

## Register of People with Significant Control



### Introduction

The Small Business, Enterprise and Employment Act 2015 (**the 2015 Act**) introduces a number of important changes to UK company law, including the requirement for UK companies and LLPs to keep a statutory register of any persons with significant control over the company (PSCs). For an overview of the other changes resulting from the 2015 Act please [click here](#).

Companies will be required to maintain a PSC register from 6 April 2016, and will have to file details of PSCs annually to Companies House from 30 June 2016. The filing will form part of a company's annual "confirmation statement" which is due to replace the annual return. Additionally, all companies incorporated after 30 June 2016 will have to file a statement of initial significant control as part of the incorporation.

The aim of the PSC regime is to increase transparency around who ultimately owns and controls UK companies, and as such it is wide ranging in its scope. This article sets out who is affected by the regime, the information the PSC register requires to contain, and the consequences of failure to act. It will focus on the application of the provisions on companies. However the provisions in respect of LLPs are largely the same, the principal changes being made to account for the difference in structure between an LLP and a company.

BIS has published statutory guidance on the meaning of "significant influence or control" (which is one of the key concepts of the PSC regime and which is discussed further below), and non-statutory guidance on the regime generally. The non-statutory guidance explains the regime and the obligations of companies in connection with it in some detail, and should be considered by anyone seeking to understand and comply with the regime.

Both sets of guidance can be found [here](#), although please note that the statutory guidance is not yet final.

### Which companies are required to keep a PSC register?

The requirement to keep a PSC register is set out in Part 21A of the Companies Act 2006 (**CA 2006**).

All non-exempted UK incorporated companies (including companies limited by guarantee) will be required to maintain a PSC register. UK incorporated Societas Europae (**SEs**) and LLPs are also subject to the requirements.

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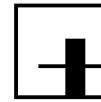
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Some companies will be exempt from the requirement because they are already subject to equivalent transparency rules. These are:

1. Companies that are subject to Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules (this includes UK companies listed on the main market of the LSE, AIM and the ISDX Growth Market).
2. Companies with voting shares admitted to trading on:
  - a regulated market in another EEA state; or
  - on certain specified markets in Japan, Switzerland, Israel and the USA. (A full list of the specified markets will be set out in Schedule 1 of the Register of People with Significant Control Regulations 2016 (the **Regulations**), when they are brought into force).

BIS have indicated that the PSC regime is likely to be extended to certain other legal entities, including Scottish limited partnerships, in order to implement the Fourth Money Laundering Directive. They intend to consult on this later this year.

### Who must be included in a PSC register?

There are two categories of person who must be included in a company's PSC register:

- Individuals who have "significant control" over the company (**PSCs**).
- Legal entities who are both "relevant" and "registerable" in relation to the company (**RRLEs**).

Importantly, only (i) individuals and (ii) legal persons who are not individuals but who are treated as individuals for the purposes of the PSC regime can be PSCs. The legal persons who are treated as individuals for the purposes of the PSC regime are:

- Corporations sole (such as a government minister).
- Governments or government departments of any country or territory (whether inside or outside the UK).
- International organisations whose members include two or more countries or territories.
- UK or overseas local authorities or local government bodies.

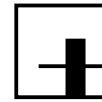
A legal entity cannot be a PSC, but can be an RRLE. Any legal person who is not an individual but who has separate legal personality will be a legal entity for these purposes. Companies and LLPs are the most common types of legal entity. Scottish partnerships and limited partnerships will also be legal entities because they have separate legal personality from their partners. Partnerships and limited partnerships formed under the law of another part of the UK, and trusts formed under the law of any part of the UK, will not be legal entities because they do not have separate legal personality.

### PSCs

An individual will have significant control over a company (and therefore be a PSC) where he or she satisfies one or more of the following conditions (the "**PSC Conditions**"):

1. The individual directly or indirectly holds more than 25% of the shares in the company.
2. The individual directly or indirectly holds more than 25% of the voting rights in the company.

“The PSC provisions are likely to be extended to certain other legal entities, including Scottish Limited Partnerships, in order to implement the Fourth Money Laundering Directive.”



3. The individual directly or indirectly holds the right to appoint or remove a majority of the board of the relevant company.
4. The individual has the right to exercise, or actually exercises, "significant influence or control" over the company.
5. The individual has the right to exercise, or actually exercises, "significant influence or control" in relation to a trust or partnership which is not a legal entity, and the trustees of the trust or partners of the partnership satisfy any of the other PSC Conditions.

