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AN OVERVIEW OF THE NEW UK PSC REGIME

Background

On 6 April 2016, most UK companies became required to maintain, and keep available for inspection, a register of ‘persons with significant control’ (“**PSC**”). Companies are also required to file PSC information with Companies House from 30 June 2016 by way of an annual Confirmation Statement (which will replace the Annual Return). This means companies should take steps to identify individuals and legal entities who meet the conditions for disclosure, so as to have a register in place, since failure to comply carries criminal penalties.

The PSC regime reflects the UK’s commitments at the G8 summit in June 2013 to introduce new rules requiring UK companies to obtain and hold information on who owns and controls them and to implement a central registry of company beneficial ownership information. The PSC regime makes it more difficult to use corporate structures to hide criminal activity, and is predicated on the new beneficial ownership register requirements of the Fourth Money Laundering Directive which will apply across the EU from 2017.

The PSC Regime as it applies to companies is set out in a new Part 21A to the Companies Act 2006 (“**CA 2006**”) and is being implemented through amendments made by the Small Business, Enterprise and Employment Act 2015 and through the draft Register of People with Significant Control Regulations 2016.

Scope of the PSC regime

The regime applies to all UK-registered companies, LLPs and Societas Europaeas. UK companies to which DTR 5 applies (i.e. those with shares listed on the UK Main Market, AIM and the ISDX Growth Market) will be exempt. UK companies with voting shares admitted to trading on another EEA regulated market or on specified markets in Switzerland, the U.S., Japan and Israel will also be exempt from the PSC regime. However, UK subsidiaries of exempt listed companies will not themselves be exempt.

Who is a “person of significant control”?

A person with significant control over a company is an individual who meets one or more of the following conditions (“**Conditions**”):

1. The person holds, directly or indirectly, more than 25% of the shares in the company;
2. The person holds, directly or indirectly, more than 25% of the voting rights in the company;

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3. The person holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company;
4. The person otherwise has the right to exercise, or actually exercises, significant influence or control over the company; or
5. The person has the right to exercise, or actually exercises, significant influence or control over an arrangement such as a trust, which is not a legal entity but which meets any of the other specified Conditions in relation to the company, or would do so if it were an individual.

Guidance on the meaning of “significant influence or control”

The Department for Business, Innovation & Skills (“**BIS**”) has published draft statutory guidance (“**Guidance**”) on the meaning of “significant influence or control” in relation to Conditions 4 and 5.

The BIS Guidance notes that if a person can direct a company’s, trust’s or firm’s activities, this will be indicative of control. If a person can ensure that the company, trust or firm generally adopts the activities which that person desires, this will be indicative of significant influence.

The BIS Guidance provides a number of examples of situations which would be indicative of a person actually exercising significant influence or control over a company and points out that such rights may derive from the provisions of the company’s constitution, the rights attached to a person’s shares or securities, from a shareholders’ agreement or from some other form of agreement or otherwise.

Legal entities as PSCs

If a UK company is owned or controlled by a legal entity, as opposed to an individual, that legal entity must be put on the company’s PSC register if it is a Registrable Relevant Legal Entity (“**RRLE**”). An entity will be an RRLE if it satisfies the following two factors:

1. It will be a ‘relevant legal entity’ (“**RLE**”) if would have met one of the Conditions for being a PSC had it been an individual; and it is “subject to its own disclosure requirements” ; and
2. it is the first RLE in the company’s ownership chain.

Where a UK company, A, is wholly owned by another UK company, B, it is not necessary for A to trace ownership up the corporate chain beyond B (because information about the ownership of B will be evident either from B’s PSC register or from disclosures it

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makes under an alternative, specified disclosure regime). However, if A is wholly owned by (i) an overseas company; or (ii) a UK legal entity which is outside the scope of the regime (an Intermediate Controller), A will need to “look through” the Intermediate Controller in order to determine whether, through a majority stake in the Intermediate Controller, any individuals or RLEs have an indirect interest in A. If so, their details will need to be entered on A’s PSC register.

Duty to take reasonable steps to identify PSCs and RRLEs

New section 790D CA 2006 places a duty upon companies to take reasonable steps to identify their PSCs and RRLEs. Failure to do so is a criminal offence and the maximum penalty is two years imprisonment, a fine, or both. Steps that a company should take to identify its PSCs include, amongst other things, reviewing its register of members, articles of association, statement of capital and shareholders’ agreements.

In addition to the duty placed on companies, new section 790G CA 2006 requires individuals and legal entities that become a PSC or RRLE to notify the company of their status within one month.

Information to be entered on PSC register

New section 790K CA 2006 specifies that the following required particulars must be included on the PSC register:

Information on individuals with significant control	Information on registrable relevant legal entities
Their name	The entity’s name
Their date of birth	The entity’s registered address or principal office
Their nationality	The entity’s legal form and governing law
The country or state or part of the UK where the PSC usually lives	The register that the entity appears in (with details of the state) and its registration number
Their service address	The date that the entity became an RRLE in relation to the company, which will be 6 April 2016 for existing companies compiling their PSC register for the first time
Their usual residential address	The specific condition or conditions for being a PSC that the RRLE meets, with a quantification of its interest
The date the individual became a PSC, which will be 6 April 2016 for existing companies compiling their PSC register for the first time	
The specific condition or conditions for being a PSC that the individual meets with a quantification of their interest where relevant	
Any restrictions on disclosing the PSC’s information that are in place	

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Notices and restrictions

Companies have a duty to keep the company's PSC register up-to-date and must serve notice, where appropriate (for example, as soon as reasonably practicable after it believes a change has occurred), on anyone with a 'relevant interest' in the company to request information or confirmation of their PSC or RRLE status.

Companies are able to serve a warning notice on anyone that has not responded to an initial notice within one month. If, within one month of the warning notice being sent, the initial notice requesting information is not complied with and no valid reason for the non-compliance is provided, the company can decide whether to serve a restrictions notice.

A restrictions notice effectively disenfranchises the individual PSC's or RRLE's interest in the company until the information requested by the company is provided to it and the restrictions are lifted. While these restrictions are in place, the holder is prevented from selling or transferring the interest or any rights in respect of the interest, or agreeing to do so, exercising any rights associated with the interest, or receiving an issuance of new shares or payment in respect of the interest.

PSC information to be publicly available

In keeping with the overriding objective to increase transparency, the PSC register will be open to public inspection and information from the register must therefore be filed with Companies House. A protection regime exists under which there is scope for individual PSCs to apply to protect their identity from public view; however, they must be able to demonstrate that they are at risk of violence or intimidation as a result of the information being public.

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Questions, Comments, Suggestions?

If you have any comments or queries, please do not hesitate to get in touch with your usual Curtis contact, or one of the team members below.

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