



Briefing

Corporate

The PSC register – are you ready?

The Small Business, Enterprise and Employment Act 2015 introduces material changes to UK company law. These changes have their roots in the Government's drive over recent years to improve transparency and trust in our companies.

One such change is the introduction of a new company register of people with significant control (the PSC register). The implementation of a compulsory regime which captures information on a wide range of people with significant influence or control over a company (PSCs) and, in most cases, makes it publicly available, will have a material impact on the administration of UK companies.

We look at some key features of the new PSC regime below.

When does the PSC register regime start?

The implementation timetable is:

- **6 April 2016** – relevant UK companies and limited liability partnerships (LLPs) must start keeping a PSC register; and
- **from 30 June 2016** – relevant UK companies and LLPs must start including PSC details when filing their new annual confirmation statements (which will replace the current annual return from the same date).

Who must keep a PSC register?

All UK incorporated limited companies, LLPs and UK Societas Europaea, except:

- DTR5 issuers (broadly, companies with shares admitted to trading on the LSE Main Market, AIM or the ISDX Growth Market); and
- those subject to certain other disclosure regimes including those with shares admitted to trading on a regulated market in an EEA state and certain markets in Japan, USA, Switzerland and Israel.

Open-ended investment companies (OEICs) will not be required to keep a PSC register.

Who is a PSC?

Any individual (X) who meets one or more of the conditions set out below in relation to a company (company A) will be a PSC. Different conditions apply to determine who are the PSCs of LLPs – (see “**How does the regime apply to LLPs?**” on page 4).

What are the conditions for companies?

There are five conditions used to identify a PSC of company A:

1. X holds more than 25% of the shares in company A (directly or indirectly);
2. X holds more than 25% of the voting rights in company A (directly or indirectly);
3. X holds the right to appoint or remove a majority of the board of company A (directly or indirectly);
4. X has the right to exercise, or actually exercises, significant influence or control over company A; and
5. X has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not itself a legal entity (where the trustees of the trust or members of the firm meet any of the above conditions 1 to 4 in relation to company A).

What is a Relevant Legal Entity (RLE)?

Although known as the register of people with significant control, it will also capture the details of certain relevant legal entities (known as RLEs). An entity will be an RLE in relation to company A where:

- if it were an individual it would meet one or more of the conditions set out above; and
- it is itself “transparent” – either it keeps its own PSC register or is subject to a similar qualifying disclosure regime (for example, it is a DTR5 issuer).

What is meant by “significant influence or control” in conditions 4 and 5?

This phrase is key and is used as a means of capturing individuals who do not meet the first three conditions but should otherwise be classed as PSCs. Detailed **statutory guidance** published by the Government will have a statutory footing and **must** be followed when deciding whether someone satisfies this test (see “**What can we do to prepare?**” on page 5).

The statutory guidance includes examples of situations which indicate whether a person is a PSC by virtue of having significant influence or control. It also includes examples of excepted roles which will normally indicate that a person holding that role should not be considered to be exercising significant influence or control.

Separate statutory guidance will apply to companies and LLPs. For LLPs (see “**How does the regime apply to LLPs?**” on page 4).

Examples of situations which will indicate that significant influence or control exists in relation to a company for the purposes of Condition 4 include:

- a person who is significantly involved in the management and direction of the company (note the safe-harbour for directors below);
- a person whose recommendations are (almost) always followed by the shareholders holding the majority of voting rights when deciding how to vote; and
- a person who has absolute veto rights over decisions related to the running of the business of the company (unless those rights are solely for the purposes of protecting minority interests).

Examples of excepted roles for the purposes of Condition 4 (where a person would not normally be considered to be exercising significant influence or control provided that the given role is the only reason a person may be thought to exert significant influence or control or otherwise qualify as a PSC) include:

- liquidators, receivers, lenders, suppliers/customers and professional advisors;
- directors (including sole directors); and
- employees (acting in the course of their employment).

The **statutory guidance** also sets out examples of how to apply the significant influence or control test in the context of trusts (condition 5).

