Register set out below is divided into three sections: Part I relates to companies, Part II relates to LLPs and Part III relates to European public limited liability companies, Societas Europaea (SEs) that are registered in the UK (to the extent the new Part 21A of the Companies Act is modified to ensure that the PSC Register is effective for UK SEs).

PART I: COMPANIES

PSC Register

Companies will be required from 6 April 2016 to establish, maintain and keep available for public inspection a PSC Register, in addition to its existing registers (such as the register of directors and register of members). The PSC Register will identify and record every person with significant control over the company (each, a "PSC"). This requirement applies even if the company has no PSCs or has not yet been able to definitively identify them.

Furthermore, with effect from 30 June 2016, a company will be required to file certain PSC information with Companies House as part of its annual Confirmation Statement (formerly, the Annual Return).

Private companies have the option of keeping PSC information on the public register at Companies House rather than in a separately maintained PSC Register.

The aim of the PSC Register is to increase transparency over who owns and controls UK companies and, according to the Department of Business, Skills & Innovation (BIS), will help inform investors when they are considering investing in a company and also help to support law enforcement agencies in money laundering investigations.

Who is a PSC?

A PSC is an individual who, either alone or as one of joint holders of a share, meets one or more of the following conditions:

(i) holds, directly or indirectly, more than 25% of the shares in the company;

(ii) holds, directly or indirectly, more than 25% of the voting rights in the company (and voting rights held by the company itself are disregarded for this purpose);

(iii) holds, directly or indirectly, the right to appoint or remove a majority of the board of directors;

(iv) exercises, or has the right to exercise, *significant influence or control* over the company;

(v) exercises, or has the right to exercise, *significant influence or control* over the activities of a trust (of which the individual is a trustee) or firm (of which the individual is a member) and the trust or firm itself meets one or more of the preceding conditions (if it were an individual).

The Secretary of State is required to publish guidance as to the meaning of 'significant influence or control' and the BIS published its statutory guidance on 27 January 2016, following its December 2015 consultation, which can be briefly summarised as follows.

Meaning of 'significant influence or control'

The guidance states that *control* and *significant influence* are alternatives and that neither has to be exercised by a person with a view to gaining economic benefits from the activities or policies of the company, trust or firm.

Control – where a person can direct the activities of a company, trust or firm, this would be indicative of control.

Significant influence – where a person can ensure that a company, trust or firm generally adopts the activities or policies they desire, this would be indicative of significant influence.

Right to exercise control or significant influence - the above conditions in (iv) and (v) require the person to have the right to exercise or actually exercise control or significant influence. A person may hold the right to exercise in a variety of circumstances, such as under the provisions of a company's constitution, the rights attached to shares or securities held by such person or via a shareholders' agreement or other agreement. The guidance provides examples of such right include a right to veto or absolute decision over specified reserved matters, but states that these examples do not constitute an exhaustive list. The right to exercise control may result in that person being a PSC regardless of whether they actually exercise that right.

Actually exercise control or significant influence over a company - the guidance provides a list of situations which would be indicative of a person actually exercising control or significant influence over a company for the purposes of condition (iv) above e.g. (i) if that person is involved in the day to day management and direction of the company i.e. not a member of the board, but one who regularly or consistently directs or influences a significant section of the board or who is regularly consulted on board decisions; (ii) a director who owns important assets or has key relationships which are important to the running of the business (e.g. IP rights) and uses this additional power to influence the outcome of board decisions; and (iii) a person whose recommendations are always or almost always followed by shareholders who hold the majority of voting rights.

Excepted roles with relation to companies - the guidance gives a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising control or significant influence for the purposes of condition (iv) above, provided however, that a person may still be a PSC if the relevant role or relationship differs in material respects from how that role or relationship is usually understood. Examples listed include:

(a) a person providing professional advice, such as a lawyer, accountant, financial advisor etc.

