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WOODFINES SOLICITORS' NEWSLETTER FOR BUSINESS

Corporate Governance - Introducing the Register of People with Significant Control (The PSC Register)



Written by Neil Gibbs,
Partner, Company
Commercial

The PSC Register - Timetable

From **6 April 2016**, almost all UK companies and LLPs must maintain a PSC Register. The purpose of the PSC Register is to make it possible to see not just who owns shares in a company but also who influences or controls a company discretely (a person with significant control).

From **30 June 2016**, this information will also need to be delivered annually at Companies House by each company when filing its confirmation statement (which from that date will replace the annual return).

Newly incorporated companies will, from 30 June 2016, also be required to include a statement of initial significant control as part of their incorporation application.

Throughout this note, reference is made to Companies but this applies in the same way to Limited Liability Partnerships as well.

Who is a Person with Significant Control (PSC)?

A PSC is an individual who meets one or more of the following 5 threshold conditions for a single company, namely that they:

1. directly or indirectly own more than 25% of the shares in the company;
2. directly or indirectly hold more than 25% of the voting rights in the company;
3. directly or indirectly have the power to appoint or remove the majority of the board of directors of the company;

4. otherwise have the right to exercise, or actually exercise, significant influence or control over the company; or
5. have the right to exercise or actually exercise, significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions.

Where a company is owned or controlled by another legal entity (for example another company or LLP), that legal entity's details will need to be included in the PSC Register if it satisfies one or more of the 5 threshold conditions above; and either:

- a) is required to keep its own PSC Register; or
- b) is subject to the FCA's disclosure and transparency regime; or
- c) has voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or in specified markets in Switzerland, the USA, Japan and Israel; and
- d) is the first such legal entity in the company's ownership chain that satisfies both a) and b).

Where an individual's ownership interest in a company is indirectly held through a legal entity satisfying conditions a), b) and c) above, that individual's details are not required to be included in the company's PSC Register (unless he or she satisfies threshold conditions 4 and/or 5 above).

Contents of the PSC Register

The PSC Register will contain various details of each PSC (similar to the information found regarding directors in a company's register of directors) as well as information about the person's significant control. Not every company will have a PSC, but if a company has no PSCs then the PSC Register must record that fact.



Duties on companies and PSCs

Companies must take "reasonable steps to identify their PSCs", if any. Once identified, Companies are required to contact them to confirm and obtain the details needed for the register. Thereafter, Companies must take steps to ensure that this information remains up-to-date and to maintain the register accordingly.

PSCs also have obligations and must provide companies with their details if they are not already stated or are stated incorrectly in the PSC Register.

Companies and PSCs that do not take appropriate measures to gather or provide the information they are required to, or that knowingly or recklessly give incorrect information, commit a criminal offence punishable by a fine or imprisonment.

Access to the PSC Register

Members of the public generally are entitled to view, or call for copies of, a company's PSC Register.

Do you need help with your PSC Register?

If you have any concerns, for example if you are finding it difficult to assess or determine whether threshold requirements apply or ascertain who your PSCs are, or are concerned about how to write up your PSC Register, please get in touch. [2](#)

Please contact a member
of our Commercial team at
CommercialDept@woodfines.co.uk

ATED Threshold Reduced



Written By Eoin Longworth, Paralegal, Commercial Property

The Government introduced the Annual Tax on Enveloped Dwellings (ATED) back in the 2012 Budget and it came into force on 1st April 2013. It was designed to deter high-value UK residential property being owned indirectly, for example through a company or a partnership where one of the partners is a company.

Since its inception, the starting threshold for ATED has been reduced; originally it was charged on residential properties worth more than £2million, which was reduced to £1million on 1st April 2015. This year, 2016, the threshold reduced even further to £500,000 from 1st April, with those who own residential properties worth £500,000 - £1million having to pay an annual tax of £3,500.

