Linklaters

Investing in the UK: new rules require public disclosure of ultimate owners of unlisted UK companies

December 2015

Do you hold an interest in an unlisted UK entity, directly or indirectly? Did you know that the UK entity may need to make your personal information and details of your interest public from 2016?

From April 2016, UK-incorporated companies and limited liability partnerships will be required to maintain a register of persons having significant control over them, known as a 'PSC register'. This register will need to be filed with the Registrar of Companies from the end of June 2016 and will be available to the public. Companies with shares listed on certain markets including the London Stock Exchange will be exempt, as information on their significant shareholders is already disclosed to the public under the rules of those markets.

The requirement is being introduced following commitments by the UK government to increase the transparency of corporate ownership. It is targeted at those who carry out criminal activity such as money laundering behind opaque corporate structures. However, it will also impact legitimate investors with direct or indirect interests in unlisted UK companies, as information about ultimate controllers will need to be made public for the first time.

Who can be a person having significant control (PSC)?

The PSC regime is particularly concerned with identifying individuals or governments who ultimately control UK companies. Accordingly, if they have significant influence or control over a UK entity the following may be required to be disclosed on the public register:

> individuals of any nationality or residence

> corporations sole (i.e. legal entities consisting of one person only)

> governments or government departments of any country or territory or part thereof

> international organisations whose members include two or more countries or territories or their governments

> local authorities or local government bodies in the UK or elsewhere

Non-UK legal entities that hold interests in UK companies will not themselves be recorded on the PSC register (save for non-UK entities with voting shares listed on certain markets). However, any individuals or governments etc. that hold an interest in a UK company indirectly via a non-UK legal entity may need to be registered.

What makes someone a person having significant control?

A PSC of a company is someone who satisfies one or more of five criteria in relation to it:

> holding, directly or indirectly, more than 25% of the shares

> holding, directly or indirectly, more than 25% of the voting rights

> holding, directly or indirectly, the right to appoint or remove directors holding a majority of the votes that can be cast at a meeting of the board of directors

> having the right to exercise, or actually exercising, significant influence or control over the company

> 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 and which meets any of the above conditions

The meaning of 'exercising significant influence or control' is to be defined in statutory guidance which is currently under development.

Equivalent criteria to those for companies are being developed to establish who is a PSC of a limited liability partnership.

How are indirect interests treated?

A person is treated as holding a share or right indirectly if it has a 'majority stake' in a legal entity that holds the share or right itself or through a chain of legal entities each of which (other than the last) has a majority stake in the entity below it and the last of which holds the share or right in the UK company. Applying the rules becomes complex where there is a long chain of ownership. The diagrams illustrate some examples.

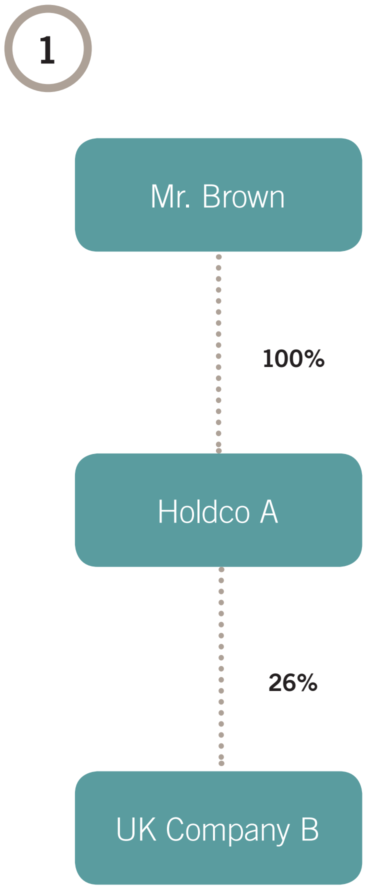
A 'majority stake' means:

> holding a majority of voting rights

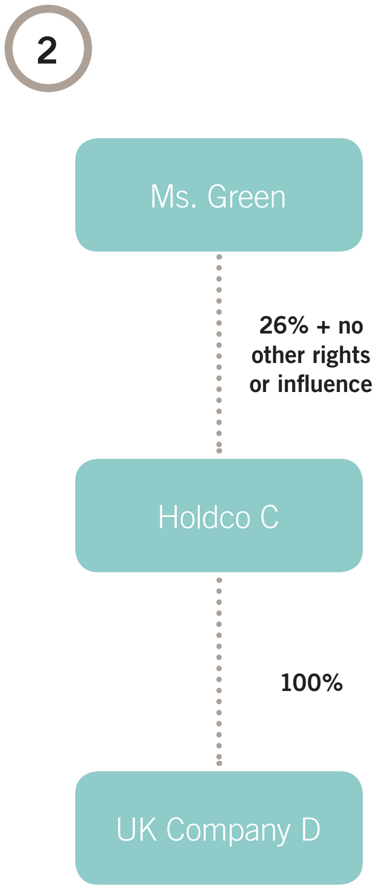
> being a member and having the right to appoint or remove a majority of the board

