

# New Register of 'People with Significant Control' over UK Companies – One Month to Implementation

March 10, 2016

## Introduction

As part of the UK Government's drive to improve business transparency, from 6 April 2016 onwards, a new Part 21A of the UK Companies Act 2006<sup>1</sup> will require UK incorporated companies (that are not expressly exempt from the requirement) (**PSC Companies**) to keep a public register of people with significant control (**PSCs**) over them (a **PSC Register**). A PSC Company will have to comply with certain rules relating to its PSC Register and its PSCs will have certain obligations to respond to requests for information regarding their interests in the PSC Company.

Broadly speaking, UK incorporated companies that are exempt from the requirements are those that are already subject to some form of shareholder or ownership disclosure regime for example, companies that are listed on the Main Market or AIM in the UK<sup>2</sup>, listed on a regulated market in any other EEA state or listed on certain markets in Israel, Japan, Switzerland and the US<sup>3</sup>.

In addition to UK incorporated companies (that are not expressly exempt from the requirement), UK limited liability partnerships and Societates Europaeae will also be required (under a different set of regulations<sup>4</sup>) to keep PSC Registers, and to comply with rules which are similar to that set out in Part 21A of the UK Companies Act 2006.

The UK Department for Business Innovation & Skills (**BIS**) has published guidance for PSC Companies, UK limited liability partnerships and Societates Europaeae on identifying PSCs, and recording and updating their registers with the relevant information (**PSC Guidance**). The PSC Guidance was last reissued in an updated form on 4 March 2016. BIS has also issued draft statutory guidance on the meaning of "significant control" (**Significant Control Guidance**). The Significant Control Guidance was last reissued in an updated form on 27 January 2016. Further changes may still be made to the PSC Guidance and the Significant Control Guidance ahead of 6 April 2016 and BIS has indicated its intention to provide further detailed guidance on other specific areas of the new regime over the coming months.

The PSC Guidance (together with a summary), the Significant Control Guidance and other relevant documents produced by BIS are accessible on the [UK Government's website](#).

---

<sup>1</sup> Added by [Small Business, Enterprise and Employment Act 2015, Schedule 3, Part 1, para. 1](#).

<sup>2</sup> Section 790B of the Act.

<sup>3</sup> Regulation 3, draft [Register of People with Significant Control Regulations 2016](#) (which will come into force on 6 April 2016).

<sup>4</sup> See draft [Limited Liability Partnerships \(Register of People with Significant Control\) Regulations 2016](#) and the draft European Public Limited-Liability Company (Register of People with Significant Control) Regulations 2016 (that have not yet been published but are referred to in the PSC Guidance)

This memorandum summarises the new Part 21A requirements that will apply with effect from 6 April 2016 and will oblige a PSC Company to:

- **Keep** a PSC Register;
- **Identify** its “registrable” PSCs;
- **Obtain and record** required information about its “registrable” PSCs on its PSC Register; and
- **Provide** information on its PSC Register to UK Companies House annually.

## Keeping a PSC Register

A PSC Company must keep a PSC Register available for inspection at its registered offices<sup>5</sup>. This register must contain required particulars of those individuals with significant control who are “registrable” (a **Registrable PSC**), and those “relevant legal entities” who are “registrable” (a **Registrable RLE**)<sup>6</sup>. From 30 June 2016 onwards, a private company has the option of keeping such particulars at UK Companies House if no objection is received from its Registrable PSCs or Registrable RLEs<sup>7</sup>.

Any person is entitled to make a request to inspect the PSC Register without charge or to request for copies of the PSC Register on payment of a fee.<sup>8</sup> In general, a PSC Company must comply with such requests unless it applies to the English courts for permission not to do so. The courts will only grant such permission if those requests are not sought for a proper purpose.<sup>9</sup>

## Identifying “registrable” PSCs

A PSC Company must take reasonable steps to identify its Registrable PSCs and Registrable RLEs. Specifically, it must ask, by written notice, anyone whom it knows, or has reasonable cause to believe, to be a Registrable PSC or Registrable RLE for confirmation of their status within a month. The PSC or “relevant legal entity” in question will also be asked to confirm or correct their particulars, and supply any missing information. A PSC Company may also choose to issue notices to persons who might know the identity of its PSCs or “relevant legal entities” requesting relevant information.<sup>10</sup>

Templates for the different forms of notices that could be issued by a PSC Company are contained in the PSC Guidance.

