



Effect of restrictions notices

The effect of a restrictions notice is as follows:

- a) any transfer of the interest is void
- b) no rights are exercisable in respect of the interest
- c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest holder
- d) except in liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise.

An agreement to transfer an interest that is subject to these restrictions is void, as is an agreement to transfer any associated right otherwise than in liquidation (Schedule 1B, para 3).

Inspection and copying of the register

A company's PSC register must be kept available for inspection:

- a) at its registered office, or
- b) at a place specified in regulations under s136 CA 2006.

A company must give notice to the Registrar of Companies of the place where its PSC register is kept available for inspection and of any change in that place, but no such notice is required if the register has, at all times since the company was incorporated, been kept available for inspection at the company's registered office (s 790N). A company's PSC register must be open to the inspection of any person without charge (s790O).

Any person may require a copy of a company's PSC register or any part of it on payment of such fee as may be prescribed.

Obligations of searchers of the PSC register

A person seeking to exercise rights to inspect or copy the company's PSC register must, under s790O, make a request to the company containing the following information:

- a) in the case of an individual, his or her name and address
- b) in the case of an organisation; the name and address of an individual responsible for making the request on behalf of the organisation
- c) the purpose for which the information is to be used, and
- d) whether the information will be disclosed to any other person, and if so
 - i) where that person is an individual, his or her name and address
 - ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf and
 - iii) the purpose for which the information is to be used by that person

A UK company's required response to a PSC register search request

Where a company receives a request to inspect or copy its PSC register, it must, within five working days either:

- a) comply with the request, or
- b) apply to the court.

If the company applies to court, it must notify the person making the request.

If the court is satisfied that the inspection or copy is not sought for a "proper purpose", it must direct the company not to comply with the request and it may further order that the company's costs on the application be paid in whole or in part by the person who made the request.

If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons) then it may direct that the company is not to comply with any such request.

However, if on an application the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision.

A criminal offence is committed by the company and every officer of the company where an inspection or copy request is made to the company and it is refused without a supporting court order.

PSC searcher's criminal offences

Various criminal offences are committed by a 'searcher' of the PSC register if such a person knowingly or recklessly makes a request for inspection or a copy of the PSC register and the request contains a statement that is misleading, false, or deceptive in a material particular (s 790R).

It is also an offence for a person in possession of information obtained by inspection or copying of a UK company's PSC register:

- a) to do anything that results in the information being disclosed to another person or
- b) to fail to do anything with the result that the information is disclosed to another person – knowing or having reason to suspect that the other person may use the information for a purpose that is not a proper purpose.

Alternative method of record-keeping

As an alternative to the UK company maintaining its own PSC register at its registered office (or other designated UK address) a company may elect to keep the information required to be entered on the PSC register with the Registrar of Companies on a 'central register'. The Central Register is unconditionally open to inspection by the public.

Such an election does not in any way exonerate the company from its investigative and information gathering duties in relation

to its PSCs, nor on the PSC's reciprocal obligations to the company.

Unfortunately, the alternative regime involving the Central Register does not exonerate a UK company from creating a PSC register on incorporation and filing details of its PSCs (if any) on incorporation to the Central Register. Therefore, if the UK company does not elect to keep its PSC records on the Central Register (and place its PSC register in abeyance) it will have to maintain its own PSC register, and file the up-to-date contents of its PSC register on incorporation annually to the Central Register.

PSC particulars recorded on the PSC register

This includes the name of the PSC, his or her country or state of residence, nationality, date of birth (although the day of birth will be suppressed as an anti-fraud measure), service address (if the PSC wishes to withhold his or her residential address), the date on which the person became a PSC, and the nature of the PSCs control over the UK company).

Confidentiality planning for beneficial owners going forward

Planning will require beneficial owners to disengage themselves from significant control of the UK company. This suggests that the use of trusts to own UK companies will become prevalent among the small minority of beneficial owners who require legitimate confidentiality. Other measures involving option agreements and split share capital arrangements also suggest themselves. However, these measures will require advice from a UK corporate lawyer.

Conclusion

Although, in a perfect world one should wait for statutory guidance on condition four of PSC status (this is the broad-brush or "sweeping up" condition) before implementing any protective measures, as well as waiting to see what the protection regime the government will offer to PSCs at "risk of serious harm" from disclosure looks like (this regime is likely to be too uncertain and narrow in scope to be practicable), many PSCs will wish to act well before the deadline for the implementation of the PSC register (currently January 2016) and the Central Register (currently April 2016), in order to restructure the share ownership of affected companies.

END NOTES:

1. A relevant legal entity is a company either itself subject to the Act's disclosure requirements or is a DTR 5 issuer, or of a description specified in regulations.
2. i.e. shares or voting rights in the UK company or the right to appoint or remove a majority of the UK company's directors.