

Small Business, Enterprise and Employment Act 2015

Our first briefing on the Small Business, Enterprise and Employment Act 2015 (the Act) explained how from January 2016 there will be a new requirement that companies investigate and obtain information on persons with 'significant control' over the company (known as PSCs) and to file this information at Companies House from April 2016 (as part of the new annual confirmation process).

Since then the Government has published a consultation document setting out further details on how the register of PSCs (PSC register) will operate in practice (as much of the detail was not included in the primary legislation) - and this document also contains a draft of The Register of People with Significant Control Regulations 2015 (the PSC Regulations).

The most important details emerging from this consultation document and/or the PSC Regulations include the following:

- **listed companies:** The Act already exempts listed companies from the requirement to maintain a PSC register (as they are obliged to provide similar information under other regulatory requirements) but the recent consultation also proposes to exempt UK companies listed on regulated markets in other EEA states
- **LLPs:** LLPs will be required to hold a PSC register from January 2016 - LLPs had previously been omitted from this requirement
- **4th Money Laundering Directive:** Certain required changes to the UK PSC regime to conform it to the EU's 4th Money Laundering Directive will not be implemented until 2017 - so the PSC regime will be changing shortly after its initial implementation
- **information to be included on the PSC register:** We already knew that persons who ultimately hold more than 25% of the shares or voting rights, have the ability to control a majority of the board of directors, or who otherwise exercise significant influence or control would be classified as PSCs. The PSC register must include details of a PSC's name, residential address, service address, date of birth (where relevant) and information about how they have significant control.

The PSC register must also record whether the percentage of shares/voting rights held by the PSC falls within one of three specified categories (being more than 25% up to 50%; more than 50% up to

75%; or 75% or more). Using these categories will hopefully make the ongoing maintenance of the PSC register more straightforward, as there is no requirement to state the exact percentages

- **statements:** Certain statements must be recorded in the PSC register - either where the company does not have a PSC or has been unable to verify its PSCs. A 'menu' of options will cover the possible variations that could apply
- **warning/restriction notices:** If PSCs do not respond to the initial notice sent by the company requesting information within one month, the company may send a warning notice and, if this is not responded to in certain timescales, a restrictions notice can be issued. A restrictions notice will effectively 'freeze' that person/entity's interest until the relevant information is provided. Whilst the shares are 'frozen' in this way the holder of the interest will not be able to sell, transfer or receive any benefit from the rights, or exercise the rights, attaching to them
- **fee for inspection:** It appears that the preferred option for charging for inspection of a company's PSC register is a £12 fixed fee - however, the consultation document also provides a sliding scale option for consultation
- **protection regime:** Details of the protection regime enabling information about PSCs to be withheld from disclosure to credit reference agencies or appearing on the public register are provided (where the person can show that disclosure would put them at serious risk of violence or intimidation due to the activities of the company). Transitional provisions will allow PSCs to apply for this protection ahead of April 2016.

The latest consultation document can be viewed at:

<https://www.gov.uk/government/consultations/company-ownership-and-control-register-implementation>.

talk to us...

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