Part 21A of the UK Companies Act 2006 also imposes a duty on Registrable PSC and Registrable RLEs to proactively notify the relevant PSC Company, in certain circumstances, of their status and to provide their particulars to such company.<sup>11</sup>

---

<sup>5</sup> Section 790N of the Act.

<sup>6</sup> Section 790M of the Act.

<sup>7</sup> Section 790X of the Act.

<sup>8</sup> Section 790O of the Act.

<sup>9</sup> Section 790P of the Act.

<sup>10</sup> Section 790D of the Act.

<sup>11</sup> Section 790G of the Act.

**When would an individual be a PSC?**

In general, an individual would be a PSC if he or she satisfies any one of the conditions<sup>12</sup> set out below:

<b>Condition 1</b>	The individual holds, directly or indirectly, more than 25% of the shares in a company.
<b>Condition 2</b>	The individual holds, directly or indirectly, more than 25% of the voting rights in a company.
<b>Condition 3</b>	The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company.
<b>Condition 4</b>	The individual has the right to exercise, or actually exercises, significant influence or control over a company.
<b>Condition 5</b>	The individual has the right to exercise, or actually exercises, significant influence over a trust or firm that is not a legal person (e.g. a partnership) that would satisfy one of the conditions above if it were an individual.

There are special rules in Schedule 1A of the UK Companies Act 2006 on the interpretation of these five conditions. For example, there are rules on determining how to calculate a person’s shareholdings, when a person would be “holding” shares, and when he or she would be doing so “indirectly”.<sup>13</sup> In particular, shares and rights will be held indirectly in a company where a legal entity holds the shares or the rights in such company and another person (an individual or another legal entity) has a “majority stake” in that legal entity. A person will hold a “majority stake” in a legal entity if he or she:

- holds a majority of the voting rights in it;
- is its member and has the right to appoint or remove a majority of its board of directors;
- is its member and controls a majority of the voting rights by agreement with other shareholders or members; or
- has the right to exercise or actually exercise dominant influence or control over it.

The Significant Control Guidance provides guidance on the definition of “*the right to exercise, or actually exercises, significant influence*”. Specifically, it sets out a non-exhaustive list of what might constitute a right to exercise significant influence or control:

- where a person has absolute decision or veto rights over decisions related to the running of the business of the company (for example, adopting or amending the company’s business plan or appointing or removing the CEO); and
- where a person holds absolute veto rights over the appointment of directors who hold a majority of the voting rights at meetings of the board on all matters.

---

<sup>12</sup> Part 1, Schedule 1A of the Act.

<sup>13</sup> Parts 2 and 3 of Schedule 1A of the Act.

In relation to such rights, the Significant Control Guidance notes that if a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting minority interests in the company, it is unlikely on its own, to constitute significant influence or control. It also notes that a person would not have significant influence or control where the absolute decision rights or veto derive solely from being a prospective purchaser of the company, on a temporary basis, for example, pending clearance by the UK Competition and Markets Authority.

The Significant Control Guidance also sets out a non-exhaustive list of situations which would be indicative of a person actually exercising significant influence or control:

- if they are significantly involved in the management and direction of the company e.g. a shadow director; and
- if their recommendations are always or almost always followed by shareholders who hold the majority of voting rights in the company, when they are deciding how to vote.

### **When would a legal entity be a “relevant legal entity”?**

In order to be a “relevant legal entity”, a legal entity must satisfy two conditions.

Firstly, a legal entity (a body corporate or a firm that is a legal person under the law by which it is governed) would be a “relevant legal entity” if it satisfies (as if it were an individual) one of the conditions set out above for an individual to be a PSC.

