



Has the UK been "Blinded by Transparency"?

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Registers of beneficial ownership in the UK

- UK companies – from 2016 – **public** (the first of its kind in the world!)
- Taxable relevant trusts – from 2017 - **private**
- Overseas companies owning UK property – from 2021 – **public** (another world first!)
- The Crown Dependencies and British Overseas Territories?

Public or private?

- Transparency –v– privacy
- The 4th and 5th EU Anti-Money Laundering Directives (AMLDs)
- Different policy considerations for companies and trusts?
- Legitimate interest

UK Companies: Register of Persons with Significant Control

What is it?

- Regulations entered into force in April 2016
- Records the details of the “beneficial owners” of UK companies - “persons with significant control” (PSCs)
- Applies to:
 - all UK incorporated companies, limited liability partnerships, Societates Europaeae
 - active Scottish limited partnerships and Scottish general partnerships where all of the partners are corporate bodies
 - UK AIM and Nex Exchange companies

When did the register come into effect?

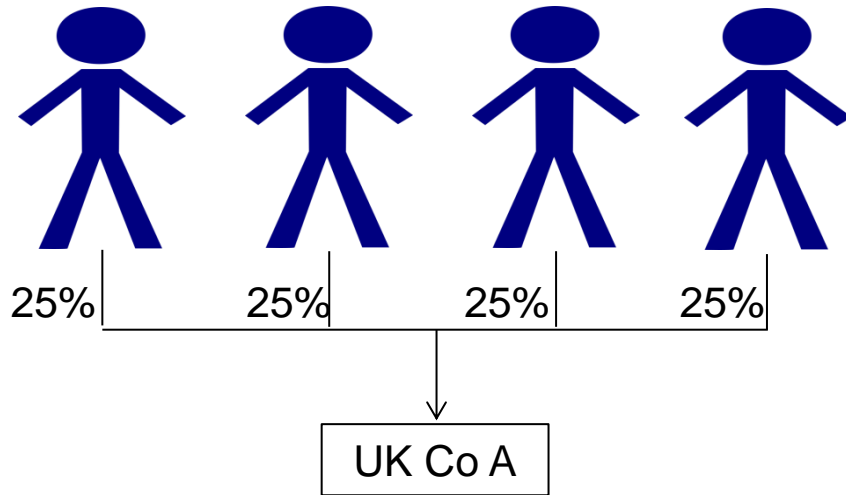
- Company required to keep an internal register
- Central register held at Companies House – available to the public
 - Requirement to update PSC register within 14 days
 - Requirement to notify Companies House within 28 days (forms PSC01 to PSC09)

Who is a Person with Significant Control?

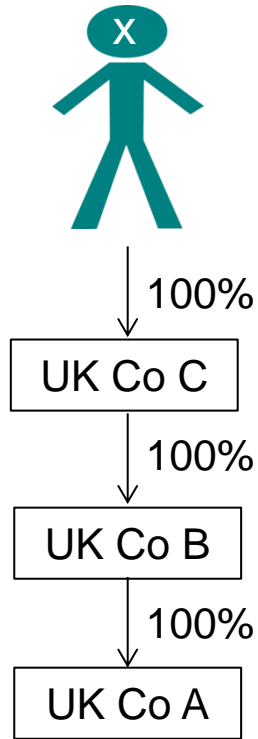
- A PSC is an individual who:
 - (i) has DIRECT or INDIRECT ownership of MORE than 25% of the shares (so if there are four equal individual shareholders then there will be no PSC);
 - (ii) has a DIRECT or INDIRECT holding of MORE than 25% of the voting rights;
 - (iii) has a DIRECT or INDIRECT right to appoint or remove a majority of the board of directors;
 - (iv) has SIGNIFICANT INFLUENCE **OR** CONTROL – actual and/or the right, whether or not actually exercised; or
 - (v) has the right to exercise or actually exercises **significant influence or control** over the activities of a trust or partnership, which, if an individual, would satisfy any of the four conditions above
- SIGNIFICANT INFLUENCE – enables the person to ensure the company or trust adopts those policies or activities which are desired by the holder of the significant influence even if he does not actually exercise the right
- CONTROL – power to direct the activities and policies of the company, firm or trust. The guidance provides examples

What is a Relevant Legal Entity?