(b) a third party dealing under a commercial or financial agreement, such as a supplier, customer or lender;

(c) a person who is an employee acting in the course of their employment, such as an employee, director or CEO of a third party which is treated as a person with significant control over the company;

(d) a director of the company (NB. a director who owns important assets or has key relationships which are important to the running of the business (e.g. IP rights) and uses this additional power to influence the outcome of board decisions (see (ii) above under Actually exercise control or significant influence over a company) can not rely on the excepted role of director to avoid being a PSC); and

(e) a person in relation to any association, professional standards organisation or network of companies or firms which promulgates common rules, standards or policies to be adopted by members of the network.

Right to exercise control or significant influence over a trust or firm – for the purpose of condition (v) above, the guidance notes that a person to have the right to exercise significant influence or control over a trust or firm if that person has the right to direct or influence the running of the activities of the trust or firm e.g. (i) an absolute power to appoint or remove any trustee or partner; (ii) a right to direct the distribution of funds or assets; (iii) a right to direct investment decisions of the trust or firm; (iv) a power to amend the trust or partnership deed; or (v) a power to revoke the trust or terminate the partnership.

Actually exercise control or significant influence over a trust or firm – for the purpose of condition (v) above, the guidance notes that a person is likely to exercise significant influence or control over a trust or firm if that person is regularly involved in the running of the trust or firm, such as a settlor or beneficiary who is actively involved in directing the activities of the trust, or a general partner in the case of a limited partnership.

Excepted roles with relation to trusts or firms - the guidance gives a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising control or significant influence for the purposes of condition (v) above, which are substantially similar to those for companies. Again, a person may still be a PSC if the relevant role or relationship differs in material respects from how that role or relationship is usually understood.

What PSC information must be made available?

The PSC information must include the PSC's:

- name
- service address
- the country or state (or part of the UK) in which the PSC is usually resident
- nationality
- date of birth
- usual residential address
- the date on which the PSC became a registrable person in relation to the company in question
- the nature of his/her control over the company (including level of shares and voting rights)

This information must be updated by the company if it knows or might reasonably be expected to have known that a change to their PSCs has occurred. PSCs must inform the company of any changes to the information recorded in certain circumstances.

The PSC information must be provided to Companies House on incorporation (a statement of initial significant control) and as part of the company's annual Confirmation Statement thereafter.

Those private companies which elect to hold their PSC Register at Companies House, rather than at their registered office, should note that they are required to update such register in the same way as if it was privately held i.e. on or around the date of any change(s), rather than wait for the annual Confirmation Statement.

Information will be publicly accessible, provided however that a PSC's usual residential address may only be accessed by specified public authorities and credit reference agencies.

As mentioned above, the PSC Register can never be blank; thus, if for some reason the PSC information can not be provided, other statements will need to be made instead, explaining why the information is not available.

Failure to provide PSC information

Failure to provide accurate information on the PSC Register and failure to comply with notices requiring a person to provide information are criminal offences and may result in a fine or a prison sentence of up to two years.

PART II: LLPS

This section concentrates solely on the differences between the application of the PSC Register to LLPs as opposed to companies and should therefore be read in conjunction with Part I for a fuller understanding of the PSC Register and its purpose.

Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016

The *Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016* apply an adapted version of the new Part 21A of the Companies Act 2006 to LLPs so as to require LLPs to keep a PSC Register and amend the specified conditions in Part 21A to ensure that the provisions are relevant in the context and structure of an LLP. The adapted version is set out as a new Part 8A to the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009.

Who is a PSC?

In the context of an LLP, a PSC is an individual who meets any of the following specified conditions:

(i) he/she holds, directly or indirectly, the right to share in more than 25% of the LLP's surplus assets on a winding up;

(ii) he/she holds, directly or indirectly, more than 25% of the rights to vote on matters to be decided by a vote of members of the LLP (including rights only exercisable in certain circumstances);

(iii) he/she holds, directly or indirectly, the right to appoint or remove the majority of persons entitled to take part in the LLP's management;

(iv) he/she exercises, or has the right to exercise, significant influence or control over the LLP; or

(v) he/she exercises, or has the right to exercise, significant influence or control over the trustees or members of a trust or firm that is not a legal person, where those trustees or members would meet one or more of the preceding conditions (or would do if it were an individual).