Any individual who meets one or more of the PSC Conditions in relation to a company must be entered on its PSC register unless the condition is met by that individual indirectly through an RRLE in which case the RRLE must be entered on the PSC register in place of such individual.

### RRLEs

As mentioned above, a legal entity which is both **relevant** and **registerable** must be included in a company's PSC register.

A legal entity is **relevant** in relation to the company if it meets the following conditions:

- it satisfies one of the PSC Conditions; and
- it is either:
  - required to hold its own PSC register (this will be the case for all non-exempt UK companies, LLPs and SEs but not, for example, at present for Scottish partnerships and Scottish limited partnerships); or
  - exempt from holding its own PSC register by virtue of being subject to its own transparency requirements.

The legal entity is **registrable** in relation to the company if it is the first relevant legal entity in the company's chain of indirect holders of its shares or control rights.

For example, if company A is wholly owned by company B (another non-exempt UK company), company A must enter company B on its PSC register as an RRLE. Company A does not require to investigate whether there is a PSC who holds shares or control rights indirectly through company B. This minimises the burden on subsidiary companies and avoids duplication of the efforts involved in identifying PSCs.

If a legal entity is not relevant and registrable, the company will have to go through the chain of indirect holders of its shares or control rights until it comes either to an individual who is a PSC or a legal entity which is an RRLE. For example, Scottish partnerships have separate legal personality and therefore constitute a legal entity but are not required to hold a PSC register (although this may change as noted above), so if a company is wholly owned by a Scottish partnership, the company will have to consider who owns and controls that legal entity.

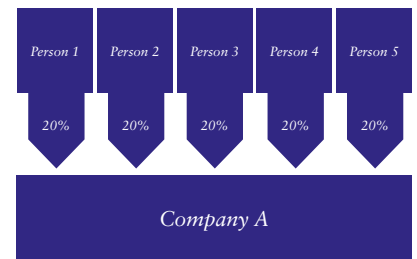
### What does "significant influence or control" mean?

"Significant influence or control" is one of the key concepts in the PSC regime, as it determines whether an individual or legal entity satisfies the fourth or fifth PSC Conditions.

### Fourth PSC Condition: significant influence or control in relation to companies

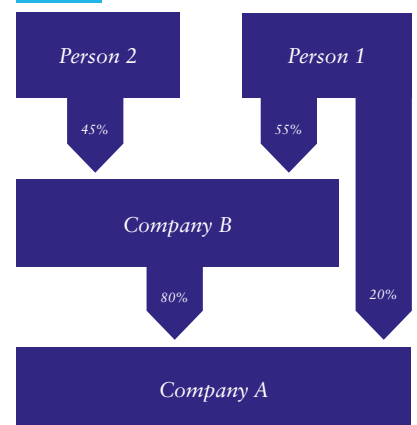
A person will fulfil the fourth PSC Condition if they have the right to exercise,

FIGURE 1

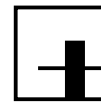


None of the stakeholders hold more than 25% of the shares therefore, provided that there are no arrangements between stakeholders to exercise rights together and none of them exercises, or has the right to exercise signature influence or control over Company A, Company A will not have any PSCs.

FIGURE 2



Company B is both registrable and relevant so it is an RRLE. However, it is not the sole shareholder of Company A, so the other ownership interests of Company A and Company B should be considered to determine whether there are any PSCs holding shares or rights indirectly in Company A through its ownership of Company B. Person 2 is not a majority stakeholder of Company B, so cannot be a PSC of Company A. Person 1 is a majority stakeholder of Company B and therefore is a PSC of Company A. Their total shareholding for the purpose of entering which band they fall into as a PSC is the aggregate shareholding, ie. 75%.



or they actually exercise, significant influence or control over a company. Importantly, a person who does not, in fact, control or influence a company in anyway may be required to be entered on its PSC register, by virtue of having the right to do so.

The concepts of “significant influence” and “control” are alternatives. A person has “control” of the company if they have the actual power to direct its policies and activities. “Significant influence” enables a person to ensure that the company generally adopts the policies or activities that that person wants it to adopt. In each case, there is no requirement that the person obtains an economic benefit from the policies or activities, only that they have the power to influence the direction of the company.