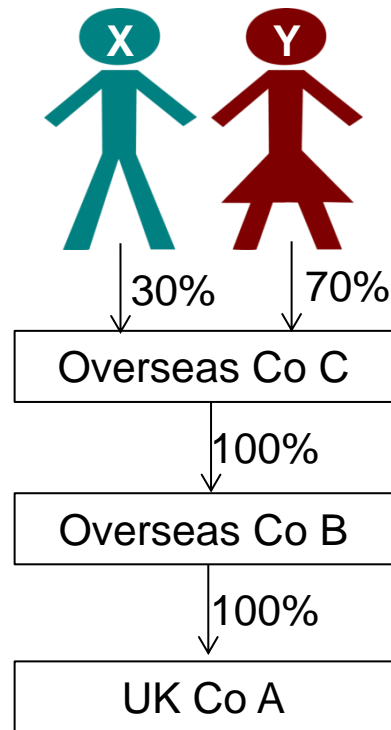
- A UK company which is subject to its own PSC disclosure requirements
- A non-UK company is never a Relevant Legal Entity and can therefore never be listed as a PSC



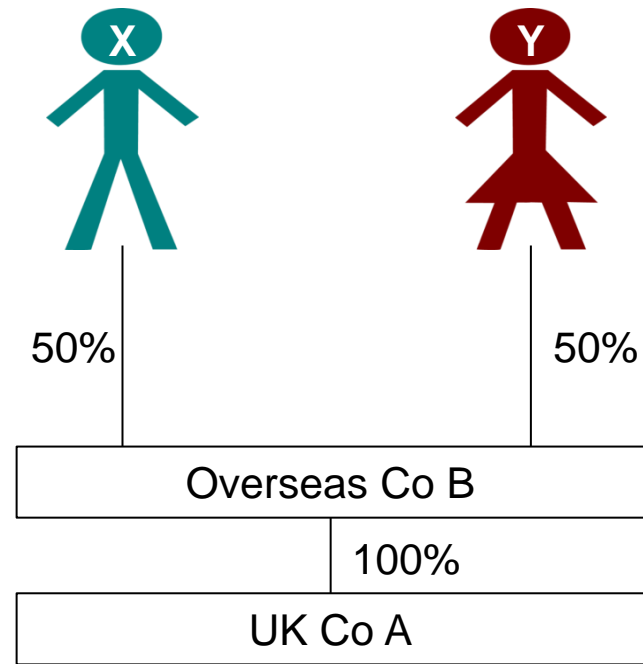
No PSCs



Relevant Legal Entities



Indirect ownership – X and Y need a “majority stake” (more than 50%) in Overseas Cos B and C to be PSCs



Who is registerable on UK Co A's register?

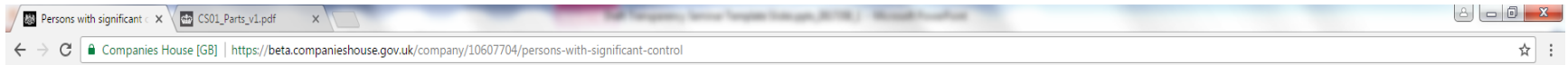
What Information Must be Disclosed?

- Name
- Date of birth (although the day of their date of birth is not publicly accessible)
- Nationality
- Service address (residential address must be provided but will not be made public)
- The nature of control over the company
- The date on which the individual became a PSC

Example – SELLFRIDGES



SELLFRIDGES



Company number **10607704**

- Overview
- Filing history
- People**

- Officers
- Persons with significant control**

1 active person with significant control / 0 active statements

Mr Ronald Terence Richards ACTIVE

Correspondence address

204 Clements Road, Birmingham, West Midlands, United Kingdom, B25 8TS

Notified on	Date of birth	Nationality
8 February 2017	January 1945	English

Nature of control	Country of residence
Ownership of shares – 75% or more	United Kingdom

Ownership of voting rights - 75% or more

Right to appoint and remove directors as a trustee of a trust

Has significant influence or control as a trustee of a trust

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What are the consequences of failing to comply?

- Obligations on directors and shareholders
- Criminal sanctions – prison sentence of up to two years
- Financial penalties:
 - Fines with no maximum for directors, PSCs or companies; and
 - Failure to keep a register - £1,000 plus £100 daily default fine

Can the information be suppressed?

