

REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL: WHAT THE NEW COMPANY REQUIREMENTS MEAN FOR YOU

New rules mean that UK companies must create and keep up-to-date a register of 'people with significant control' (PSCs) and file relevant information annually at Companies House. This factsheet outlines the key points and explains what you need to do next...

The requirement to keep a register of 'people with significant control' (PSC register) was one of a number of changes to the Companies Act 2006 included in the Small Business, Enterprise and Employment Act 2015, which aims to increase transparency in the ownership and control of UK companies and to help combat money laundering.

The new rule applies to **all UK private companies (including companies limited by guarantee) and UK LLPs**. However, some entities, such as limited partnerships and Charitable Incorporated Organisations, are exempt from the requirement to maintain a PSC register. The following kinds of UK companies are also exempt:

- Companies that are subject to chapter five of the Financial Conduct Authority's Disclosure and Transparency Rules; and
- Companies with voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel.

These companies are subject to other transparency rules. Overseas entities operating in the UK might be subject to requirements in their home country but are not subject to the requirements of Part 21A to hold a register.

THE NEW REQUIREMENTS FOR COMPANIES

The requirement for companies to keep a PSC register came into effect on **6 April 2016**. Since that date, you – as a director or officer of the company – are required to:

- **Identify** the people with significant control (PSCs) over the company and provide information about them
- **Record** the details of the PSC(s) on the company's PSC register

- **Provide this information to Companies House** as part of the annual Confirmation Statement (formerly the Annual Return) from **30 June 2016**.

Companies must also keep the PSC register up to date with any changes on an ongoing basis. You can do this by entering the information when the annual Confirmation Statement is made, or alternatively you can elect to hold your own register at Companies House instead and update this register in real time.

Identifying a person with significant control

Companies may need to look beyond the people who immediately own their shares, to identify those individuals or entities which ultimately have significant control of the company.

A PSC is defined as a person to whom one or more of the following conditions applies:

1. The individual either directly or indirectly holds more than 25% of the shares in a company
2. The individual either directly or indirectly holds more than 25% of the voting rights in a company
3. The individual has the right to appoint or remove a majority of a company's board of directors
4. The individual exercises, or has the right to exercise, significant influence or control over the company
5. The individual exercises, or has the right to exercise, significant influence or control over the activities of a trust or firm which is not a legal entity, and which itself meets one of the above conditions.

Additionally, if an individual knows, or ought reasonably to know that they should be registered as a significant controller, a proactive disclosure obligation will apply to that individual, requiring them to notify the company of their interest.

Although a PSC refers to an individual, in some cases a company may be owned by a legal entity. Where this applies, the company's PSC register should include details of the legal entity if it is 'relevant' and 'registrable' to the company. The company is not required to look further at its chain of ownership for any indirect interests.

To be classed as relevant, the legal entity must meet one or more of the following criteria: it maintains its own PSC register; it is subject to the Financial Conduct Authority's Disclosure and Transparency Rules; or it has voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel. A legal entity is 'registrable' in relation to a company if it is the first relevant legal entity in the company's ownership chain.

In many cases, identifying PSCs will be relatively straightforward, but companies with more complex ownership structures may find it more of a challenge and might require professional advice.

KEEPING A PSC REGISTER

The details that must be kept for each PSC on a company's register are:

- name
- date of birth
- nationality
- country, state or part of the UK where the PSC usually lives
- service address
- usual residential address (this must not be disclosed when making your register available for inspection or providing copies of the PSC register)
- the date he or she became a PSC in relation to the company (for existing companies, 6 April 2016 should be used)
- which conditions for being a PSC are met. For conditions (1) and (2) (see earlier) this must include the level of their shares and voting rights, within the following categories:
 - Over 25% up to (and including) 50%
 - More than 50% and less than 75%
 - 75% or more.

Confirming information

Before a PSC can be entered on the register, the company must confirm all the details with them. Information may be treated as confirmed if:

- the information was provided to your company by the PSC;
- the information was supplied to your company with the knowledge of the PSC;
- the PSC was asked to confirm whether the information was correct, and they replied that it was so.

A PSC register can never be left blank. Where a company has taken reasonable steps and is confident that there are no individuals or legal entities which meet any of the conditions, it must state this on the PSC register. Where this is the case, the company should include the following text on the register: 'The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company'.

Where, for some reason, the PSC information cannot be provided – for example, if you are still in the process of obtaining it – a specific explanatory statement will need to be made instead.

UPDATING THE REGISTER

Under the new regulations, companies have a responsibility to ensure their PSC register is kept up to date. A company must enter updated information on its own PSC register and provide this to Companies House as part of the Confirmation Statement. This applies in cases where the company has:

- become aware of a change;
- the information needed to enter on its own PSC register; and
- confirmed the information if it relates to someone who has been identified as a PSC and the information has not been provided by the PSC or with their knowledge.

AVAILABILITY OF PSC REGISTERS

Information provided to Companies House will form a central PSC register that will be publicly available, subject to certain redactions.

Companies must ensure their own PSC register is available for inspection at their registered office address or provide copies if requested to do so. When making the PSC register available for inspection or providing copies of it, the PSC's usual residential address must not be included.

PENALTIES FOR FAILURE TO COMPLY WITH THE NEW REQUIREMENTS

Failure to comply with the requirements of the PSC regime could lead to the company or directors, or identified PSCs, committing a criminal offence. The company and its directors could face a fine or imprisonment, or both.

WHAT NEXT?

Although registering PSCs will be reasonably straightforward for many companies, particularly those with simple ownership structures, for others the new requirements will be more problematic, and could result in complex new obligations.

The Department for Business, Innovation and Skills has provided detailed guidance for companies about the PSC register, including example notices for obtaining PSC information and official wording to use on forms. Further information can be found at <https://goo.gl/pS1vtU>.

However, if you are unsure of your obligations and would like to discuss how the PSC register or any other company secretarial requirements affect you, please contact us. We would be delighted to assist you.

