

Corporate Update
The PSC Register
Rosling King LLP



The Small Business, Enterprise and Employment Act 2015 (“SBEE”) received Royal Assent on 26 March 2015 and the intention behind the SBEE is to make the United Kingdom the most attractive place to begin, finance and grow a business, as well as implementing changes to combat tax evasion, money laundering, terrorism and the misuse of companies. SBEE will implement a new transparency measure in the form of a public register of people with significant control or influence over a company (the “PSC Register”).

All companies, which are not exempt, will be required to hold and maintain a PSC Register from 6 April 2016 and will be required to provide the relevant information to Companies House when delivering the company’s Annual Confirmation Statement (the replacement for the current Annual Return) after 30 June 2016 or, on incorporation, via a Statement of Initial Control.

The PSC Register will eventually be extended to LLPs and UK registered Societas Europaea.

From an EU perspective, whilst the SBEE only currently covers UK legal entities, the European Union’s Fourth Money Laundering Directive, which came into force on 26 June 2015, will require all member states to hold central registers detailing a company’s beneficial ownership from 26 June 2017.

Significant Control or Influence

The Government published initial draft guidance regarding the PSC Register and the meaning of ‘significant influence or control’ on 21 December 2015, which was updated on 27 January 2016 (the “Draft Guidance”). The Draft Guidance explains that a person with ‘significant control or influence’ is an individual who meets at least one of the following conditions:

- directly or indirectly holds more than 25% of the nominal share capital;
- directly or indirectly controls more than 25% of the votes at general meetings;
- directly or indirectly controls the appointment or removal of the majority of the board;
- actually exercises, or has the right to exercise, significant influence or control over the company; or
- actually exercises or has the right to exercise significant influence or control over any trust or firm which has significant control over the company.

The Draft Guidance also provides examples of activities which, when carried out in the normal course of business or employment, will not constitute significant control or influence. Examples include being an employee, a director, a person providing advice in their professional capacity or a person engaging in a third party commercial or financial agreement. Where a legal entity rather than an individual fulfils one or more of the above conditions and that legal entity is required to maintain a PSC Register itself under SBEE or is exempt from doing so, it will be considered a ‘relevant legal entity’. Not all ‘relevant legal entities’ will need to be recorded on a PSC Register.

Should the company be owned by a foreign Limited Partnership, only the general partner has

to be included on the PSC Register, as it is only necessary to include information on the controllers of the company on that company's PSC Register.

Corporations sole, governments, government departments, international organisations and local authorities will be treated as 'individuals' for the purpose of the PSC Register.

Information Required

A company's PSC Register will include an individual's name, address, month and year of birth, nationality, service address and interest in the company, which will be based upon banded percentages (25%-50%; greater than 50% but less than 75%; or greater than 75% of share capital).

The PSC Register will be available freely online, searchable by individual name as well as legal entity name. However, only certain information contained on a company's PSC Register will be available from Companies House, with certain public authorities being able to access the complete PSC Register. The company must keep the PSC Register available for inspection alongside the company's other registers and must provide copies of the PSC Register on payment of a flat fee of £12 per request.

Companies will be required to update information contained within the PSC Register if they know or might reasonably be expected to have known that a change in their PSC Register has occurred.

Should the nature of the activities a company carries out be such that making the relevant information public could lead to a serious risk of threats of violence or intimidation against the individual, a company can make an application to the Registrar of Companies for protection on information being made public.

Limited Liability Partnerships ("LLPs")

Whilst the Government has not set an implementation date, it has suggested that legislation will be enacted to extend the requirement to maintain a PSC Register to LLPs, and has provided guidance on the meaning of 'significant control or influence' in the context of LLPs. The draft guidance for LLPs largely duplicates the Draft Guidance, save for changes to suit the differences in structure between an LLP and a company. The Draft LLP Regulations are due to be laid in Parliament on 6 April 2015.

Exemptions

Not all UK companies will be required to maintain a PSC Register. Regulation 3 of the PSC Regulations specifies the entities that are not required to keep a PSC Register, which include UK companies that have voting shares admitted to trading on regulated markets in the European Economic Area, as these companies are already required to disclose detailed information on their ownership under Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules Sourcebook (DTR 5 issuers). In addition, UK companies with voting shares admitted to trading on markets in Japan, USA, Switzerland and Israel will also be exempt as they are subject to similar requirements. The PSC Regulations will

provide a definitive list of exempt markets.

Implementation

It is imperative that all companies and shareholders are aware of the PSC Regulations, how they will affect them and begin preparing for the April 2016 deadline. Companies must consider how they are to comply with the rules and which individuals could fall within the meaning of having 'significant control or influence' over a company.

Once a company has identified all of those individuals with 'significant control or influence' or any individuals that the company believes, or has reasonable cause to believe, may have a degree of control or influence over that company, it should send a notice to that person requiring that person to confirm their position; this will include anyone whom the company knows or has reasonable cause to believe knows the identity of any significant controller or knows someone that is likely to have that knowledge or information. Failure to take such steps or to give notice will be an offence and will lead to a fine or imprisonment. It is important for companies to realise that there will be no defence available for any unintentional or slight breach.

What constitutes 'reasonable steps' will be dependent upon the circumstances in each case. However, as the sanctions for failing to take reasonable steps are so great, companies should err on the side of caution and comply with the implementation requirements under the PSC Regulations.

An individual with 'significant control or influence' will also be required to notify or confirm to the company the extent of their interest in that company. Should a company serve notice upon an individual and that individual fails to respond within one month of receiving the notice, the company can send a further warning notice informing the individual that the company intends to issue a restrictions notice, which will freeze any interest of that individual in the company until the necessary information is provided.

As a result of SBEE, within one year of SBEE coming into force, all companies should have provided the required information to Companies House via of the mandatory Confirmation Statement. Companies House should therefore hold information regarding the beneficial ownership of the majority of UK companies, which shall be available in one central, online searchable register to be provided by the Government, assisting companies with 'know your client' checks and helping identify the beneficial owners of companies for the purposes of anti-money laundering legislation.

For further information, please contact [James Walton](#) or the Partner with whom you usually deal.