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UK: CORPORATE BRIEFING

DISCLOSURE REQUIREMENTS EXTENDED TO PEOPLE WITH SIGNIFICANT CONTROL – BE PREPARED!

FEBRUARY 2016

- WHO IS A PERSON WITH SIGNIFICANT CONTROL?
- DOES A PSC HAVE TO BE AN INDIVIDUAL?
- YOUR OBLIGATIONS

"THE PRICE OF FAILURE TO TAKE ACTION MAY BE SIGNIFICANT FOR BOTH THE COMPANY (OR LLP) AND PSCs."

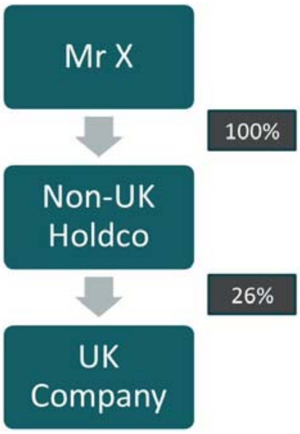
As mentioned in previous Corporate Briefings, from 6 April 2016, the majority of UK incorporated companies and limited liability partnerships (LLPs) will be required to maintain a register of people with significant control (PSC register). The price of failure to take action may be significant for both the company (or LLP) and PSCs. Similar legislation will be implemented across the European Union over the next couple of years.

From 30 June 2016, the information included in this register will need to be filed with Companies House annually and will be available for public inspection. UK companies with shares quoted on certain markets (e.g. the Main Market of the London Stock Exchange, AIM and ISDX) are not obliged to maintain a register, but their various UK incorporated subsidiaries must comply, just as any other private company.

Who is a person with significant control (PSC)?

A PSC is an individual (or legal entity – see below) who meets one or more of the following criteria in relation to a company:

- he holds, either directly or indirectly, more than 25% of the aggregate nominal share capital;
- he holds, either directly or indirectly, more than 25% of the voting rights;
- he holds, either directly or indirectly, the right to appoint or remove a majority of the board of directors;



Mr X is a PSC of the UK Company as he meets one or more of the specified conditions by an indirect holding through a legal entity which is not an RLE.

- he has the right to exercise, or actually exercises, significant influence or control over the company; or
- he has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would meet any of the above conditions if it were an individual.

Guidance on the meaning of "right to exercise" or "actually exercises" significant influence or control over a company is set out in statutory guidance. The guidance does not provide an exhaustive statement of what these mean, but provides a number of indicative principles and examples – the aim of which is to aid corporate transparency by ensuring that the individuals (or entities) who have a less direct, but still significant, influence over UK corporates are known.

More general guidance on the requirements and the five criteria, including shares and rights held indirectly, is included in the non-statutory guidance.

The requirement to keep a PSC register is applied to LLPs with necessary modifications, including to the five conditions for significant control – see further the non-statutory guidance.

Does a PSC have to be an individual?

No, legal entities should be included in the register where they are both "relevant" and "registrable". An entity will be relevant where it meets one or more of the PSC conditions set out above and it holds a PSC register, is a DTR 5 issuer[1], or has voting shares admitted to trading on an EEA regulated market or other specified market. An entity is then registrable if it is the first relevant legal entity in a company chain. These entities are referred to as "Relevant Legal Entities" or "RLEs".

However, when a legal entity is not an RLE, it cannot be entered on the PSC register and instead the company must look at the ownership and control of that legal entity to identify any PSCs or RLEs who have a majority stake in that legal entity and are registrable. See diagram.

Your obligations

Identification and enforcement: A company (or LLP) must take reasonable steps to find out if anyone is a PSC/RLE and must give notice to any person whom it knows (or has reasonable cause to believe) is registrable. The obligation to take reasonable steps may also include giving notice to a person where it is believed that the person is likely to have knowledge of a PSC or RLE. Taking reasonable steps will include considering the documents and information already available to the company (e.g. register of members, articles of association or any shareholders' or other relevant agreements relating to the company).

If a company fails to comply with its duties to identify PSCs/RLEs then it is a criminal offence, punishable by an unlimited fine (for the company and/or relevant officers) and/or up to two years' imprisonment for the officers.

USEFUL SOURCES OF INFORMATION

- PSC summary guidance
- Full non-statutory guidance for companies and LLPs
- Draft statutory guidance on "significant influence or control" for companies
- Draft statutory guidance on "significant influence or control" for LLPs

[1] A DTR 5 issuer is an issuer to which Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules applies.

There is also a proactive disclosure obligation on registrable persons and entities. This obligation is triggered if a person knows (or should reasonably know) that they are a PSC/RLE, their particulars are not already registered, they have not received a notice from the company and these circumstances have continued for at least one month. A person who does not comply with this within one month may also be found guilty of a criminal offence, punishable by an unlimited fine and/or imprisonment.

To a large extent, a company is obliged to be "self-policing" as it is responsible for contacting potential PSCs/RLEs by way of notice. If no response is received from a notice, a warning notice may be sent by the company and if no response is then received, a company may impose restrictions on the interests held by the relevant individual/entity (such restrictions include a prohibition on the transfer of the relevant shares and on receiving dividends). In this scenario, a company that does not impose such restrictions must be able to justify its decision in order to show that it has taken "reasonable steps".

Registration: The relevant information must be entered on the PSC register, but this can only happen when it is complete and, in the case of an individual, has been "confirmed". This must reflect the official wording required in relation to nature and level of interest. A company's PSC register cannot be empty and must at all relevant times – including from 6 April 2016 - contain a statement of the company's status in relation to its investigations using one of the officially prescribed statements (as set out in the non-statutory guidance). Information on the PSC register must be kept up to date.

WHAT NEEDS TO BE RECORDED IN A PSC REGISTER?

PSC details: name, date of birth, nationality, country or state of residence, service address, usual residential address, date on which became PSC, nature of the PSC's control and details of any restrictions on disclosure of information.

RLE details: name, registered/principal office, form of RLE, governing law, register of companies and registration number, date on which became RLE and nature of control.

FOR MORE INFORMATION

This briefing contains a brief overview only of the main requirements. In each case, it will be necessary to consider the relevant legislation and guidance as well as the facts of each particular case.

Should you like to discuss any aspect of this Briefing, please contact one of our team below or your regular contact at Watson Farley & Williams.

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