- If entry on the register presents a serious risk of violence or intimidation against the PSC
- Latest figures: of 270 applications in the first 6 months only 5 were granted (4.1 million companies on the register)

Our experience

- Purposive approach to the legislation
- Spreading ownership between family members so that no individual owns more than 25% - health warning required regarding “joint arrangements”
- Foundations?

What we know so far (Global Witness Report)

- Over 9800 companies list the beneficial owners as a foreign company (3000 with “tax haven” addresses)
- Most beneficial owners are from the UK, followed by other European countries and India and China
- Just under 10% claim to have no beneficial owner
- 19 PEPs, 76 persons from the US sanctions list and 267 disqualified directors
- 5 beneficial owners control more than 6000 companies
- 4000 beneficial owners are listed as being under the age of 2

Taxable Trusts: The Register of Beneficial Ownership

What is it?

- Regulations entered into force on 26 June 2017
- Two functions:
 - Implement the UK's obligations under the 4th AMLD
 - Provide a new mechanism for trustees to register with HMRC for self-assessment

Requirements

- **Record keeping:** Trustees must keep an internal register of beneficial owners
- **Reporting:** Trustees must report to HMRC (including registering trusts for self-assessment)
- **Register:** HMRC must maintain a central register of beneficial owners
- Additional disclosure obligations for trustees

Record keeping obligations - “relevant trusts”

- Trustees of “relevant trusts” are required to record information on every “beneficial owner”
- 2 categories:
- **UK trusts** – express trusts where:
 - (1) all the trustees are UK tax resident; or
 - (2) at least one trustee is UK tax resident and the settlor was resident and domiciled in the UK at the time when he settled or added to the trust
- **Non-UK trusts** – express trusts that are not UK trusts and either:
 - receive income from a UK source; or
 - have assets in the UK on which it is **liable to pay** income tax, CGT, IHT, SDLT, land and buildings transaction tax or stamp duty reserve tax

Reporting obligations for “taxable relevant trusts”

- The trustee of a “relevant trust” will need to provide information to HMRC if the trust is a “**taxable relevant trust - i.e. the trustees are **liable to pay** income tax, CGT, IHT, SDLT, land and buildings transaction tax or stamp duty reserve tax in relation to the assets or income of the trust**
- 2 categories of information:
 - Trust information
 - Beneficial owners and potential beneficiaries
- Reporting is made via the new online Trust Registration Service (TRS)

Who are the beneficial owners?

- The **settlor** (even if the settlor is dead)
- The **trustees**
- **Beneficiaries**
 - Where there is a **class of beneficiaries**, it is only necessary to identify individuals within that class who have received a benefit
- Any other individual referred to as a potential beneficiary in any *document from the settlor*, such as a letter of wishes
 - Unless they are only contingent beneficiaries and the contingency has not yet occurred
 - HMRC: this does not include an attendance note made by a solicitor
- Any individuals who have control over the trust:
 - e.g. power to add or remove beneficiaries, appoint or remove trustees, withhold consent to or veto trust distributions or amendments to the trust
- *Corporates with an interest in trust capital or control over the trust: look through to the individual beneficial owners of the body corporate*

Details of beneficial owners

- The information required for each “beneficial owner” includes:
 - full name
 - date of birth
 - National Insurance number or HMRC unique taxpayer reference
 - (if the individual does not have an NI number or HMRC UTR) usual UK residential address or (for non-residents) passport or ID number
 - the nature of that individual’s relationship to the trust (e.g. settlor, beneficiary)

Information in relation to the trust

- Name of trust
- Date of set up
- Statement of account of trust assets
 - Only required on first registration
 - The TRS only requires the market value of assets settled on the date of creation
- Where the trust is tax resident
- Where the trust is administered
- Contact address for trustees
- Advisors being paid to provide legal, financial or tax advice in relation to the trust
 - The TRS only requires details of the agent dealing with registration

Public or private – who can see the register?

- The register will *not* be open to inspection by the general public – yet...
 - The 5th Anti-Money Laundering Directive contains a proposal for trust beneficial ownership to be public, subject to a “legitimate interest” test, from January 2020
 - The Directive is currently being legislated
 - Brexit?
 - ECHR and the right to privacy?

What are the consequences of failing to comply?