> being a member and controlling a majority of the voting rights pursuant to an agreement with other members

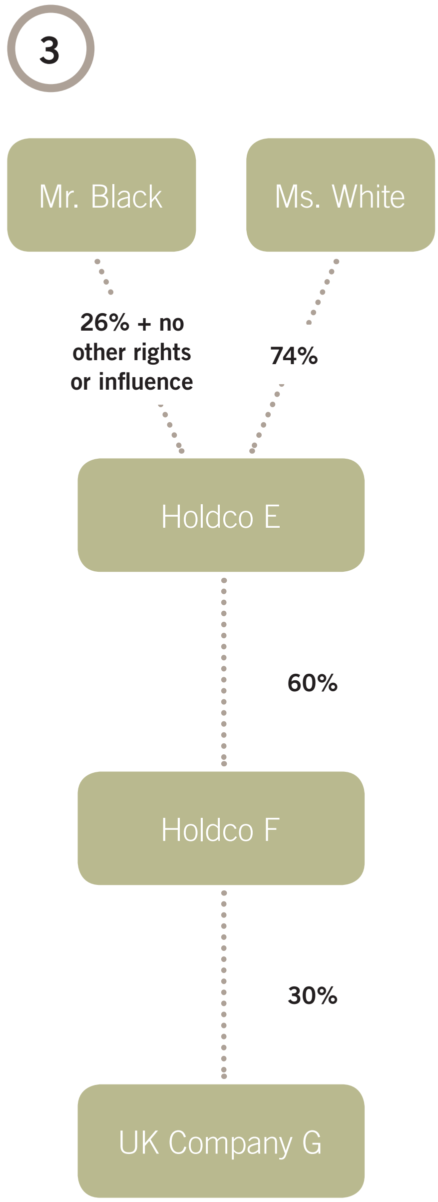
> having the right to exercise, or actually exercising, dominant influence



Mr. Brown should be registered as a PSC of B. He indirectly holds more than 25% of the shares in B. He holds them via a legal entity (A) in which he has a ‘majority stake’.



Ms. Green is not a PSC of D. She is not treated as indirectly holding the shares in D owned by C, because she does not have a ‘majority stake’ in C.



Ms. White should be registered as a PSC of G. She indirectly holds more than 25% of the shares in G. She holds them via a legal entity (E) in which she has a ‘majority stake’ and which in turn has a ‘majority stake’ in another legal entity (F) which holds the shares directly. Mr. Black is not a PSC of G. He is not treated as indirectly holding the shares held via E as he has no ‘majority stake’ in E.

What information will be made public?

The PSC register will contain data on persons having significant control over the company, including certain personal details (such as name, address, nationality, date of birth) as well as information on the nature and extent of their control. This will include what category of control they have as well as an indication of the level of control in the case of the holding of shares or votes.

In a chain of legal entities, a company's PSC register will identify any UK company or LLP, or non-UK company with voting shares listed on certain markets, that would have been a PSC if it were an individual. Someone wishing to identify the ultimate owners of the company would then be able to look at the PSC register or other publicly available information on ownership of the entity above it in the chain.

Although listed companies will not have to maintain a PSC register, their UK subsidiaries will. The PSC register of such a subsidiary will usually identify the listed company (or an intermediate holding company) but should not contain any information on the listed company's investors.

What happens if you don't comply?

UK companies and LLPs must take reasonable steps to establish who should be registered as a PSC, including by sending notices to anyone they have reasonable cause to believe should be recorded on the PSC register. If a PSC fails to respond to such a notice, or fails to comply with certain general duties to provide information to the company, it will be guilty of a criminal offence. The punishment is an unlimited fine and/or up to two years' imprisonment. The company will also be able to prevent transfers of the underlying shares and stop paying dividends on them. If a company fails to take reasonable steps to identify its PSCs, both it and any officer in default will have committed a criminal offence, again punishable by unlimited fine and/or up to two years' imprisonment.

Where to find the rules

The PSC register rules are in a new Part 21A of the Companies Act 2006 (inserted by the Small Business, Enterprise and Employment Act 2015) and in effect from April 2016. There will also be some supplementary regulations and guidance.

Action to take

Although some of the details of the rules are yet to be finalised, investors with interests in UK unlisted companies or LLPs can start to consider now whether they might need to be registered as PSCs of such entities and what this will mean for them. When the rules take effect they should provide the required information to UK companies of which they believe they are a PSC or be prepared to respond to requests for information from such companies. In the case of complex control arrangements, establishing whether or not a person is registrable as a PSC will require careful consideration by reference to each relevant entity's ownership structure.

For assistance on the new rules, please contact one of the people named below or your usual contact at Linklaters.

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