Secondly, it must be subject to its own disclosure requirements, namely:

- Part 21A applies to it; or
- it is an issuer subject to Rule 5 of the UK Disclosure and Transparency Rules; or
- it has voting shares admitted to trading on a regulated market in an EEA state other than the UK; or
- it has voting shares admitted to trading on certain markets in Israel, Japan, Switzerland or the US (including NYSE and NASDAQ).<sup>14</sup>

### **When is an individual PSC or a relevant legal entity “registrable”?**

An individual PSC or a “relevant legal entity” is “registrable” unless they only have indirect control over the relevant PSC Company through a “relevant legal entity” or a chain of legal entities which includes at least one “relevant legal entity”.<sup>15</sup>

What this means in practice is that for each limb of its ownership structure, a PSC Company will only need to identify in its PSC Register a Registrable RLE or Registrable PSC (if any). Once the PSC company identifies a Registrable RLE or Registrable PSC for that limb, it will not need to conduct any investigations above it. Please see the appendix to this memorandum for a number of illustrative case studies on the application of this rule.

---

<sup>14</sup> Section 790C of the Act.

<sup>15</sup> Section 790C of the Act as amended by the [Companies Act 2006 \(Amendment of Part 21A\) Regulations 2016](#).

## Recording a PSC’s details on the PSC Register

The following details of a Registrable PSC and Registrable RLE must be recorded in the PSC Register of the relevant PSC Company<sup>16</sup>:

Registrable PSC	Registrable RLE
<ul style="list-style-type: none"> <li>• Name</li> <li>• Service address</li> <li>• Country or state in which the individual is usually resident</li> <li>• Nationality</li> <li>• Date of birth</li> <li>• Usual residential address (not publicly available but will be available to public authorities and credit reference agencies)</li> <li>• Date on which the individual became a Registrable PSC</li> <li>• Nature of his control over the company</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate or firm name</li> <li>• Registered or principal office</li> <li>• Legal form of entity and governing law</li> <li>• If applicable, register of companies in which it is entered and registration number</li> <li>• Date on which it became a Registrable RLE</li> <li>• Nature of control over the company</li> </ul>

For Registrable PSCs, this information must be recorded once all required particulars of that individual has been confirmed. For Registrable RLEs, this information must be recorded once the company becomes aware of the entity’s status as such. PSC Companies must keep these particulars up to date.<sup>17</sup>

A PSC Register must never be empty. If a PSC Company is in the process of taking reasonable steps to identify its Registrable PSCs and/or Registrable RLEs, this fact must be entered on the PSC Register.

## Providing information on the PSC Register to UK Companies House

From 30 June 2016 onwards, the UK Companies Act 2006 will require PSC Companies to provide information in their PSC Registers to UK Companies House when they deliver their annual confirmation statement (the replacement for the former annual return). Where there is any change to a company’s PSC Register throughout the year, whilst there is no obligation to make a notification at the time of such change, these changes should all be included as part of the company’s next annual confirmation statement.<sup>18</sup>

---

<sup>16</sup> Section 790K of the Act.

<sup>17</sup> Section 790M of the Act.

<sup>18</sup> Section 853I of the Act.

## Consequences of breach

In general terms, breach of the requirements of the new regime by a PSC Company (for example, its duty to keep a PSC Register) are criminal offences committed by the company and its officers in default. These offences are punishable by imprisonment or a fine (or both). Similarly, this is the case for Registrable PSCs and Registrable RLEs, for example, where they fail to supply required information to a PSC Company.

In addition, if a Registrable PSC or Registrable RLE does not respond to a notice from a PSC Company requesting confirmation of its status and required particulars (if relevant), the company may take steps to impose restrictions on their shares including a restriction on the transfer of such shares.<sup>19</sup>

## Concluding remarks

The new PSC regime will impose additional compliance and administrative burdens on UK companies. The regime will be particularly onerous for multi-national organisations with complex corporate structures as the UK companies within these structures will be required to undertake a thorough search for their ultimate beneficial owners who may be exercising control over them via multiple arrangements or agreements rather than through their indirect shareholdings. Going forwards, organisations may avoid the inclusion of UK companies in their group in order to avoid the PSC regime.

