

## The PSC Register - not just a UK issue

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Changes to regulation and legislation in financial services continue to come thick and fast - at the moment, financial services providers are dealing with the introduction of the Common Reporting Standard as well as proposed changes to rules around UK non-dom qualification, further changes to the taxation of UK residential property and the proposed new UK offence of failing to prevent the facilitation of tax evasion, amongst others.

The task of preparing for these changes is undeniably complex - both in understanding the details of the new rules as well as designing and implementing the systems and procedures to address them.

There is one particular change that is already in force, but which still requires attention because it involves fundamental tests which remain unclear.

This change relates to the April 2016 introduction of the new UK regime for recording beneficial ownership of companies, the Register of People with Significant Control (the **PSC Register**). The ultimate intention of the regime is to make publicly available details of the ultimate beneficial ownership of UK companies.

Although this is a matter of UK law, it is potentially relevant to all financial services providers who administer UK companies or who administer structures that have a direct or indirect interest in them.

You would be forgiven for thinking that new legislation which has been in force for more than six months shouldn't be causing confusion - but it's the subjective nature of two of the defining tests that should be providing financial services providers with cause to stop and think.

The law defines "a person with significant control" of a UK company as a person or legal entity who meets any one or more the following criteria (my italics):

- Directly or indirectly owning more than 25% of the shares.
- Directly or indirectly holding more than 25% of the voting rights.
- Directly or indirectly having the power to appoint or remove the majority of the board of directors.
- *Otherwise having the right to exercise or actually exercising significant influence or control.*
- *Having the right to exercise or actually exercising significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions.*

The first three tests are largely objective and straight-forward - the final two are less so. Although some statutory guidance on these tests has been published by the UK authorities, firms should already have taken or be taking UK legal advice on the application of the tests, the interpretation of that guidance and how it applies to their own particular circumstances.

Like all recent UK and US legislation relating to financial services and transparency, there are significant penalties for non-compliance.

Failure to take reasonable steps to discover who satisfies any one or more of the five tests and so should be recorded on the PSC Register is a criminal offence for which both the UK company involved and its officers are liable, as well as being a breach of statutory duty for directors of the relevant UK company. UK companies are obliged to serve notices requesting confirmation from people or entities on whether they meet the test - not responding to such a notice within a month is itself a criminal offence for the recipient of the notice, as is knowingly or recklessly supplying false information.

UK companies may also serve notices requesting information from third parties - for example, lawyers, other professional advisers or financial services providers - who may not themselves have "significant control" but who may know of others who do.

The PSC Register takes a very different approach to collecting information on company beneficial ownership which has long been adopted in leading offshore centres such as Guernsey and Jersey.

Those financial services providers, both onshore and offshore, with any material involvement with UK companies who have not yet taken UK advice on their obligations under the PSC Register regime should be doing so as a matter of urgency. The implications, both financial and reputational, of falling foul of the rules would be serious.

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