Register of Persons with Significant Control

Duty For UK Companies To Keep A Register Of Persons With Significant Control (PSCs)
**Update**

Persons with significant control (PSC) requirements have been in place now since 30 June 2016, but there are now changes you’ll need to be aware of that came into effect on 26 June 2017.

As part of the implementation of the EU Fourth Money Laundering Directive (‘4MLD’), the PSC regime has received an update. With the overall aim of further targeting money laundering and terrorist financing.

**Frequency of notice to a PSC**

The requirements that a relevant entity must give notice as soon as reasonably practicable to its PSC when it knows or has reasonable cause to believe there has been a change to the PSC information, has been amended - this notice must now be given within 14 days of becoming aware or suspecting that a change has occurred.

**Frequency of filing requirements**

The key change to note for DMGT is the frequency of filing requirements to Companies House.

PSC information will no longer be updated annually on the confirmation statement. Instead, to meet the 4MLD requirement for the central register to be ‘adequate, accurate and current’, companies will need to report PSC changes to Companies House as and when they happen.

Now (from 26 June 2017), entities subject to the regime will have **14 days to update their PSC register** followed by **14 days to notify Companies House** of any change, where a relevant change to PSC information occurs after that date. Failure to do so within the specified time limits is an offence.

See pages 7-8 for details about specific actions to take.

**Notices to PSCs**

Notices to PSCs must now be given within 14 days of becoming aware or suspecting that a change has occurred.
Background to PSC registers

You should now be aware that from 6 April 2016 the Companies Act 2006 was amended to require details of those individuals who have significant control of an English company (known as PSCs) to be included in a register which must be maintained by the company and made available for inspection. Consequences of a breach of the new requirements include a criminal offence and, in certain circumstances, share rights being restricted. From 30 June 2016 PSC registers have needed to be sent to Companies House. Blueprint has been upgraded to manage this obligation and is able to produce the register, however, manual intervention is needed to confirm the details held within the database are correct and the necessary diligence should be carried out to confirm the PSCs listed are accurate.

Each of DMGT’s principal businesses have UK subsidiaries which are required to keep a PSC register. This legislation is relevant for those of you who are responsible for any UK subsidiary. We have worked with those affected to ensure their UK subsidiary register has been created and are being maintained correctly.

Why does this legislation exist?
The UK has committed to implement a publicly accessible central register of the individuals who ultimately own and control UK companies – the company’s beneficial owners or ‘people with significant control’.

The Small Business, Enterprise and Employment (SBEE) Bill implemented this commitment by introducing a central register of people with significant control over UK companies (the ‘PSC register’) which is held by Companies House.

What is the PSC Register?
The PSC register holds information on PSCs and the way they exercise control over the company. This will help searchers of the register build a picture of the company’s ownership and control structure. The SBEE Bill enables regulations to be made, setting out the information that is required and how it should be recorded.

Should any queries arise having read this Guide, DMGT Company Secretariat are available to offer advice about any of the items detailed or indeed anything else relating to PSC registers - see contact details.
What do UK companies have to do?

A company:
1. take reasonable steps to identify those persons with significant control over it (including giving notice to anyone whom it knows or has reasonable cause to believe is such a person, requiring them to confirm or correct any particulars); and
2. give notice to any person if it knows or has reasonable cause to believe that they know the identity of a person with significant control over it (or can identify someone likely to have that knowledge); and
3. maintain an up-to-date PSC register and make it open to public inspection (even if no person has significant control over the company).

Who needs to be registered?

An individual is a ‘person with significant control’ (PSC) in relation to a company and, subject to certain exceptions (see below), must be registered if, very broadly, he or she:
- has an interest in more than 25 per cent of the company’s shares or voting rights;
- has the right to appoint or remove a majority of the company’s board; or
- has the right to exercise (or actually exercises) ‘significant influence or control’ over the company.

Important

If the company fails to comply with these obligations, it and any officer in default commits a criminal offence, punishable by up to two years’ imprisonment or a fine.
What is ‘significant influence or control’?

Companies must look at the facts of each particular case, but examples of situations which might constitute a right to exercise significant influence or control include some veto rights over decisions related to the running of the business or the appointment of the majority of the directors. This clearly could have implications for joint ventures and other corporate arrangements – although the guidance does state that veto rights over fundamental matters for the purposes of protecting minority interests are unlikely, on their own, to constitute significant influence or control.

Criteria for a PSC:
- ultimately own or control more than 25 per cent of a UK company’s shares or voting rights; or
- have the right to share in more than 25 per cent of any surplus assets of a UK LLP; or
- who ultimately own or control more than 25 per cent of members’ rights to vote; or
- who otherwise exercise significant influence or control over the company, LLP or its management, to be included on a private and a public register (the PSC register).

Do only individuals need to be disclosed?