ATED does not affect property owners who own their property in their own personal names. You will only need to fill an ATED Return if all the following criteria are satisfied:

- If the property can be classified as a dwelling by HMRC i.e. if all or part of it is used, or could be used as a residence, for example a house or a flat. This also

includes any gardens, grounds and buildings within them;

- The property is owned, completely or partly, by a 'Non-Natural Person' (NNP). This is defined as either a company, a partnership where one of the partners is a company or a collective investment scheme e.g. a unit trust;
- The property was worth more than £2million on 1st April 2012 (although, as explained above, this threshold has been reduced to £1million on 1st April 2015 and £500,000 on 1st April 2016).

If the NNP owns the property from the 1st April in the year, then it is liable to pay the full amount. Acquisition of the property later on in the year will incur a proportional amount of tax. See below for a summary of the chargeable amounts for 1st April 2016 to 31st March 2017:

Property value	Annual charge
More than £500,000 but not more than £1 million	£3,500
More than £1 million but not more than £2 million	£7,000
More than £2 million but not more than £5 million	£23,350
More than £5 million but not more than £10 million	£54,450
More than £10 million but not more than £20 million	£109,050
More than £20 million	£218,200

Source: Government guidance on ATED, <https://www.gov.uk/guidance/annual-tax-on-enveloped-dwellings-the-basics>

Since the 15% Stamp Duty Land Tax is now being applied for NNPs purchasing residential properties worth over £500,000, it seems the Government is keen to dissuade the holding of high value residential properties via an indirect method.

This being said, there are reliefs from ATED. Perhaps the most notable of these is a relief for property rental companies run on a commercial basis and charging a commercial rent. Another relief is available for property developers, although for each property, you must ensure that you fulfil the criteria for these reliefs. These reliefs

are not automatic and must be applied for on the submitted tax return. Properties owned by charities and used for charitable purposes are exempt.

With this new ATED threshold, buyers should carefully consider the long term tax situation if a company purchases a residential property; the ATED payable on their new house may well be more than the initial SDLT on the purchase price.

For further advice on this subject, please contact a member of our Commercial Property team at your nearest office.



Written By Sylvia Goulding, Partner, Commercial Property

For tenants occupying most types of commercial premises, there are statutory protections preventing landlords from refusing to renew leases when they expire, or raising the rent to unreasonable levels when granting a new lease. There are a few specific grounds on which the landlord can refuse to grant a new lease, but it must prove to a Court that these grounds exist and compensation is often payable to the tenant.

Formal notice in a prescribed form must be served by a landlord to bring the lease to an end, even when the term for which it was granted has expired. Failure to serve the correct notice means that the lease continues in existence on the same terms while the tenant remains in occupation of the property. There are strict time limits imposed on both parties which must be complied with or valuable rights can be lost. An application to Court may be required. If the tenant wishes to leave the premises after the expiry date, it must give the landlord a minimum of three months' notice.

The protections enjoyed by business tenants also prevent landlords from insisting on major changes to the terms of the previous lease without good reason. The rent payable and the other terms of any new lease are often the subject of much negotiation between the landlord and tenant, and the parties should take legal advice to ensure they are aware of what can be achieved.

For further advice on any of these issues, please contact Sylvia Goulding on 01234 270600 or email sgoulding@woodfines.co.uk

The General Data Protection Regulation: SME's beware!



Written by John Yatchisin, Senior Associate, Company Commercial

The General Data Protection Regulation, or 'GDPR', spells out the future of data protection in Europe.

The new regime isn't all bad. Once adopted by our Information Commissioner's Office (ICO) in the United Kingdom and other national bodies, it will lead to a much more consistent approach to data protection across the EU.

There appears to be a more risk-based approach to compliance, and there is the notion that businesses operating across the EU will have a "lead" data protection authority to deal with, based on criteria that are still to be fully agreed. In addition, there will be no requirement that a business must notify their appropriate local authority (in our case, the ICO) of their data processing activities.

