

Industry Update

Is your Trustee Company a Person with Significant Control?

This Update concerns pension schemes with a corporate trustee, where urgent action is required. The position of schemes with only individual trustees is unaffected.

From 6 April 2016 Part 21A of the Companies Act 2006 requires most companies and LLPs to establish a register to record the people who own or control them. From 30 June 2016 onwards this information must be delivered annually to the central public register at Companies House. In addition, from 30 June 2016 onwards those seeking to incorporate a new company will have to send a statement of initial significant control to Companies House, alongside the other documents required for an application to incorporate.

There is no exemption from these requirements for trustee companies.

Persons with significant control

The people recorded as having control are termed Persons with Significant Control (PSCs). For an individual to be a PSC, they must meet one or more of five conditions in relation to the company.

Those conditions are:

- Directly or indirectly holding more than 25% of the shares;
- Directly or indirectly holding more than 25% of the voting rights;
- Directly or indirectly holding the right to appoint or remove a majority 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 the activities of a trust or firm which is not a legal entity, but which would itself satisfy any of the first four conditions if it were an individual.

Slightly different rules apply where a company is owned or controlled by another entity (such as a parent company) instead of an individual. This is often the case for trustee companies acting as the trustee of a pension scheme, where usually the shares in the company are held by the employer sponsoring the scheme. In such a case a legal entity must be recorded on the PSC register if it is both "relevant" and "registrable" in relation to the trustee company. A company is a relevant legal entity (RLE) if it would have come within the definition of PSC if it had been an individual, even if its control is via another company which is not a RLE.

The Register of PSCs

The register must be set up by **6 April 2016** and be fully completed between 6 April and 30 June, from when it must be delivered annually to Companies House.

The register cannot be left blank. While information is being gathered, the register must be set up and contain the following wording:

“The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company.”

This is the absolute minimum that must be in place for a corporate trustee on 6 April 2016.

What must the Register contain?

Where you have identified a PSC you need to obtain, confirm and then enter the following details on the PSC register about the PSC:

- Name
- Date of birth
- Nationality
- Country, State or part of the UK where the PSC usually lives
- Service address
- Usual residential address (if different from service address)
- The date when the individual became a PSC in relation to your company
- Which of the five conditions for being a PSC the individual meets, with quantification of the interest where relevant
- Any restrictions on disclosing the PSC’s information which are in place.

Keeping the Register Up to Date

Once you have compiled your register you are obliged to keep it up to date.

Further Information

The relevant guidance issued by the Department for Business Innovation & Skills may be found via this link.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505303/NON-STATUTORY_GUIDANCE_FOR_COMPANIES_AND_LLPS.pdf

This includes the official wording which needs to be included in the register.

If you would like to discuss this further, please get in touch with your usual contact at Cartwright Group:

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