From an M&A perspective, a purchaser of a UK company will be well-advised to undertake due diligence on the company's PSC register and the steps it has taken to update this register to ensure that the target company is not in breach of any of the requirements under the regime. The purchaser may also wish to negotiate for contractual protection in the sale agreement (for example, warranties and indemnities) to address any perceived risks related to the target's PSC Register.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

<b>Will Pearce</b>	<b>+44 20 7418 1448</b>	<a href="mailto:will.pearce@davispolk.com">will.pearce@davispolk.com</a>
<b>Simon Witty</b>	<b>+44 20 7418 1015</b>	<a href="mailto:simon.witty@davispolk.com">simon.witty@davispolk.com</a>
<b>Dan Hirschovits</b>	<b>+44 20 7418 1023</b>	<a href="mailto:dan.hirschovits@davispolk.com">dan.hirschovits@davispolk.com</a>
<b>William Tong</b>	<b>+44 20 7418 1089</b>	<a href="mailto:william.tong@davispolk.com">william.tong@davispolk.com</a>

---

© 2016 Davis Polk & Wardwell London LLP | 5 Aldermanbury Square | London EC2V 7HR

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy policy](#) for further details.

Davis Polk & Wardwell London LLP is a limited liability partnership formed under the laws of the State of New York, USA and is authorised and regulated by the Solicitors Regulation Authority with registration number 566321.

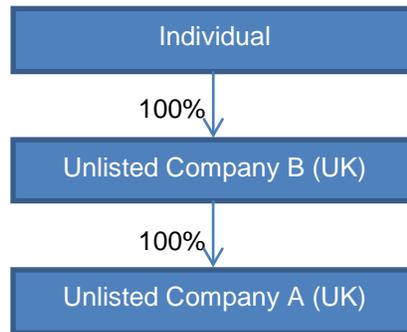
---

<sup>19</sup> Schedule 1B of the Act.

## Appendix – Case Studies

### Case Study 1: Privately-owned UK Group

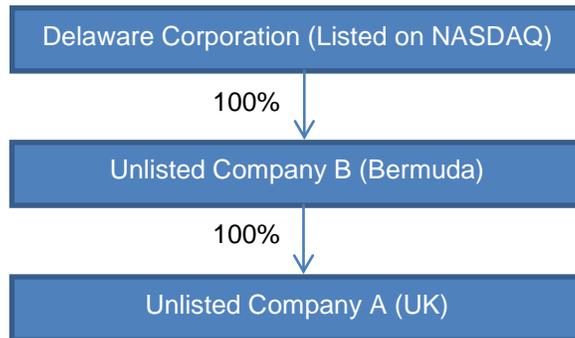
Company A is wholly owned by Company B which is, in turn, wholly owned by an individual, as shown in the diagram below:



- The individual would be a PSC over Company B and Company A (indirectly through his or her ownership of Company B).
- Company B is a Registrable RLE in relation to Company A as it is an unlisted UK incorporated company subject to Part 21A of the UK Companies Act 2006 and it owns Company A.
- Since Company B is a Registrable RLE, the individual's particulars would only be recorded in Company B's PSC Register and not Company A's PSC Register.
- Company B would be recorded in Company A's PSC Register as a Registrable RLE.

