



# PSC REGISTER - A TRIUMPH FOR TRANSPARENCY OR SNOOPER'S CHARTER?

JULY 2014

In March of last year, the UK Parliament enacted the Small Business, Employment Act 2015 which contains amendments to the Companies Act 2006. These amendments, once in force, will require companies registered in the UK to maintain registers of individuals who have significant control over a company and will also provide for the introduction of a publicly accessible central register from 2016.

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Public opinion will always be divided on this prickly subject. The over-simplistic view in support of a register is that those with nothing to hide have no fear of a public register. Where have we heard that one before?

It is tempting to assume that anyone who objects to such a sensible measure must surely be assisting those with criminal intent. Arms dealers and tin pot dictators should have nowhere to hide, onshore or offshore. Will a register deter criminals? Will it also compromise the privacy of (law-abiding) private individuals? Some would claim that the loss of privacy to a few is a small price to pay to keep the bad people out.

As Mr Djanogly pointed out, such a register may be totally ineffective as a crime fighting tool. Criminals will generally find a way around the requirements. We may simply end up penalising the rest for no real benefit. We risk creating an environment which is hostile to those with legitimate privacy concerns.

As has often been said "there is a difference between the public interest and what interests the public." This will surely provide fresh

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fodder to journalists on the tabloids, well known for their exercise of restraint when targeting celebrities.

## The UK Approach

For better or worse, the UK government has adopted this position notwithstanding there are other mechanisms which can be put in place to ensure that details of beneficial ownership are accessible to the relevant authorities such as the police, customs and regulators which should not unduly compromise the privacy of those carrying on lawful activities.

## The Guernsey Way

It may come as a surprise to some (UK politicians included) that the legal and regulatory requirements of Guernsey currently encompass:

- The licensing of corporate and fiduciary service providers who provide company incorporation and management services
- A rigorous anti money laundering and client due diligence framework imposing obligations on service providers to obtain and retain beneficial ownership details
- A prohibition in the Company law against the issue of bearer shares
- The requirement, save in exceptional cases, for a local resident agent to be appointed to keep records of beneficial ownership
- Robust enforcement against those who are non-compliant.

These measures go far beyond those currently in place in the UK and could serve as a possible model to be adopted in UK.

In the meantime we will follow the developments of the PSC Register. Time will tell if the stated aims of transparency are truly achievable and at what cost.

## Final thoughts

The idea of a public registry appears superficially attractive but is, in our view, unworkable; the information on the Registry is likely to be inaccurate or become inaccurate (unless updated regularly) and the possibility of misuse of any accurate information is a real and worrying issue.

The way to tackle criminal activity is to ensure that there is robust enforcement by the appropriate authorities, rather than making beneficial ownership information public.

The existing regime in Guernsey works well and balances clients' legitimate needs for confidentiality whilst providing access to agencies to pursue those involved in criminal activity.

Guernsey should, in conjunction with other international financial centres, explain and robustly defend what is an established and better alternative approach to countering financial crime.

Towards the back end of last year, Collas Crill consultant, Ian Kirk, was invited to give an offshore perspective at a City Debate hosted by Mishcon de Reya on the issue. The panel included Jonathan Djanogly (Conservative

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MP for Huntingdon) and representatives of charities promoting the concept of a public registry.

At the start of the debate the audience was asked whether a public registry was a good idea. The vote was 44% in favour of and 56% against the idea.

At the outset, Mr Djanogly's view was clear that a public registry was a bad idea. In his opinion, it would have no discernible impact on fighting crime and would adversely impact on the right of privacy in corporate affairs in the UK. He thought it could well deter foreign investment in the UK by those who wanted to keep their shareholdings private.

Unfortunately Mr Djanogly was called to the House of Commons for a "three line whip", leaving our esteemed representative of the offshore community to make Mr Djanogly's case! A second vote was taken at the conclusion of the event; 77% against a public register and 23% against (a swing of 21%).

### The argument for and against

The Department of Business and Skills in the UK published its 65 page consultation paper on 19 June. The focus will be on the creation of a workable register of people with significant control ("**PSC Register**"). Baroness Neville-Rolfe in the foreword said this:

"...the development of the [PSC Register] has been driven by one question: 'how can we keep this simple?' The final scheme strikes a balance between information that can be supplied quickly and without undue burden but that is still enlightening and meaningful."

She explains "Trust is one of the most important commodities in the investment market. If you do not know who is behind a company, how can you be sure who you are doing business with, what motivates them and what they might be trying to achieve?"

"Obscure company ownership structures can facilitate tax evasion, money laundering and even terrorist financing. Clamping down on these practices is an imperative of this Government."

Indeed. The PSC Register is the product of the pronouncements at the G8 meeting in 2013. It's about financial crime and ensuring that UK companies are not instrumental in the activities of criminals. Will a PSC Register succeed in balancing the interests of businesses, investors and the public?

Guernsey's Policy Council recently published its own consultation paper entitled "Transparency of Beneficial Ownership of Companies in Guernsey" inviting comments no later than close of business on **10 July 2015**.

### UK Debate

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"...the development of the [PSC Register] has been driven by one question: 'how can we keep this simple?'"

— Baroness Neville-Rolfe

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