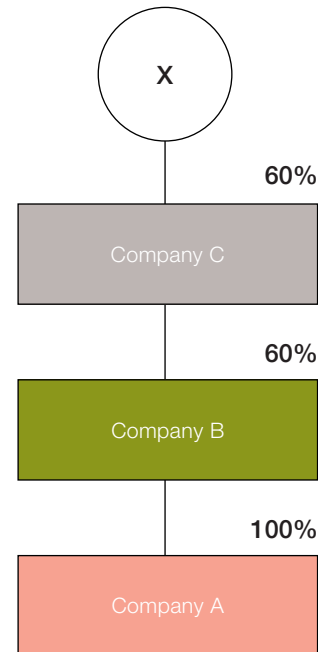
Is there any other guidance on how to apply the conditions?

In addition to the **statutory guidance** which must be followed when checking if a person is a PSC by virtue of conditions 4 and 5, the conditions are supplemented by lengthy statutory provisions which further explain how they should apply. The Government has also produced comprehensive **general guidance** covering all aspects of the new PSC regime (see “**What can we do to prepare?**” on page 5). This guidance is essential reading for those trying to identify PSCs and RLEs and understand and comply with their wider obligations under the new regime.

The framework is very detailed and the identification of PSCs and RLEs in company structures which are not simple could be complex. We have picked out some of the key points below.

Directly or indirectly. Conditions 1 to 3 use this term but what is meant by “indirectly”? When does X hold shares or rights in company A indirectly? This occurs where X holds a majority stake

in a legal entity which itself holds the shares or rights in company A. It also occurs where X is at the top of a chain of entities each of which has a majority stake in the one below, the last of which holds the shares or rights in company A. “**Majority stake**” is defined to include various scenarios including holding a majority of the voting rights in the relevant legal entity and otherwise having the right to exercise dominant influence or control over that entity.



In the example above, X has a direct interest in Company C and indirect interests in Company A and Company B through a majority stake chain.

Joint interests or arrangements. Where more than one person holds a share or right jointly, each of them is treated as holding it. For example, a shareholding of 30% held jointly by husband and wife is treated as 30% (not 15%) in the hands of each of them.

Nominees. Shares held by a person (Y) as nominee for another (Z) are treated as held by Z.

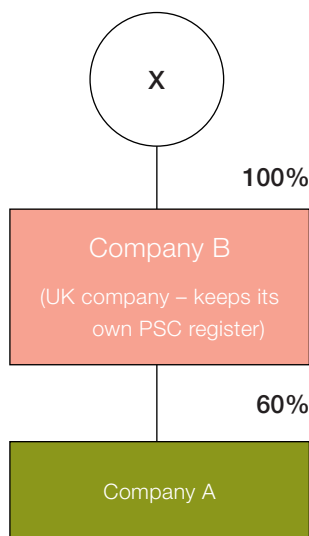
Must all PSCs and RLEs be registered in the PSC register?

The regime operates a two-stage test:

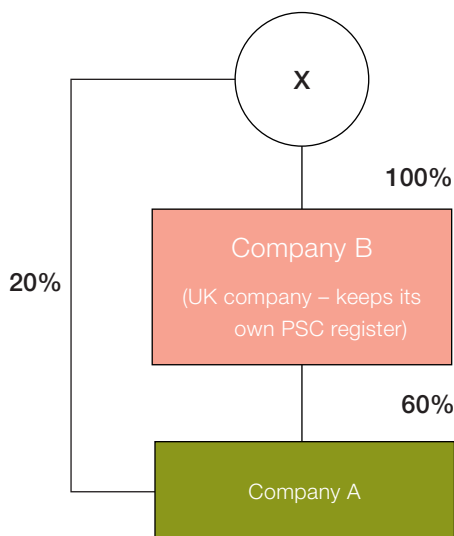
- determine who is a PSC or RLE in relation to the company; then
- determine whether they are a **registrable** PSC or RLE.

The general rule of thumb is that all individuals and entities identified as PSCs or RLEs (X) of company A must be registered in its PSC register. The exception to the rule is where the interests of X in company A are held **only** through one or more RLEs over each of which X has significant control. This exception is extended to interests held through a chain of legal entities provided at least one of the legal entities in the chain is an RLE in relation to company A.

