

Section 81 and Schedule 3 of the Small Business Enterprise and Employment Act 2015 has introduced new provisions into the Companies Act 2006 which, in broad terms, require a UK company to keep a "beneficial owners" register which is open to the public.

The register is to be known as the PSC register, "PSC" being an abbreviation of "people with significant control". Not all beneficial owners of a UK company's share capital are caught: only those with "significant control" of the UK company.

Who are PSCs?

The legislation contains five conditions of PSC status. If a person meets any one of the conditions, then he or she is a PSC.

PSC status:

Condition 1: An individual holds, directly or indirectly, more than 25% of the shares of the UK company.

Condition 2: An individual holds, directly or indirectly, more than 25% of the voting rights in the UK company.

Condition 3: A person holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the UK company.

Condition 4: At the time of writing, the fourth condition is egregiously circular. It states that a person with significant control of a company is a person 'who has the right to exercise, or actually exercises significant influence or control' over the company. The Secretary of State must prepare and publish guidance about the meaning of 'significant influence or control' and this guidance must be laid before Parliament. Regard must be given to that guidance in interpreting references to 'significant influence or control' (Schedule 1A, para 20). The government is expected to issue such

guidance during the summer of 2015.

Condition 5: The fifth condition is that:

- a) the trustees of a trust (or the members of a firm that, under the law by which it is governed, is not a legal person) meet any of the conditions 1-4 above in their capacity as trustees (or as partners of a partnership without legal personality) in relation to a UK company, or would do so if they were individuals, and
- b) a person has the right to exercise, or actually exercises, significant influence or control over the activity of that trust (or firm).

Which UK companies are affected?

- UK private companies
- UK unlisted PLCs
- UK guarantee companies
- UK unlimited companies

The Act does not capture UK limited liability partnerships, but these are almost certainly going to be captured in secondary legislation.

The UK company's duty to investigate

A UK company within the scope of Schedule 3 must under new s790D take reasonable steps to determine if anyone is a registrable person or a registrable relevant legal entity¹ for the purposes of the PSC register and, if so, identify them. Pursuant to this, the UK company must give notice to anyone who it knows or has reasonable cause to believe is a registrable person or a relevant legal entity in relation to it; and if the recipient of the notice confirms this status, then the recipient of the notice must confirm or correct any particulars that are included in the notice, and supply any particulars that are missing.

A UK company issuing notices under s790D may also give notice to a person if it knows or has reasonable cause to

believe that the person knows the identity of someone who is a registrable person, or a relevant legal entity, or if the person knows the identity of someone likely to have that knowledge. An addressee of a notice has up to one month from the date of the notice to comply with it.

A UK company will also have a duty under s790E to keep PSC particulars up to date, and must issue further notices if it knows or has reasonable cause to believe that a relevant change has occurred in the particulars of a PSC. The company and every officer of the company in default commits a criminal offence if it fails to comply with the terms of s790D or E.

The duty to supply information

Schedule 3 of the Bill extends new administrative burdens beyond the UK company itself in support of the PSC register. Section 790G imposes duties on persons who know or who ought to know that they are 'registrable persons' or 'relevant legal entities' to notify the UK company of their status in relation to the company, where their required particulars are not stated in the company's PSC register, and such a person has not received notice from the company. Not only is there a duty to supply such information to the company by the registrable person, but there is also an ongoing duty on the registrable person to communicate updated information to the UK company.

Enforcement of disclosure requirements

Investigative notices served by the company under s790D or E to persons with 'relevant interests'² who fail to comply with the notices can lead to enforcement by means of a 'warning notice', followed, if necessary by a 'restrictions notice' (Schedule 1B para s1 - 6).