No – some legal entities will also have to be named in the PSC register. Broadly, a company must first identify any ‘relevant legal entity’ (RLE), defined as a body corporate or a firm which is a legal entity under the law by which it is governed and which:
- would have been a PSC in relation to the company had it been an individual; and
- is subject to its own disclosure requirements (i.e. broadly, if it is a listed company as described above, or a UK company which itself is required to keep a PSC register).

All RLEs must be included in the company’s PSC register, unless they are ‘non-registrable’, i.e. if the RLE only holds an interest in the company through one or more other legal entities over each of which they have significant control, and at least one of which is a RLE in relation to the company (as above, RLEs are subject to their own disclosure obligations). Note that an individual who is a PSC will also be ‘non-registrable’ if the same test is satisfied.
What are the obligations PSCs and RLEs have under the new regime?

PSCs and RLEs must respond to requests for information from companies and, even if they do not receive such a request, they must proactively inform the company if they are registrable and supply the required particulars. They also have a continuing obligation to inform the company of any relevant changes. A failure to comply can be a criminal offence. In addition, in some circumstances share rights could be restricted.

When might share rights be restricted?

If a PSC or RLE fails to respond to requests for information, the company can impose restrictions on its shares (or certain of its rights) without a court order by serving a ‘restriction notice’. The effect of this is that, broadly:

- any transfer of the shares or right is void;
- no related rights can be exercised;
- no payments may be made in relation to the shares or right (e.g. dividends); and
- no new shares may be issued in relation to the shares or right.

What if a person ignores these restrictions?

A person commits a criminal offence if it takes certain actions knowing that a share or right is subject to restrictions (e.g. if it tries to transfer it or vote in respect of it). The company and its directors may also commit offences in certain situations (e.g. if the company issues new shares to a PSC or RLE in contravention of a restriction).

Public register

The public register is freely available online and searchable by individual name, as well as by corporate entity name.
Actions that should already be in place

Analysis of your:
- register of members;
- constitutional documents (e.g. articles of association and shareholder agreements); and
- statement of capital to identify persons who may be PSCs or RLEs.

Also consider whether anyone else has significant control.

Consider writing to those persons identified above, asking them to confirm whether they are PSCs or RLEs and if so to confirm the required particulars if needed. In the case of most DMGT subsidiaries the PSC/RLE will be its holding company.

Compile a draft PSC register. This was created automatically for all UK companies entered in Blueprint. The system automatically creates a register which is populated with the default position of being in the process of identifying PSC/RLEs.

Ensure the PSC register in its current state is available for inspection.

Ensure you have taken and continue to take reasonable steps to identify your PSCs/RLEs.

Send formal notices to those persons you consider may be PSCs/RLEs (and/or to third parties who might have that information) unless you have identified all of the company’s registrable persons and they have provided or confirmed the prescribed details (i.e. they are a Group company already shown correctly in Blueprint).

Once you are satisfied you have identified PSCs/RLEs you will need to update the position on Blueprint and file the register with Companies House.

Actions to be carried out after 26 June 2017

Where a change to PSC information prior to 26 June 2017 has not yet been notified to Companies House (e.g. by submitting a CS01 confirmation statement), the entity must notify Companies House of that change within 14 days of 26 June 2017.

If an entity’s own PSC register is already up to date and any changes to PSC information have already been notified to Companies House then no further action is required.

Note: Company Secretariat must, where possible, file all CS01 forms with Companies House within 14 days to notify it of PSC information.
Ongoing actions

Ensure the PSC register is kept up-to-date in Blueprint. Common changes that companies will now need to report directly to Companies House, as well as updated in the PSC register, include:

• The emergence of a new PSC, RLE or other registrable person – for example, if someone buys shares in the company and their ownership exceeds 25% of the company’s share capital for the first time.

• Changes in specified details of a PSC, RLE or other registrable person – for example, a PSC changes their residential address or an RLE company changes its name.

• The nature of an existing PSC’s control over the company changes – for example, they move between different shareholding ‘tiers’ by buying or selling shares.

• Someone ceasing to be a PSC or RLE – for example, they sell shares so that they now hold 25% or less of the company’s shares or voting rights.

Companies will also need to report various specified statements as they become or cease to be true. These are mostly relevant while the company is identifying and obtaining details of PSCs, or where there is good reason to believe there are no persons with significant control over the company.

Changes must be reported using forms PSC01 to PSC09 (or the equivalent forms for LLPs, LLPSC01 to LLPSC09) within 14 days of an update to the PSC register.

Continuous monitoring under the revised regime is vital.

Blueprint

Here are some videos which explain how to create and maintain a PSC register for your UK subsidiaries using Blueprint: https://support.icsassoftware.com/forums/23104726--How-to-videos

You will need to create an account by entering your email address and a password of your choice.
Contact

If you would like any further information about any of the above, please contact:

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Blueprint Helpdesk for questions about PSCs and the software:  
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Opening hours: 24 hours for receipt of documents. Contact centre lines opening hours: Monday to Friday 8.30 am - 6.00 pm (UK time)