However, with these benefits comes ambiguity and, in the end, the potential for significant additional cost. This is because many of the GDPR's most onerous provisions, which were once to be cut back or eliminated for some or all SMEs, may now apply to SMEs. At this stage, much remains unclear. What is clear is that businesses should be aware of the proposed regime, so they can react as appropriate when the time comes.

For one thing, enhanced enforcement powers mean that the UK maximum fine will go from £500,000 to, potentially, €00,000,000 or a percentage of global turnover, whichever is greater! Clearly, fines of this magnitude will likely only be

applied in extreme circumstances, and indeed may never be adopted in the final text, but such levels of enhanced risk are clearly something all businesses could do without. This issue, along with some of the other proposed requirements discussed below, will make it more likely that businesses may feel compelled to appoint a data protection officer, even if they are not required to do so under the law.

In addition, obtaining the consent of data subjects may become much more onerous, as implied consent is replaced with a requirement for explicit consent. Getting a customer to tick a box will work, but requiring a customer to untick a pre-ticked box if they don't consent is not acceptable. Therefore, all businesses that rely on data collection will need to explore their means of obtaining consent.

For businesses that have always relied on being data processors rather than controllers, beware – the regime for processors may get a lot tougher and, in that sense, more closely resemble the kind of requirements currently imposed on data controllers. With this in mind, it will likely become more difficult for businesses to negotiate their data processing clauses and agreements, as processors attempt to continue to minimise their exposure and controllers attempt to put more burden on their processors.

In terms of data breaches, the GDPR requires notification of their local authority without undue delay and, most probably, within 24 hours. This means that businesses will need to think much more carefully about developing an action plan for data breaches, similar to the work they put into business continuity planning.

Finally, the "right to be forgotten", which means what it says on the tin, and the right to object to profiling, which can impact businesses that utilise online tracking and behavioural advertising, will create challenges for many.

In the end, a lot is changing. Most of these changes increase the burden on businesses and, right now, might or might not fully apply to SMEs. Here at Woodfines, we specialise in representing SMEs and owner managed businesses, being one ourselves, and will therefore keep abreast of the new regime as it reaches its final form and takes effect within the business community. To speak to us about any issues relating to data protection, please contact a member of our Company Commercial team at your nearest office. [2](#)

For further information, please contact John Yatchisin at jyatchisin@woodfines.co.uk or telephone 01234 270600.

Firm News...



Appointments and New Starters

At the beginning of April, Woodfines saw the appointment of two new Partners, and three new Senior Associate Solicitors:

Charlotte Benjamin, a Commercial Property specialist in the firm's Sandy office, and **Karl Dembicki**, who is an expert in Wills, Trusts and Probate matters in the firm's

Cambridge office, both have been appointed following positions as Senior Associates at Woodfines.

Meanwhile, solicitors, **Claire Dunn** and **Suzanna Stephenson**, both were appointed as Senior Associates with the firm from the beginning of April.

Finally, experienced solicitor, **Esther Marchant**, has joined the Wills & Probate team in Bedford. She brings with her over 30 years of experience in writing Wills, Lasting Powers of Attorney, estate planning, probate administration, trusts and other related issues. 



Charlotte Benjamin



Karl Dembicki



Claire Dunn



Suzanna Stephenson



Esther Marchant

Upcoming Events...



Saturday 21st May
**Bedfordshire Young
Farmers' Rally**

Join us for lunch at this year's
Beds Young Farmers' Rally
(pre-booking required)

Thursday 26th May
Road Transport Conference
IWM Duxford, Cambridgeshire

Wednesday 1st June
Bedford Business Lunch
Star Rowing Club, Bedford

Friday 8th July
Woodfines Golf Day
John O'Gaunt Golf Club

Sat 16th – Sun 17th July
Bedford River Festival

The Embankment, Bedford
We will again be present at this
year's River Festival, with information
and activities for all!

For further information on all of
these events, please visit
www.woodfines.co.uk/events
or email Nicola at noloughlin@woodfines.co.uk