**Case Study 2: UK Subsidiary of NASDAQ Listed Company**

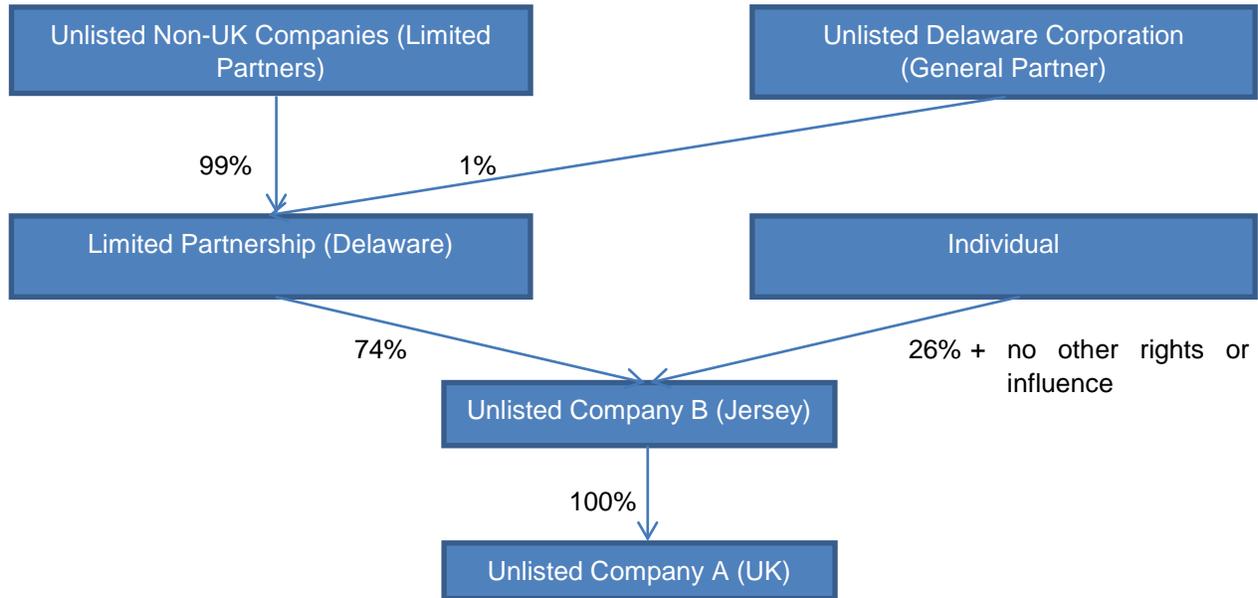
Company A, a UK incorporated company, is wholly owned by Company B, an unlisted Bermudian company which is, in turn, wholly owned by a Delaware Corporation (listed on NASDAQ), as shown in the diagram below:



- Company B is not a “relevant legal entity” in relation to Company A as it is not subject to its own disclosure requirements (i.e. it is an unlisted overseas company). Accordingly, its particulars do not have to be recorded in Company A’s PSC Register.
- The Delaware Corporation is a Registrable RLE in relation to Company A as it is a body corporate under Delaware law, it is subject to its own disclosure requirements since it is listed on NASDAQ and it owns Company A (indirectly through its ownership of Company B). In other words, the Delaware Corporation’s particulars must be recorded in Company A’s PSC Register.
- Company B and the Delaware Corporation are both overseas companies. They are not subject to the English law requirement to keep a PSC Register.

**Case Study 3: UK Portfolio Company of US Financial Sponsor**

Company A, a UK incorporated company, is wholly owned by Company B, a Jersey incorporated company, which is in turn owned by an individual and a Delaware limited partnership. The limited partnership has a number of unlisted non-UK incorporated companies as its limited partners and a Delaware corporation as its general partner.



- Company B is not a “relevant legal entity” in relation to Company A as it is not subject to its own disclosure requirements (i.e. it is an unlisted overseas company). Accordingly, its particulars do not have to be recorded on Company A’s PSC Register.
- The individual is not a PSC in relation to Company A as he or she does not own a majority stake in Company B and therefore he or she is not treated as indirectly holding the shares in Company A through Company B. In addition, he does not have any other rights or influence over Company B. Accordingly, his or her details does not have to be recorded on Company A’s PSC Register.
- The Delaware Limited Partnership is not a “relevant legal entity” in relation to Company A as it is not subject to its own disclosure requirements (i.e. it is an unlisted overseas legal entity). Similarly, on the basis that the Limited Partners and the General Partner are unlisted overseas companies, none of them are “relevant legal entities” in relation to Company A.
- To the extent that there is a Registrable RLE or a Registrable PSC in relation to Company A above the Limited Partners, such entity or individual would need to be recorded in Company A’s PSC Register.
- Company B, the Delaware Limited Partnership, the Limited Partners and the General Partner are non-UK incorporated companies and are not required by English law to keep a PSC Register.