

Register of Persons with Significant Control and Replacement of Annual Confirmation Statement

Small Business, Enterprise and Employment Act 2015

The Small Business, Enterprise and Employment (SBEE) Act 2015 is designed to make the UK a more attractive place to start, finance and grow a business and reduce the barriers that many small businesses face in their drive for innovation and growth. On 26 March 2015, SBEE was given royal assent and covers a wide range of issues, including implications on company secretarial obligations. In a drive to promote greater corporate transparency, the SBEE Act introduced a requirement for UK companies to identify and register people with significant control to Companies House annually. A brief summary of the changes and effective dates is given below.

What is the Persons with Significant Control Register (PSC Register)?

Since 6 April 2016 all UK companies limited by shares or guarantee (including charitable companies, LLPs and academy schools) are required to maintain a PSC register giving details of individuals with significant control over the company. The PSC register is in addition to the other registers that companies and LLPs already maintain.

Who qualifies as PSC?

An individual qualifies as a PSC if they meet any of the following conditions:

- Holding directly or indirectly more than 25% of the shares (calculated by reference to nominal value of share capital or, for guarantee companies, by reference to rights to capital or profits);
- Holding directly or indirectly more than 25% of the voting rights;
- Holding the right, directly or indirectly, to appoint or remove a majority of directors.

There are also two tests around the right to exercise significant influence or control:

- An individual who has the right to exercise or actually exercises significant influence or control;
- Trustees of a trust that is not a legal person meet one or more of the specified conditions in their capacity as such and the individual exercises or has the right to exercise significant influence or control of the activities of that trust. This means that if someone has significant influence over the trust that individual is also caught.

The PSC register will contain details of “registrable PSCs”, who are individuals meeting any of the above conditions unless their interest is “non-registrable”. A non-registrable PSC is an interest held via another company. In simple terms, a direct holding of more than 25% by an individual would be registrable, whereas a similar holding held via another UK company would not.

An entity can be a PSC if it meets one of the conditions above. This is referred to in the legislation as a “relevant legal entity” (RLE). If the RLE is another UK company or one listed on certain specified markets (a “registrable RLE”) the PSC register need only contain the details of that company. However, if the RLE is not a registrable RLE the PSC register must contain details of the individual who ultimately meets the PSC test.

Information on registrable persons

The PSC register must contain details on each identified PSC including their name, residential and service addresses, country of residence or incorporation, nationality, date of birth, when they became a PSC and a statement as to which PSC condition(s) they meet.

While in many cases it will be obvious whether a company has a PSC and the identity of such, the law imposes a duty on companies to investigate, obtain and update information on registrable persons.

Failure to take reasonable steps to identify PSCs or to maintain a PSC register are criminal offences and so may be subject to penalties or even imprisonment.

Since 1 July 2016 information on PSCs must be filed at Companies House as part of the new annual confirmation statement (see below).

Annual confirmation statements

With effect from 1 July 2016, companies are no longer required to file an annual return. The annual return is replaced by an annual confirmation statement stating that the company has delivered all the information it was required to provide in the period covered by the statement.

The “confirmation date” is the anniversary of the last annual return date or, for new companies, the anniversary of incorporation. There must be no more than 12 months between annual confirmation statements.

The confirmation statement will cover:

- Changes to registered office;
- Details of company registers relating to directors and PSCs (see above);
- Details of any Single Alternative Inspection Location (SAIL);

When providing a confirmation statement a company must also provide details of any changes in its principal business activities and changes in its capital.

A confirmation statement must be filed within 14 days of the confirmation date (not 28 days as for the annual return). The fee for online filing is £13, the same as for the annual return.

The change from annual return to annual confirmation statement also applies to LLPs.