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# An Analysis of the UK's New Register of Beneficial Owners

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## The New Register

From 6 April 2016, most UK companies, LLPs and Societas Europaea became required to maintain a register of “persons with significant control” (PSCs) <sup>1</sup>. A PSC is defined as an individual who ultimately owns or controls more than 25% of a company's shares or voting rights or who otherwise exercises control over a company or its management. From 30 June 2016, companies will be required to file these details at Companies House, which will maintain the information on a fully searchable register that will be freely available to the public.

The new rules come at a time when allegations about offshore centres have been triggered by the release of the so-called “Panama Papers”. Central to the allegations contained in these papers are that individuals and companies used offshore entities to cloud the ownership of assets.

The register was first mooted in 2014 by the then-business secretary Vince Cable, as part of his attempt to tackle what he called the “darker side of capitalism” <sup>2</sup>, and should be viewed in the wider context of the UK Government's commitment to promote greater corporate transparency at the G8 Summit in June 2013 and the G20 Summit in November 2014.

The framework was formally enacted by [Part 7 of the Small Business, Enterprise and Employment Act 2015](#), which also abolished bearer shares and banned the use of corporate directors in the majority of circumstances (for more commentary on those issues, please see this [previous blog post](#)). This Act, which amends the Companies Act 2006, creates criminal offences for companies, their directors and, in some cases, the PSCs themselves and their advisers and intermediaries. A person found guilty of such offences may be punished by up to two years in prison and/or a fine.

This legislation goes beyond the requirements of the EU's Fourth Money Laundering Directive, which only requires the register to be available to certain public bodies and those that can demonstrate a “legitimate interest” in accessing the information.

The Government has provided guidance both for companies and PSCs to help them better understand their obligations (the most up-to-date versions of which [can be found here](#)).

## Reasonable Steps

Arguably the most onerous provision in the legislation is that companies are now under a far-reaching, positive duty to take “reasonable steps” to identify its PSCs. Failure to do so is one of the offences punishable by up to two years in prison and/or a fine.

Clearly what constitutes reasonable steps will vary in each case, but the Government guidance makes it clear that a company will have to demonstrate significant efforts in this regard. For example, if a company believes that it has a PSC, but has been unable to identify them by direct contact, a company should consider serving notices requesting information on anyone they know or have reasonable cause to believe knows the identity of the PSC, or could know someone likely to have that knowledge. This could include intermediaries or advisers known to act for them, such as lawyers, accountants, banks, trust and company service providers or any other contacts such as family members, business partners or known associates.

Further, if the suspected PSC has a relevant interest in the company, but the company is unable to obtain the required information, a company must “seriously consider” whether it is appropriate to impose restrictions on any shares or rights they hold in the company.

The new register will include similar details to those a company is already required to hold on its register of Directors (i.e. name, DOB, address, etc.), as well as a quantification of the PSC’s interest (where relevant). This information will have to be “confirmed” before it is entered onto the PSC register, which will usually involve the PSC either supplying the information personally or confirming that the information is correct. Alternatively, information can be treated as confirmed if a company holds previously confirmed information and has no reason to believe that it has changed.

In addition to the new Companies Act requirements, the PSC register is likely to have due diligence implications for financial institutions looking to enter into transactions with UK companies. Scrutiny of the register is likely in future to become a standard and essential part of the corporate due diligence process.

### **But will the new register be effective?**

Given the rather onerous requirements that the new register will place on companies, many have questioned whether the new register will actually be effective in preventing and detecting the illegitimate masking of the ownership of assets. With that in mind, there are certainly some areas for concern:

The new register has one obvious limitation, in that it will only be as good as the information that is supplied. There is also the genuine question as to who is going to monitor for violations, since Companies House has extremely limited means of verifying the information that it is provided with. Since the mainstream law enforcement agencies are unlikely to dedicate resources to investigating and enforcing standalone Companies Act offences, in practice it is likely that the criminal sanctions provided for in this legislation will only be brought to bear as part of wider criminal investigations.

Another concern is that the register will be easy to side-step, as it does not apply to foreign companies operating in the UK. The Department for Business Innovation and Skills has sought to address this concern in a recently published [discussion paper](#), which contains proposals to extend

the beneficial ownership register to foreign companies that hold or aim to hold English or Welsh real estate or intend to bid for UK Government contracts. Whilst this uniformity of approach makes sense, such a register would be as vulnerable to dishonesty and lack of enforcement as the domestic regime. In fact, these problems are likely to be even more acute in the context of foreign companies, given the difficulty and cost of verifying information from overseas.

## **Conclusion**

Whilst the intention to increase corporate transparency should be commended, in order to be effective the new register has to be part of a wider, and perhaps multinational, strategy to combat serious crime. The risk of the current process is that law-abiding companies will find themselves dealing with an increased regulatory burden brought about by the new register, whilst a lack of verification and enforcement capability may allow the ultimate targets of this initiative to slip through the net.

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<sup>1</sup> For the purposes of this article the relevant UK companies, LLPs and Societas Europaea have been grouped together under the defined term “company” or “companies”.

<sup>2</sup> <https://www.gov.uk/government/news/tough-action-promised-on-hidden-company-owners>