#### *Right to exercise significant influence or control*

BIS’ statutory guidance gives a number of examples of what might constitute a right to exercise significant influence or control.

A person will have significant influence or control where they have decision rights over decisions relating to the running of the business, e.g. amending the company’s business plan, changing the nature of the company’s business, appointing or removing the CEO, borrowing additional funds from lenders and amending any profit-sharing or share option scheme of the company.

Veto rights over decisions relating to the running of the business may also constitute significant influence or control, e.g. veto over amendment of the company’s business plan or making any additional borrowing from lenders. An absolute veto right over the appointment of the majority of the company’s directors will also constitute significant influence or control.

Where veto rights are held in relation to fundamental matters, solely for the purpose of protecting the person’s minority interests in the company, this is unlikely to constitute significant influence or control. For example, if a person holds veto rights in order to prevent winding up of the company or dilution of their shares or rights, this alone would not require them to be entered on the PSC register. Nor would they have to be entered on the PSC register if the decision or veto rights derive from being a prospective vendor or purchaser in relation to the company, for a temporary period of time.

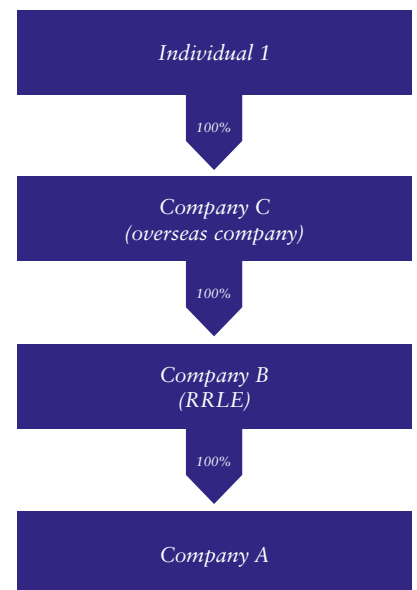
The statutory guidance is not particularly helpful on this point, and it may well be difficult in practice to determine whether a right is a minority protection or gives the holder of it significant influence or control.

#### *Actual exercise of significant influence or control*

The statutory guidance also provides examples of what would constitute a person actually exercising significant influence or control. These show just how broad the PSC provisions are. They include, for example, a person whose recommendations are always (or almost always) followed by shareholders which hold the majority of the voting rights in the company, regardless of the fact that the person does not hold any shares in the company themselves.

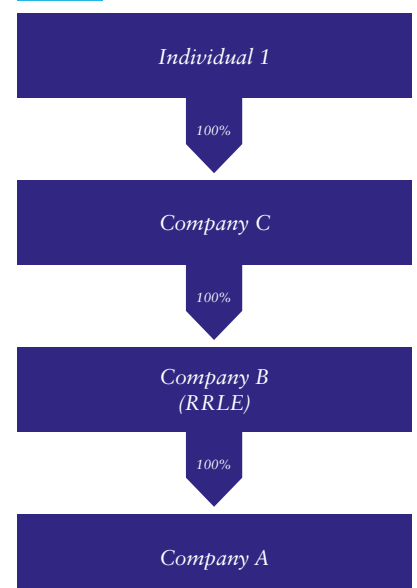
A person who owns important assets or has key relationships which are important to the running of the business and uses this power to influence decisions related to the running of the business, or a person who is regularly consulted on board decisions, would also be considered to exercise significant influence or control.

FIGURE 3



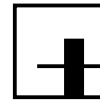
Individual 1 indirectly holds 100% of Company A’s shares through its ownership of Company C. Although Company C is not an RRLE because it is an overseas company, there is an RRLE below it in the ownership chain. Therefore, only Company B is entered on the PSC register and the ownership of Company B is not considered, so Individual 1 does not require to be entered on Company A’s PSC register.

FIGURE 4



Company B should be entered as an RRLE. Company A does not require to consider Company B’s ownership chain, so Company C and Individual 1 will not be entered on its PSC register.