- Civil penalties:
 - Sliding scale for administrative offences:
£100 (under 3 months late)/£200 (3-6 months late)/£300 or 5% of tax liability (over 6 months late)
 - No penalty if HMRC are satisfied the trustees took “every reasonable effort” to comply
 - HMRC will not penalise trustees if they or their agents miss the 31 January 2018 registration deadline, provided registration completed by 5 March 2018
- Criminal penalties:
 - Fine or imprisonment for up to 2 years

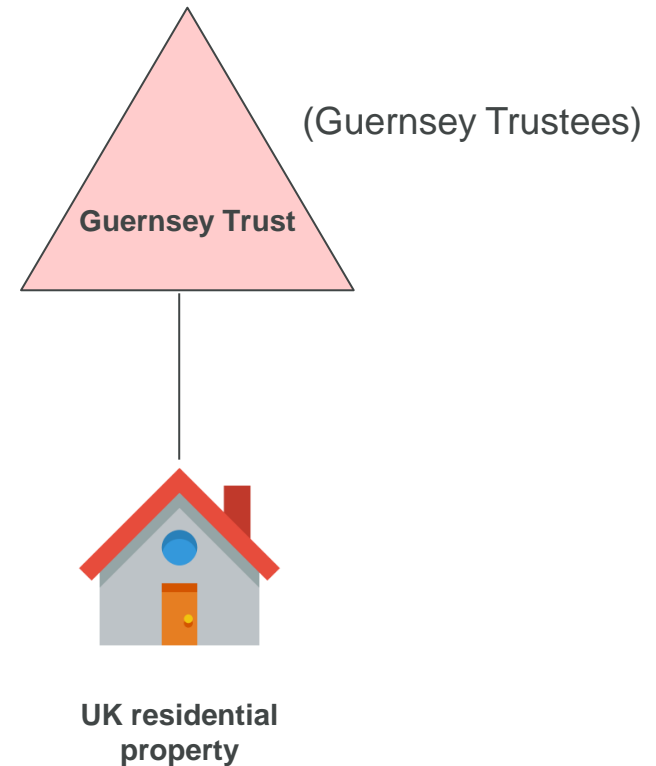
Focus on non-UK resident trusts – holding UK assets directly

Record keeping:

A “**relevant trust**” is—
a non-UK trust which is an express trust;
and
(a) receives income from a source in the United Kingdom; or
(b) has assets in the United Kingdom,
on which it is liable to pay income tax,
CGT, IHT, SDLT, land and buildings
transaction tax or SDRT

Reporting:

A “**taxable relevant trust**” is—
a relevant trust in any year in which the
trustees are **liable to pay** income tax,
CGT, IHT, SDLT, land and buildings
transaction tax or SDRT in relation to the
assets or income of the trust



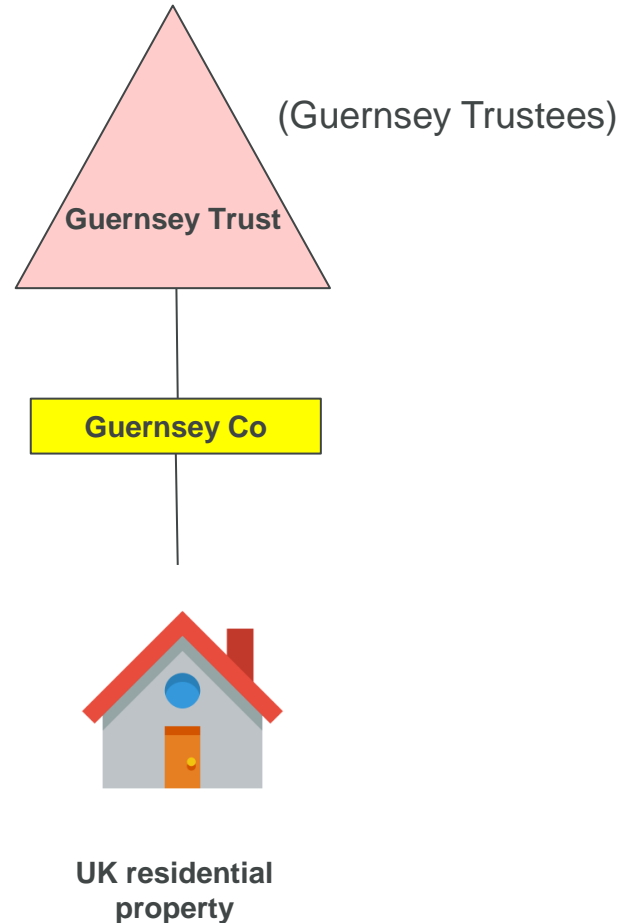
Focus on non-UK resident trusts – holding UK assets through a non-UK company

