BR

Bracher Rawlins
SOLICITORS

77 Kingsway London WC2B 6SR
Tel: 020 7404 9400
Fax: 020 7404 9401

DX 168 London/Chancery Lane
www.bracherrawlins.co.uk

How does the new PSC register affect your company or LLP?

What is the PSC register and what is its purpose?

From 6 April 2016 most UK companies and LLPs will be required to identify and record the individuals who are its ultimate beneficial owners and controllers. The information must be recorded on a "register of people with significant control" (a "PSC register").

The rules are being brought in to help combat tax evasion, money laundering and terrorist financing by giving a full picture of the legal and beneficial ownership of companies and LLPs.

From 30 June 2016, companies and LLPs will also have to file this information on the public register at Companies House as part of a new annual "confirmation statement" (which will replace the annual return).

Who is a person with significant control?

A person with significant influence or control ("PSC") in relation to a company is one who meets one or more of the five conditions set out below:

1. holds more than 25% of the shares;
2. holds more than 25% of the voting rights;
3. holds the right to appoint or remove the majority of the board;
4. has the right to exercise, or is actually exercising, significant influence or control over the company;
5. holds the right to exercise, or is actually exercising, significant influence or control over a trust or firm, which would satisfy one of the first four conditions if it were an individual.

Conditions 1, 2 and 3 can be met directly or indirectly. So, a complex group structure with an ultimate beneficial owner at the top will no longer protect someone's identity.

"Significant influence" and "control" (referred to in 4 and 5 above) are alternatives. The guidance notes to the new rules state:

- "A person will have controlover a company if they have the power to direct its policies and activities."
- "A person exercising significant influence will be able to ensure that the company adopts those policies or activities which are desired by that person."

What practical steps will companies and LLPs need to take?

A company subject to the PSC regime will need to do all of the following:

1. identify any PSCs in relation to the company and confirm certain information about them (see below);
2. record the details of the PSC or PSCs on the company's register;
3. file their information annually with Companies House;
4. update the information on its own PSC register when the information changes and at Companies House when completing the company's annual filing.

A company must take "reasonable steps" to identify PSCs, and record the status of its investigations if it cannot immediately determine their identity.

The information put on a company's PSC register includes the individual's name, date of birth, service address, usual residential address (although this will not be public) and the date on which the individual became a PSC.

Companies and their officers, and PSCs, are subject to criminal offences for failure to comply with their obligations.

What should you do now?

To ascertain whether the first three PSC conditions do apply to any individuals, companies should:

1. review the company's register of members and identify blocks of shareholdings of more than 25% or direct or indirect blocks of voting rights of more than 25%.
2. review the company's articles of association to identify if anyone has the right to appoint or remove the majority of the board.
3. try to establish whether conditions 4 or 5 ("significant influence or control"), are met in relation to any individuals. This may be a matter of judgment.

If you have queries with regard to how the new PSC requirements will affect your company or LLP, please contact Matthew Cowan at matthew.cowan@bracherrawlins.co.uk or Victoria Willetts at victoria.willetts@bracherrawlins.co.uk.