Charities and the Register of People with Significant Control (PSC Register)

Since 6 April 2016 registered companies have had an obligation to keep a PSC Register showing individuals who have significant control over the company (PSCs). The PSC register must also show any 'Relevant Legal Entity' (RLE) with significant control such as a parent company. It is unlikely that the new regime will be onerous for the majority of our charity clients, however most will be required to take some action. We thought it might be helpful to draw to your attention some of the points that need to be considered and the action to be taken in order to ensure compliance with the new regulations. Those who are using our company secretarial services will however be covered.

Who do the new rules apply to?

All UK companies and LLPs including charitable companies, community interest companies, and trading subsidiaries of charities are required to keep a PSC Register.

Charitable incorporated organisations (CIOs) and unincorporated charities do not need to do so, although their trading subsidiaries do.

PSCs - Who has 'significant control'?

For incorporated charities the main situations where an individual is considered to have significant control are:

1) holds more than 25% of member voting rights. This means charitable companies will need to list members as PSCs if the number of members is three or less; or
2) otherwise exercises, or has the right to exercise, significant influence or control

Directors, along with employees and professional advisers, are classed as 'excepted roles' and will not generally be PSCs unless:

- they are also members of the charity and, as above, there are three or less members.
- their role differs in material respects or contains significantly different features from how the role or relationship is generally understood.

Chief Executive Officers, as employees, perform 'excepted roles'. However if they regularly or consistently direct or influence a significant section of the board or are regularly consulted on board decisions and their views influence decisions made by the board, they could fall within the definition of a PSC. Our view is that most charity CEOs will not be PSCs, but each charity needs to review their own circumstances.

What if there are no PSCs?

A PSC register must never be blank. If the charity has taken all reasonable steps to identify any PSCs and RLEs and is confident that there are no individuals or legal entities which meet any of the conditions for registration, the register should state:

"The company knows or has reasonable cause to believe that there is no registrable person or registrable legal entity in relation to the company."

Trading Subsidiaries

Trading subsidiaries of charities are required to keep a PSC register. If the trading subsidiary is 100% owned by a charitable company then the subsidiary's PSC register will only need to disclose details of the parent charity as an RLE.

What do companies need to do?

- Review the published Guidance on the Gov.uk website
- Ensure trustees are aware of the new requirements and their obligations to maintain a PSC register
- Identify the PSCs and confirm with them their personal information (Annex 3 to the Guidance provides pro forma notices)
- Record the details of the PSC on the company's own PSC Register (in accordance with the Guidance)
- Provide this information to Companies House as part of the Annual Confirmation Statement (replacing the Annual Return after 30 June 2016)
- Set up procedures to ensure PSCs are identified on an ongoing basis. Update the information on the company's own PSC register when it changes and update the information at Companies House when the next Confirmation Statement is made.
- Consider whether there are any grounds for information on the PSC Register being withheld from the public register at Companies House