Record keeping:

A “**relevant trust**” is—
a non-UK trust which is an express trust;
and
(a) receives income from a source in the United Kingdom; or
(b) has assets in the United Kingdom, **on which it is liable to pay** income tax, CGT, IHT, SDLT, land and buildings transaction tax or SDRT

Reporting:

A “**taxable relevant trust**” is—
a relevant trust in any year in which the trustees are **liable to pay** income tax, CGT, IHT, SDLT, land and buildings transaction tax or SDRT in relation to the assets or income of the trust



UK Property Ownership by Overseas Companies and Legal Entities: Beneficial Ownership Register

What will the register achieve?

- “The government is committed to ensuring that the UK is an open and transparent place to do business. In order to achieve this it was announced at the anti-corruption summit in May 2016 that the UK would create a register showing the owners and controllers of overseas companies that own property in the UK...”
- 4 stated aims:
 - Contain useful information
 - Publicly and easily accessible
 - Protect the information of those at risk
 - Avoid creating disproportionate burdens or putting off legitimate investors

When will the register come into effect?

- Consultation closed on 15 May 2017
- Response to consultation published March 2018
- The register will come into effect in 2021– transitional period for companies to register or restructure (1 year +)

Who will the register affect?

- “PSC for overseas companies undertaking specific activities”
- The register will apply to all legal entities that can hold properties” – wide definition (but expressly stated in the consultation response not trusts)
- Definition of ‘beneficial owner’ will follow that of the PSC register
- Focus is on the beneficial owner of the property owning company and not the beneficial owner of the property itself – although “it is important we identify who benefits from the legal entity and who exercises control over it and the asset that it holds”. Confusion over the information being requested and the purpose of the register?

Public or private – who will be able to see the register?

- Public register – to be freely accessible online
- The register will be hosted by Companies House
- In effect ‘PSC’ for overseas companies

What are the consequences of a failure to comply?

- Overseas companies will only be able to buy/sell/lease or charge UK property if they have a registration number from Companies House evidencing compliance
 - A note will be entered on the title of properties held by overseas companies – no transfer may be registered without the new regime having been complied with
- Criminal offence

Can the information be suppressed?

- 4 grounds for the suppression of information:
 - The individual is at risk of violence or intimidation due to the activities of the entity or the way the property is being used
 - Certain characteristics or attributes of that individual when associated with that entity or property could put them or someone who lives with them at risk of violence or intimidation
 - Publically linking the property or entity to the individual will lead to an elevated public safety risk
 - Protection for minors or people with diminished capacity
- Whether information can be suppressed is determined by an application to a designated body – approach to be seen but seems likely to follow PSC

The Crown Dependencies and British Overseas Territories



The relationship with the UK regime

- The Crown Dependencies
 - Jersey, Guernsey and the Isle of Man
 - 2016 Exchange of Notes
 - Jersey has had a central register of beneficial ownership since 1989
- The British Overseas Territories
 - Include Bermuda, Cayman Islands and BVI
 - 2016 Exchange of Notes
 - UK legislation passed in May 2018 seeks to mandate a deadline of December 2020 for all territories to introduce *publicly* accessible registers of beneficial ownership
 - Challenges expected

An aside: Unexplained Wealth Orders (UWO)

- A new measure to tackle asset recovery and money laundering in the UK
- UWOs are intended as an investigative tool to help law enforcement act on corrupt assets
- The High Court can issue an UWO only if satisfied that the respondent is likely to be the owner of suspicious wealth beyond his means, and if all of the following tests are met:
 1. The respondent is a Politically Exposed Person (PEP) outside of the EEA; or there are reasonable grounds to suspect that the respondent is or has been involved in serious crime (in the UK or elsewhere)
 2. The respondent's known income is insufficient to obtain the asset
 3. The value of the asset is greater than £50,000
- The UWO requires the respondent to explain how he lawfully acquired his assets.
- If he fails to respond or gives an inadequate response then this extra information can be used in a separate civil recovery process

Questions?

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