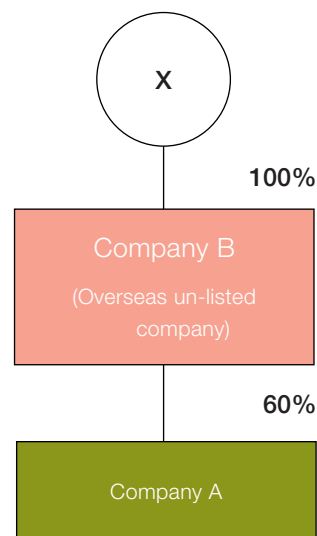
Example 1



Example 2



Example 3



In **Example 1**, company B will be included in the PSC register of company A. Even though X indirectly holds a 60% interest in company A (via his majority stake in company B), X does not need to appear in company A's register. X holds all his interest through company B, which is the more immediate holder of the interest and, crucially, company B is itself transparent as it keeps its own PSC register. If necessary, X could easily be identified further up the line of this transparent chain by looking at the PSC register of company B.

In **Example 2**, because X holds a direct interest in company A he will be included in company A's PSC register in respect of his combined direct and indirect interest of 80%. Company B will also be included in the register in respect of its 60% direct holding.

In **Example 3**, X will be included in the PSC register of company A in respect of his indirect interest (even though he has no direct interest). Company B will not be included in company A's register - it is not an RLE in relation to company A as it is an opaque overseas company without its own qualifying disclosure regime (see **"What is a Relevant Legal Entity (RLE)?"** on page 1).

This has the potential to be complex in practice where ownership structures are not straightforward. Care will need to be taken when deciding who is to be registered.

The Government's **general guidance** sets out some useful further illustrative examples of how this applies in practice.

What information appears in the PSC register?

The PSC register will exist in two forms – the register kept by the company itself and the public version of the register which will be accessible via Companies House records. The following information will be included:

- **Individual PSCs.** Name, service address, country of residence, nationality, residential address and date of birth.

The **public** register will **not** include the residential address (unless it is also a service address) or the day element of the date of birth (unless the company has opted to keep its registers centrally at Companies House rather than at its own registered office – an option that will be available to private companies and LLPs from a date soon, likely to be 30 June 2016).

The company **must not** include any details of an individual PSC in the register unless those details have been confirmed by that person or by another person with their knowledge.

- **RLEs.** Corporate name, registered/principal address, relevant register of companies and number (if applicable) and relevant governing law.
- **Prescribed statements.** To ensure consistency across the regime, there will be a series of prescribed statements which can be entered in the PSC register describing the nature and extent of control to choose from. No other descriptions of interests or commentary will be allowed. The statements are based on the five conditions and the extent of the interest will typically be recorded in bands (i.e., more than 25%, more than 50% and more than 75%). The prescribed statements also cover other situations, including where there are no PSCs or RLEs or where one has been identified but full details are not yet known. A list of the official wording of these statements is included in the Government's **general guidance**.

Companies must be careful not to be over-enthusiastic when compiling their PSC register. Details of any PSC or other person who is not actually registrable should not be included.

As with the current regime for directors, a protection system will allow applications, for information to be kept confidential, from people who would otherwise be at serious risk of violence or intimidation if their personal details were publicly available.

What are the obligations on the company to identify the PSCs and RLEs who should be included in its PSC register?

Companies which keep a PSC register will be under an overriding obligation to take reasonable steps to identify anyone who should be registered. The Government's **general guidance** sets out useful steps to take to help identify PSCs or RLEs.

If a company does not have the relevant information (confirmed as correct in the case of PSCs):

- it **must** give notice to anyone it knows, or has reasonable cause to believe, should be registered on the PSC register asking them to confirm (within one month) whether or not that is the case and, if appropriate, confirm or supply certain personal details to be entered on the register;
- it **may** give notice to any other person the company knows, or has reasonable cause to believe, knows the identity of someone else who should be registered (again, requiring the recipient to respond with certain information within one month);
- it **must** serve similar notices requesting updated information when it knows, or has reasonable cause to believe, a change in the interests or particulars of a registered PSC or RLE has occurred; and
- it has the ability to place certain restrictions on interests in the company to encourage disclosure (see "**What are the sanctions for non-compliance?**" below).