The Secretary of State has similarly published guidance as to the meaning of 'significant influence or control' in the context of LLPs and the guidance largely duplicates the guidance for companies, which can be briefly summarised as follows.

Meaning of 'significant influence or control'

The guidance does not provide an exhaustive statement of what constitutes 'significant influence or control', but provides a number of principles and examples which would be indicative of holding the right to or actually exercising significant influence or control over an LLP or the activities of a trust or firm which itself meets a specified condition in relation to the LLP.

The guidance states that *control* and *significant influence* are alternatives and that neither has to be exercised by a person with a view to gaining economic benefits from the activities or policies of the LLP, trust or firm.

Control – where a person can direct the activities of the LLP, trust or firm, this would be indicative of control.

Significant influence – where a person can ensure that an LLP, trust or firm generally adopts the activities or policies they desire, this would be indicative of significant influence.

Right to exercise control or significant influence over an LLP - the above conditions in (iv) and (v) require the person to have the right to exercise or actually exercise control or significant influence. In the context of an LLP, a person may hold the right to exercise in a variety of circumstances, such as under the provisions of the LLP agreement or some other agreement, through rights attached to a financial interest or otherwise. The person exercising significant influence or control might or might not be a member of the LLP.

The guidance provides examples of such right, including the following:

(a) where a person is likely (more likely than not) to receive more than 25% of the profits of the LLP, including profits allocated automatically or otherwise;

(b) where a person has absolute decision or holds absolute veto rights over decisions related to the running of the business of the LLP, such as amending the LLP agreement, adopting or amending the LLP business plan, changing the nature of the LLP's business or establishing or amending any financial incentive scheme; or

(c) where a person holds veto rights over the appointment of the majority of the persons entitled to take part in the management of the LLP.

The guidance notes that where a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting their own or a minority interest, then this is unlikely, on its own, to constitute significant influence or control. The above examples do not constitute an exhaustive list. The right to exercise control may result in that person being a PSC regardless of whether they actually exercise that right.

Actually exercise control or significant influence over an LLP - the guidance provides a list of situations which would be indicative of a person actually exercising control or significant influence over the LLP for the purposes of condition (iv) above. All relationships that a person has with the LLP or other individuals who have responsibility for managing the LLP should be taken into account, to identify whether the cumulative effect of those relationships places the individual in a position where they actually exercise significant influence or control, such as a member, who also owns important assets and has key relationships that are important to the running of the business, and uses this additional power to influence the outcome of decisions. The guidance provides an example of a person exercising significant influence or control, including the following:

(a) where a person is involved in the day to day management and direction of the LLP i.e. not a member of the management body, but a person who regularly or consistently directs or influences a significant section of management or is regularly consulted on management decisions and whose views influence management decisions – this would include a person who falls within the definition of 'shadow member' in the Limited Liability Partnerships Regulations 2001, but is not confined to shadow members; or

(b) a person whose recommendations are always or almost always followed by members who hold the majority of voting rights in the LLP, such as an LLP's founder who no longer has a formal interest.

Excepted roles with relation to LLPs - the guidance gives a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising control or significant influence for the purposes of condition (iv) above, provided however, that a person may still be a PSC if the relevant role or relationship differs in material respects from how that role or relationship is usually understood. Examples listed include:

(a) a person providing professional advice, such as a lawyer, accountant, financial advisor etc.

(b) a third party dealing under a commercial or financial agreement with the LLP, such as a supplier, customer or lender;

(c) a person who is an employee acting in the course of their employment, such as an employee, director or CEO of a third party which is treated as a person with significant control over the LLP;

(d) a person who is a designated member of the LLP; and

(e) a person in relation to any association, professional standards organisation or network of companies or firms which promulgates common rules, standards or policies to be adopted by members of the network.

