

Offshore Structures and The Register of People with Significant Control - The PSC Register

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Are you an Administrator or Trustee of an offshore structure which owns a company incorporated in the United Kingdom (UK)?

The Register of People with Significant Control – known as the PSC Register – will, when it comes into effect from April 2016, result in important changes that will require direct action on your part.

Q. What is happening and when?

Significant changes to the English Companies Act 2006 will come into effect from 1 April 2016. Companies incorporated in the UK will need to keep and maintain a new register that records all the people or legal entities that have “significant influence or control” over it, called a **register of people with significant control** (the **PSC Register**). The provisions regarding PSC Register are set out in the new part 21A Companies Act 2006, introduced by the Small Business, Enterprise and Employment Act 2015.

The information will be available publicly, including at Companies House in the UK.

Q. How does this affect the offshore market?

If the offshore structure contains a company incorporated in the UK you should expect to be contacted by the company in the coming months.

Set out below is a summary of the key requirements under the UK legislation that will trigger such contact. In this regard, UK companies are required to:

1.	find out who has significant control of the company
2.	contact these people to confirm the position and obtain required information
3.	create and maintain a PSC Register
4.	explain why if there is missing information
5.	allow people with a proper purpose to inspect the PSC Register

6.	give the information on the register to Companies House from 30 June 2016
7.	if people <u>who control shares</u> do not respond to requests for information, consider putting restrictions on their shares

Q. Who are the people with significant control?

A person with significant control is someone that meets one or more of the following conditions for a single UK company:

1. directly or indirectly owns more than 25% of the shares
2. directly or indirectly holds more than 25% of the voting rights
3. directly or indirectly has the power to appoint or remove the majority of the board of directors
4. otherwise has the right to exercise or actually exercises significant influence or control or
5. has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions.

Conditions (4) and (5) will capture formal and informal forms of influence or control. There is statutory guidance in the UK to assist with the meaning of "significant influence or control" which can be used to help establish whether a person has significant influence or control.

If there are no people or legal entities that fulfil any of the conditions (1) - (5) above, the company should still hold a PSC Register, and should state on the register that there are no registrable people or entities.

A corporate entity which is part of a group might also exercise significant control and fulfil the relevant criteria. A company must only record a legal entity in its PSC Register as a "**registrable relevant legal entity**" if such entity exercises significant control and is also:

- required to hold its own PSC Register or
- subject to Chapter 5 of the Disclosure and Transparency Rules (as set out in the UK's Financial Conduct Authority PRA Handbook) or
- has its voting shares admitted to trading on a regulated market in an EEA state.

Q. Why are UK companies taking note?

Under the new legislation, UK companies must take **reasonable steps** to find out if there are any people with significant control, this may include considering the register of members and writing to company members to ask if they have transferred an interest in their shares to someone else. Failing to take reasonable steps is a criminal offence for which both the company and its officers are liable. It will also be a breach of statutory duty for the directors.

Q. What form will any notification take and what information will the company require?

A UK company must serve a notice on a person or entity asking them to confirm that they have significant control or are a registrable relevant legal entity. The notice should also ask them, if they are a person or entity that should be registered, to confirm, correct or give information needed for the PSC Register.

Q. What are the consequences of not responding to such requests?

It is a criminal offence in the UK for any person or entity not to respond to a notice within a month.

If a person or entity does not respond to notice seeking information for the PSC Register, ultimately this will lead to restrictions being placed on their interest in the company. For as long as restrictions are in place the shares are effectively valueless to the holder and the lifting of restrictions cannot have any retrospective effect. For example, the owner will lose the right to receive any dividends paid.

Any person or entity that does not respond to such a notice (unless the notice was frivolous or vexatious) or knowingly or recklessly gives false information in response to a notice may commit an offence and may face imprisonment for up to two years or a fine or both.

It is currently not clear what the local law impact or regulatory ramifications will be in respect of non-compliance of the UK legislative requirements. It is likely that further guidance will be forthcoming as the various overseas jurisdictions contemplate the impact and reach of the new legislation.

Q. What if I just administer the structure, act as trustee or provide fiduciary services but do not directly have significant control?

UK companies can use the legislation to require people who do not have significant control, but may know about people or entities with significant control, to provide information. This makes it easier for companies to get information they need by contacting lawyers, banks, professional advisers or other third parties. Companies may give notice to any third party if they have reason to believe that such third party knows the identity of:

- any person with significant control
- any registrable relevant legal entity or
- any legal entity that has significant control but is not subject to its own disclosure requirements.

Notices to third parties may ask people to provide information they have that might help the company identify a person or entity with significant control, or of any person likely to have that knowledge.

In the case of a trust, the trustees will have to look to the facts and structure of the client's arrangements to determine whether or not it is the details of the settlor, the protector or the beneficiaries of the trust or the trustees themselves that will need to be disclosed for inclusion on the PSC Register.

Once obtained, information must be confirmed by the relevant controller as only confirmed information can be put on the PSC Register.

Q. Are there any ongoing obligations to notify the UK company of any changes?

The PSC Register must be updated if any information is no longer correct. UK companies must give notice to people or entities as soon as they learn of a change or have reason to believe that there has been a change. This includes a change of address.

This notice must ask the person or entity to confirm that a change has occurred to give the date of the change and confirm, correct or supply any information as appropriate.

If a company fails to obtain up to date information when it has reason to believe an update is

needed, the company and its officers may have committed an offence. On conviction they could face a prison sentence of up to two years or a fine (or both).

Controllers should be pro-active about informing the company about changes that should be made to the PSC Register. It is an offence for any person or entity not to do this when they are aware of changes that need to be made.

Q. What information will be recorded on the PSC Register?

For each person or entity included in the PSC Register, the PSC Register should state which of the five conditions 1 - 5 (set out above) the person or entity satisfies and the banding of any share ownership or voting rights control.

The UK company must include certain further statements on its PSC Register if the register is not complete. These statements are that the company:

- believes that it has no people with significant control or relevant legal entities
- has reason to believe that there is a person with significant control and has taken reasonable steps to identify the person but has not been able to identify them
- has identified that there is a person with significant control but does not have that person's confirmed particulars
- does not know if it has any people with significant control or relevant legal entities
- has issued a notice and the recipient has failed to respond
- has placed restrictions on shares

Q. If the UK company is owned through a chain of legal entities, do they all need to be noted on the PSC Register?

Not all relevant legal entities should appear on the PSC Register. Where a company is owned through a chain of legal entities, only the relevant legal entity that is immediately above it in the chain would appear on the PSC Register. That relevant legal entity is a **registrable relevant legal entity** and the other relevant legal entities are non-registrable.

You should bear in mind that you will still need to disclose ultimate beneficial owners and controllers.

Next steps

The statutory instrument and guidance will be published in the UK later in 2015 or early 2016.

It is strongly recommended that administrators and trustees take the following steps **in advance of 2016**:

1. identify whether there are any UK companies within your portfolio or structure
2. contact the UK company directly and gain an understanding of how the directors are proposing to deal with the new obligations in the coming year
3. brief colleagues within your organisation to make sure that any queries received from UK companies are picked up promptly and dealt with by an appropriate person and
4. take appropriate legal advice if unsure of the impact of the legislation on your structure.

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