Legal Services – Corporate PSC Register

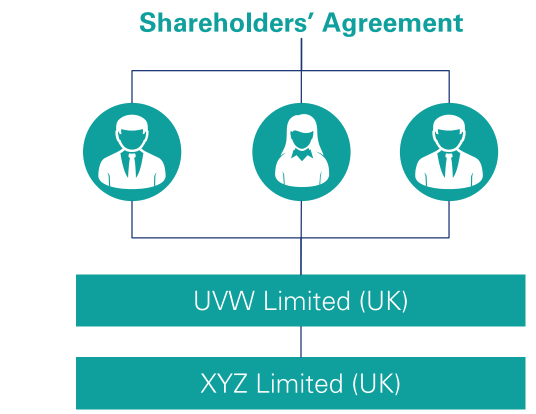
As from 6 April 2016 all non-traded UK companies will have to keep a publicly available register of its ultimate Persons exercising Significant Influence or Control ("PSC"). This information will be held at Companies House from 30 June 2016.

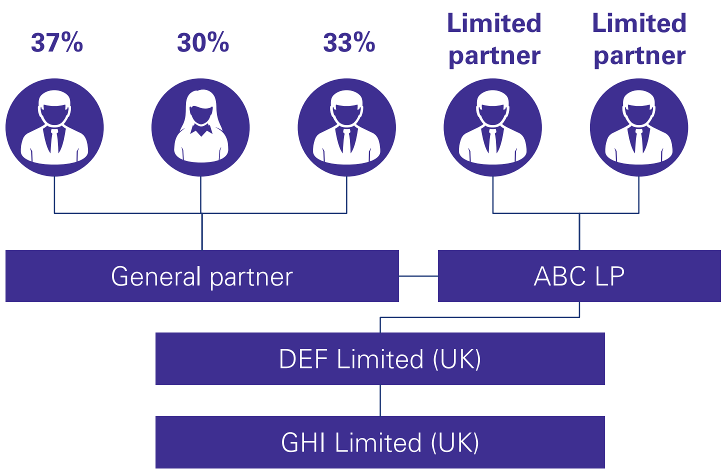
The UK has never had a publicly available register of beneficial ownership of non-listed companies before. Anyone will be able to access the information which will be available for free from Companies House and from the company.

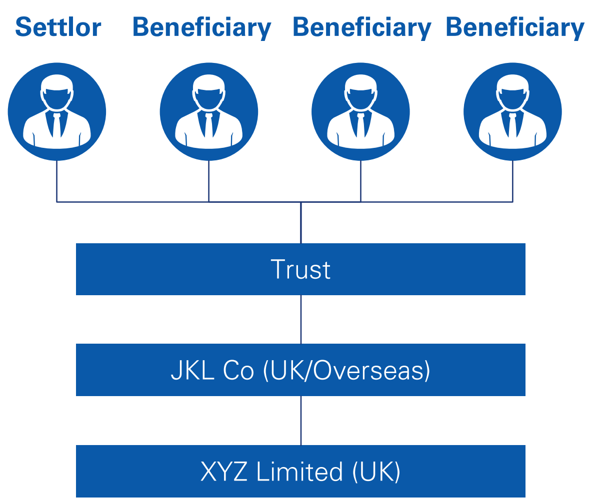
Compliance with the PSC Register legislation is mandatory and failure to do so is an offence, which may result in a fine or imprisonment, by both the company and the PSC.

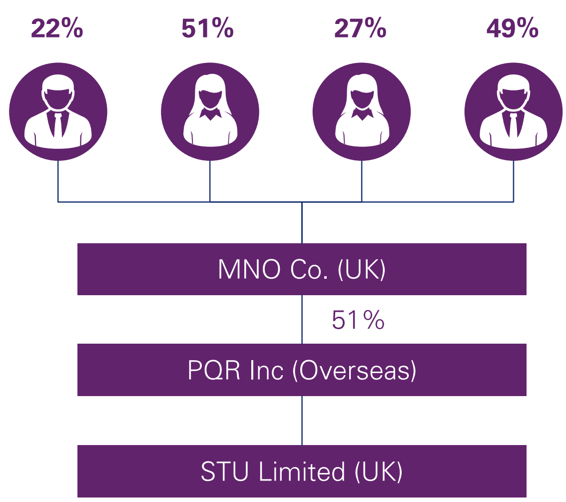
Does your group comprise complex structures with factors like those below?

If so, have you taken steps as yet to set up a PSC Register?









What is a 'PSC'?

Determining who is a PSC is not necessarily straightforward – not all beneficial owners will be PSCs. The PSC Register will need to identify all persons who, directly or indirectly, hold more than 25 per cent. of the shares or voting rights in the company, have the right to appoint or remove a majority of the board of directors of the company or the right to exercise, or actually exercise significant influence or control over the company. In addition, where the trustees of a trust or the members of a firm would be a PSC if they were an individual, any individual who has the right to exercise or actually exercises significant influence or control over the activities of that trust or firm will be a PSC. Where the company is held by a "Relevant Legal Entity" (being a company who has its own PSC Register or is listed in the UK or certain overseas markets) that company only needs to register its Relevant Legal Entity.

Significant Influence or Control?

Draft statutory guidance considers the meaning of "significant influence or control" and sets out some examples. The right to exercise "significant influence or control" includes absolute decision rights or veto rights over decisions relating to the running of the business (business plan, nature of the business, borrowing, appointing or removing CEO…). This does **not** apply where these rights are in relation to certain fundamental matters to protect minority interests. Whether such rights are actually used or not does not have any bearing when considering whether an individual has the right to exercise significant influence or control. Actually exercising "significant influence or control" is a matter of fact and includes a person who is consulted regularly and whose views influence decisions or whose recommendations are always or almost always followed.

How can KPMG Legal Services help?

We can ease the administrative burden; collating and maintaining a PSC Register is likely to be time consuming, even in a simple structure, and deals with sensitive data. The new law will require the company to take reasonable steps to identify its PSCs, notify anyone it believes is a PSC of interest and notify anyone who may know the identity of a PSC of interest. Failure to take appropriate measures to gather the information, or knowingly or recklessly give incorrect information, may amount to an offence punishable by a fine or imprisonment. We can assist by:

- Providing guidance on the duties and obligations of the company and its directors in respect of their obligation to have and maintain a PSC Register;
- Undertaking a review of shareholders' registers of the companies within a group of companies (with the assistance of overseas counsel where there are overseas entities in the group);
- Reviewing shareholder arrangements including articles of association and shareholder agreements to identify PSCs; or
- Reviewing trust deeds to consider what rights a settlor or beneficiary has.

Our dedicated Corporate Secretarial team can further assist in relieving the administrative burden by:

- Preparing the PSC register, as well as associated notices; and
- Providing ongoing maintenance of your PSC register as part of our Corporate Secretarial Core Annual Service.

Our Core Annual Service ensures all the routine company secretarial matters your entities face each year are addressed in a consistent and efficient manner.

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