

PRESS RELEASE

UNITED KINGDOM: New Company Disclosure Requirements: Persons with Significant Control

Following its announcements at the G8 summit in June 2013 the UK Government has now introduced legislation to Parliament to require UK companies and others to maintain a publicly available register of persons who have significant control over the company. The rationale is to increase the transparency of UK corporate ownership, thereby increasing trust and confidence in UK businesses.

The Small Business, Enterprise and Employment Bill

The Small Business, Enterprise and Employment Bill includes amendments to the Companies Act 2006 which would: Prevent the creation of new bearer shares and require existing bearer shares to be surrendered to the company in exchange for registered shares; Prohibit the use of corporate directors by UK companies, subject to limited exceptions not stated in the Bill but to be set out in Regulations that have not yet been published; and Require companies to identify those persons with significant control over the company and keep a publicly available register.

Who are “persons with significant control”?

An individual exercises “significant control” if he or she (either alone or jointly, for instance in a trustee capacity):

- holds directly or indirectly more than 25% of the shares in the company; or
- is entitled directly or indirectly to exercise (or to control the exercise of) more than 25% of the voting rights in the company; or
- is entitled, directly or indirectly, to appoint or remove a majority of the board of directors of the company or to control the exercise of a right or rights to do so; or
- has the right to exercise, or actually exercises, “significant influence or control” over the company – what this actually means is not yet clear but will be spelt out in guidance.

Where there is a chain of companies an individual can only be a person with significant control in relation to one of them, so a parent company will need to be recorded as the “relevant legal entity” in its subsidiary’s register. If company shares are held by a nominee the underlying beneficial owner will be the person with significant control.

What will companies have to do?

UK companies will need to take reasonable steps to create and keep updated a register held at their registered offices (“a PSC register”), containing the following information on persons who exercise significant control over the company:

- name
- service address
- country or state of usual residence
- nationality

- date of birth
- usual residential address
- nature of their control over the company
- date on which they became a registrable person in relation to that company.

The company must notify the individual (or relevant legal entity) before placing them on the register; and an individual's particulars must not be included on the register unless they have been provided or confirmed to the company by the person or with their knowledge. Private companies may, instead of keeping their own register, opt for the information to be kept on a public register at Companies House, provided that the persons with significant control do not object. New companies will be required to file a "statement of initial significant control" when making an application to register with Companies House and will then have to report any changes annually. (That statement itself will not be publicly available.)

To whom do the details need to be disclosed?

A company's PSC register must be available for inspection by the public, either at the registered office or by providing copies, subject to certain exclusions and controls. For instance an individual's usual residential address and their date of birth will be excluded. Anyone requesting disclosure will have to state their purpose and to whom they plan to disclose the information. If the company believes that the request is improper (or will be passed to a third party for improper purposes) it can apply to the Court within 5 days and, if the court agrees that the disclosure is not required for a "proper purpose," the company will not have to disclose. There is unfortunately little guidance now as to what would constitute a "proper purpose."

What are the penalties for non-compliance?

If a company fails to take reasonable steps to comply with its duties to investigate, obtain, record and keep up to date the required information, it will commit an offence and "every officer of the company who is in default" could, if convicted, face a fine or possible imprisonment. There are also provisions (including penalties for non-compliance) to ensure proactive disclosure by persons with significant control and relevant legal entities themselves where they are not otherwise known to or identified by the company.

Will these proposals affect trusts?

The legislation does not require trusts to keep a PSC register. However it is clear that an individual who exerts significant control over a company may do so in his or her capacity as a trustee. Therefore details of individual trustees of trusts which own companies may need to be entered into that company's PSC register. In addition, the proposals specifically provide that where the trustees meet the test of significant control but another individual (e.g. a protector or settlor of a trust) has the right to exercise, or actually exercises, significant influence or control over the activities of that trust, the company will also need to keep that individual's details on the PSC register. There are also some separate proposals currently before the European parliament which would require each EU member state to keep and make available a public register listing the ultimate beneficial owners of both trusts and companies. These proposals are, however, at a relatively early stage and the UK Government has indicated its opposition to the requirements for trusts.

Next steps

These proposals are not law yet but will come into force by Regulation at some point after the enactment of the Bill, which is now expected to take place in March 2015. The precise provisions may of course change before the legislation is finalised and the Government will be obliged to publish guidance, in particular to define and interpret key terms. However, both UK and international directors and shareholders of UK companies should take note to ensure that their company is ready for the changes to come.

Author

Ute Mueller, Boodle Hatfield LLP, Law partner ECOVIS in London, UK
ute.mueller@ecovis.com

About Ecovis

Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 4,500 staff operating in 40 countries. Its consulting focus and core competencies lie in the areas of tax consultation, auditing, legal advice and accounting and management consulting services. The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in its back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments - from preparation in the client's native country to support in the target country. In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally- from preparation in the client's native country to support in the target country. In its consulting work Ecovis concentrates mainly on mid sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms economy and vision, express both its international character and its focus on the future and growth.

Contact at Ecovis

Julia Hanke

Agnes-Bernauer-Straße 90 , 80687 München, Germany

Tel.: +49 89 5898-266, Fax: +49 89 5898-280

E-Mail: julia.hanke@ecovis.com www.ecovis.com