Sample notices are included in the Government's **general guidance**.

What are the obligations on PSCs and RLEs to disclose interests to the company?

In addition to responding to any notices from the company requesting information, there is a positive obligation to disclose details of relevant interests and rights.

Any individual or legal entity who meets the criteria to be registered as a PSC or RLE in the PSC register of a company will be under an obligation to notify that fact to the company, together with details of their interest and certain personal information, within one month of becoming registrable. This positive obligation to notify the company does not apply if the company has already sent a notice to that person requesting details of the particular interest (they will instead have to respond to the company's request).

The obligation to notify also extends to anyone who knows, or ought reasonably to know, the identity of someone else who should be registered.

Registered PSCs or RLEs are also under an obligation to notify the company when certain changes to their particulars or interests occur.

What are the sanctions for non-compliance?

Failure to comply with the obligations to identify PSCs or RLEs or to supply relevant information to the company could lead to fines (on individuals, companies or their directors) or, potentially, imprisonment.

The PSC regime also provides companies with the power to place restrictions on the rights and interests held in them to try and force disclosure of relevant information regarding PSCs or RLEs. If a person or entity holds any shares, voting rights or the right to appoint or remove a member of the board (even if that interest is not enough to make them a PSC or RLE themselves) and fails to comply with a notice requesting information, then the company may issue a warning notice. If they fail to respond to the subsequent warning notice (without a valid reason) then the company will be able to issue a restrictions notice in respect of that interest/right. A restrictions notice will 'freeze' the right or interest, which means that (amongst other restrictions):

- any transfer of the interest will be invalid;
- the right will not be exercisable; and
- no payments of sums due in respect of the interest will be made (for example, dividends).

How does the regime apply to LLPs?

The regime applying to companies largely applies to LLPs in the same way, however, certain differences apply to reflect the structure of LLPs. The key differences are to the conditions used to identify a PSC of an LLP (see below) and the knock-on effect this has on the information included in the PSC register in respect of the nature and control of PSC interests.

What are the conditions for LLPs?

There are five conditions used to identify a PSC (or RLE) of an LLP:

1. X holds the right to share in more than 25% of any surplus assets on a winding up of the LLP (directly or indirectly);
2. X holds more than 25% of the rights to vote on matters to be decided by the members of the LLP (directly or indirectly);
3. X holds the right to appoint or remove the majority of those entitled to take part in the management of the LLP (directly or indirectly);
4. X otherwise has the right to exercise, or actually exercises, significant influence or control over the LLP; and
5. X has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not itself a legal entity (where the trustees of the trust or members of the firm meet any of the above conditions 1 to 4 in relation to the LLP).

The Government's **general guidance** and **statutory guidance** (on the meaning of significant influence or control in the context of LLPs) should be considered when applying the conditions and regime generally to LLPs – (see “**What can we do to prepare?**”).

Where is the legislation for the PSC regime?

The Small Business, Enterprise and Employment Act 2015 inserts a new Part 21A and schedules into the Companies Act 2006.

Further detailed provisions are included in draft secondary legislation, published and laid before Parliament in late January. For companies, The Register of People with Significant Control Regulations 2016 will apply and for LLPs, The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016.

What can we do to prepare?

- Ensure that the relevant people within your organisation are familiar with the comprehensive guidance* published by the Government:
 - General guidance on the PSC regime for companies and LLPs.
 - Draft statutory guidance for companies - meaning of significant influence or control.
 - Draft statutory guidance for LLPs - meaning of significant influence or control.
 - Summary guidance for companies – register of people with significant control.
- * At the time of going to press the statutory guidance published by the Government on the meaning of significant influence or control has not been formally adopted.
- Review corporate structures to identify potential PSCs and RLEs.
 - Consider who the company may need to send notices to requesting information about potential PSCs and RLEs.
 - Confirm information relating to PSCs before including it in the register.
 - Make practical preparations – put appropriate housekeeping and administrative arrangements in place to create, maintain and update a PSC register for each group company (and LLP) required to keep one.
 - Be ready to file PSC information at Companies House from 30 June 2016 when filing the new annual confirmation statement.

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