

FOCUS ON

Creating a Register of “People with Significant Control”

Legal / Regulatory Background

From 5 April 2016, there has been a new requirement for companies (including charitable companies and community interest companies - CICs) to investigate and obtain information and then maintain a register of Persons with Significant Control (PSCs). A PSC is defined as a person (an individual or legal entity):

1. Directly or indirectly holding more than 25% of the shares; or
2. Directly or indirectly holding more than 25% of the voting rights; or
3. Directly or indirectly holding the right to appoint or remove a majority of directors; or
4. Otherwise having the right to exercise, or actually exercising, significant influence or control; or
5. Having the right to exercise, or actually exercising, 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.

It follows that for many charitable companies there may be no PSCs if there are 4 or more members. Directors are specifically excluded from definition 4. above. However it is currently not clear whether employees are also excluded – if not then it is quite possible that chief executives will fall within the definition and hence be PSCs. Charitable companies will need to assess this depending on their particular circumstances.

Detailed Guidance

A register needs to be maintained of PSCs at the registered office and at Companies House; private companies will have the choice of maintaining their PSC register at Companies House instead of keeping their own register. All registers are open to public inspection except for

details of home addresses. The register needs to be kept up to date with a process of monitoring. Failure to respond to a request or knowingly or recklessly giving false information will be a criminal offence.

From 30 June 2016, all existing companies will need to enter the relevant information from their register on the Confirmation Statement which replaces the Annual Return at Companies House.

A PSC register must never be empty – so if there are no PSCs this fact should be stated in the register e.g. “The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company.”. Whilst in the process of taking reasonable steps, this fact must be entered on the PSC register. The register must say that: “The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company.”

Further Advice

Please note that this new provision only applies to companies – including charitable companies, CICs (community interest companies) and trading subsidiaries, but not to unincorporated charities or CIOs (charitable incorporated organisations). Also for other charitable companies such as academy trusts, slightly different considerations may apply. We would be pleased to advise further, including assistance with setting up the register. Detailed guidance is also available from Companies House and can be downloaded from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505303/non-statutory_guidance_for_companies_and_llps.pdf

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