

PSC Register

From 6 April 2016, nearly every limited company or limited liability partnership will have to hold a register showing every person who has significant control of it (a PSC). If it does not, the company and its directors (or designated members for a LLP) risk prosecution and PSCs risk restrictions on their rights.

The aim is to ensure that the actual controllers of a company cannot hide behind nominees or other devices.

The new rules are very detailed and the aim of this note is only to alert you to them. In the vast majority of cases, whether and how they apply will be obvious and will just cause more form filling. In a few cases, you will need to study the rules or take advice.

In this note “company” includes “LLP” and “director” includes “designated member”.

In outline

From 6 April 2016, a company must identify and record its owners or controllers.

It is the directors' responsibility to:

- identify the people with significant control;
- record their details on the entity's own PSC Register;
- provide this information to Companies House as part of the annual Confirmation Statement (due to replace the Annual Return); and
- update the Register when the situation changes and update Companies House when the next Confirmation Statement is due.

Who is a PSC?

A PSC is an individual who either:

- directly or indirectly owns more than 25% of the shares;
- directly or indirectly has more than 25% of the voting rights;
- directly or indirectly has the right to appoint or remove a majority of directors;
- otherwise has the right to exercise, or actually exercises, significant influence or control; and/or
- 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 itself satisfy any of the first four conditions if it were an individual.

In the majority of cases, it will be obvious whether or not someone is a PSC. However, there are some less common and less obvious situations which may mean an individual is a PSC. For instance, shareholders with small holdings who act jointly to exercise an aggregate 25% of the voting rights or 'shadow directors' may qualify. If there is any doubt, it is best to read the guidance which is available at the link below or consult us.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/496740/PSC_GUIDANCE_FOR_COMPANIES_SEs_AND_LLPS.pdf

The register

The details required from a PSC so they can be entered on the register are:

Head Office
3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

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- name;
- date of birth;
- nationality;
- country, state or part of the UK where the PSC usually lives;
- service address;
- usual residential address (not to be disclosed in the register);
- the date they became a PSC;
- which conditions for being a PSC are met (including level of shareholding and voting rights if necessary); and
- whether an application has been made for the individual's information to be protected from public disclosure.

The PSC Register has to be open to inspection by anyone and the Confirmation Statement will be publicly accessible at Companies House. However, in some circumstances, information can be protected.

The company must keep its own PSC register up to date and, if any changes in control occur, update the PSC register at Companies House when filing the Confirmation Statement.

The company must take reasonable steps to identify a PSC. If the PSC refuses to provide information requested by the company they commit a criminal offence. The company may approach people it believes to have knowledge of a PSC and if they fail to respond, they will also commit a criminal offence. Failure to comply can result in a fine, a prison sentence of up to 2 years or both.

If someone fails to respond to the company with the necessary information, the company, after providing written notice, must follow a statutory procedure to place restrictions on that person's shares or rights.

Groups

If company A is controlled by one or more other companies (B and C), it will be sufficient to enter B and C on the PSC register, if they fall within any of paragraphs (i) to (v) above. You need to refer to the guidance for what has to be put in the register. If, however, company B or C does not keep its own PSC Register (which will show who its controllers are), then its controllers will have to be put on company A's PSC Register.

Further Information

If you would like any further information please contact Senior Partner James Partridge on 01892 701280 or by email: james.partridge@ts-p.co.uk.

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