Right to exercise control or significant influence over a trust or firm – for the purpose of condition (v) above, the guidance notes that a person has the right to exercise significant influence or control over a trust or firm if that person has the right to direct or influence the running of the activities of the trust or firm e.g. (i) an absolute power to appoint or remove any trustee or partner; (ii) a right to direct the distribution of funds or assets; (iii) a right to direct investment decisions of the trust or firm; (iv) a power to amend the trust or partnership deed; or (v) a power to revoke the trust or terminate the partnership.

Actually exercise control or significant influence over a trust or firm – for the purpose of condition (v) above, the guidance notes that a person is likely to exercise significant influence or control over a trust or firm if that person is regularly involved in the running of the trust or firm, such as a settlor or beneficiary who is actively involved in directing the activities of the trust, or a general partner in the case of a limited partnership.

Excepted roles with relation to trusts or firms - the guidance gives a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising control or significant influence for the purposes of condition (v) above, which are substantially similar to those for companies. Again, a person may still be a PSC if the relevant role or relationship differs in material respects from how that role or relationship is usually understood.

PART III: UK SOCIETAS EUROPAEA

This section concentrates solely on the modifications to the new Part 21A of the Companies Act to ensure that the PSC Register is effective for those European public limited liability companies, Societas Europaea (SEs), that are registered in the UK. This section should therefore be read in conjunction with Part I relating to companies for a fuller understanding of the PSC Register and its purpose.

By way of background, an SE is established by EU law and the requirements for registering an SE in the UK are set out in the *European Public Limited Liability Company Regulations 2004 [SI 2004/2326]*. This company form allows companies operating in more than one EU Member State to organise under a single European label for greater mobility in the EU. At present, there are around 50 SEs registered in the UK.

European Public Limited Liability Company (Register of People with Significant Control) Regulations 2016

The new Part 21A of the Companies Act provides for SEs registered in the UK to be subject to the PSC regime to the same extent as other public limited liability companies registered in the UK. The *European Public Limited Liability Company (Register of People with Significant Control) Regulations 2016* have now been published and modify the PSC regime (as set out in Part 21A of the Companies Act 2006 and the *Register of People with Significant Control Regulations 2016*) to ensure that it operates appropriately in respect of SEs.

The European Public Limited Liability Company (Register of People with Significant Control) Regulations 2016 (the "Regulations") make the following modifications:

1. Part 2 of the Regulations amends the European Public Limited Liability Company Regulations 2004 so that those persons seeking to register an SE with the registrar of companies will be required to submit a statement of initial significant control alongside other documentation required to form an SE;
2. Part 3 of the Regulations amends sections 12A and 790M of the Companies Act 2006 in their application to SEs. Section 12A is modified so that references to "incorporation" are read as "registration" in their application to SEs. This allows for methods of formation of an SE which do not result in the incorporation of a new company but rather a change from one type of company to another. All methods of formation require registration of an SE with the registrar and therefore this modification enables sections 12A and 790M to be read consistently in their application to SEs;
3. Part 4 of the Regulations modifies regulations 27 and 38 of the Register of People with Significant Control Regulations 2016 so that references to subscribers to a memorandum of association are to be read as references to a signatory to the statement of proposed members in their application to SEs. The effect is that on formation of an SE, a signatory to a statement of proposed members can make an application to the registrar for the registrar to refrain from disclosing either information within section 790ZF(2) of the Companies Act 2006 or secured information; and
4. Part 5 of the Regulations requires the Secretary of State to review the operation and effect of the Regulations and publish a report within the same timeframe in which the Secretary of State is obliged to review and report on Part 21A of the Companies Act 2006. The Regulations must then be reviewed within every five years after that.

The Regulations come into force on 6 April 2016, with the exception of Parts 2 and 3 which come into force on 30 June 2016.

Next Steps

If you would like to discuss this further, please contact Claire Cummings at
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