### Safe harbours

The statutory guidance provides a number of 'safe harbours' where a person would not be considered a PSC despite meeting the fourth PSC Condition. The safe harbours relate to the person having significant influence or control by virtue of having a specific role or relationship with the company. They include:

- a director of the company;
- a professional advisor to the company (e.g. lawyers, accountants and consultants);
- a person who exercises a function under an enactment (e.g. a liquidator);
- a person who is engaged with the company as a result of a third party commercial or financial agreement (e.g. suppliers, customers and lenders);
- a person who is acting in the course of their employment and nominee for their employer which has significant influence or control over the company;
- where the rights are held by a group of employees for the purpose of representing the employee interests in an employee-owned company;
- a person in relation to any association, professional standards organisation or network of companies which has control over certain rules, policies or standards which the company adopts (e.g. the Law Society of Scotland); and
- a person who makes recommendations to shareholders on a one-off issue.

However, such persons may still be PSCs if their role or relationship differs materially from how it is usually understood, or if it forms one of several opportunities which that person has to exercise significant influence or control over the company.

### Fifth PSC Condition: significant influence or control in relation to trusts and partnerships without legal personality

Whether a person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or partnership without legal personality is established broadly in the same way as detailed above in relation to the fourth PSC Condition, in that it requires someone to have the right to direct or influence the running of the activities of the trust or partnership.

The examples of significant influence or control which are given in the statutory guidance include:

- the right to appoint or remove any trustee or partner, except through application to the courts or as a result of breach of duty.
- the right to direct the distribution of funds or assets or to right to direct investment decisions;
- the right to amend the trust or partnership deed or to revoke or terminate the trust or partnership.

There are also similar safe harbours to those which apply in relation to the fourth PSC Condition.

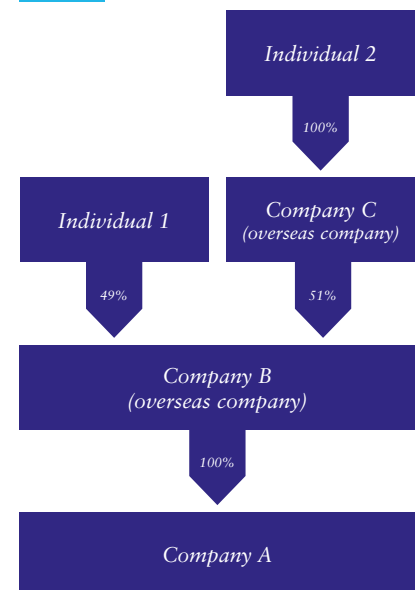
### Identifying who holds a right or interest

There are a number of specific rules which need to be considered when determining who holds a particular right or interest in relation to a company.

### Indirect holdings

As mentioned above, an individual or legal entity will satisfy the first three PSC Conditions if they hold the relevant shares or rights indirectly. For these purposes there will be an indirect holding where the relevant individual or legal entity has a majority stake in a legal entity and that legal entity either:

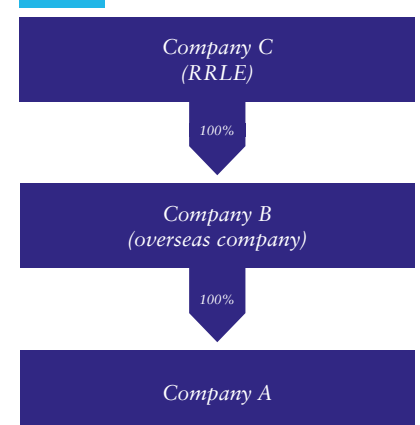
FIGURE 5



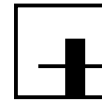
Company B is an overseas company so cannot be an RRLE. Therefore, the ownership chain of Company B must be considered.

- Individual 1 is not a majority stakeholder of Company B and therefore is not a PSC.
- Company C is an overseas company so cannot be an RRLE, so its ownership must be considered.
- Individual 2 is a majority stakeholder of Company C which is itself a majority stakeholder of Company B and therefore Individual 2 is a PSC of Company A.

FIGURE 6



Company B is an overseas company and therefore does not require to have a PSC register. It therefore cannot be an RRLE so the ownership of Company B must be considered. Company C is both registrable and relevant so it is an RRLE and must be entered on the PSC register of Company A.



- holds the relevant shares or rights in the company; or
- holds a majority stake in a chain of legal entities (each of which holds a majority stake in the legal entity immediately below it in the chain) with the legal entity at the bottom of the chain holding the relevant shares or rights in the company.

For these purposes, a person will have a majority stake in a legal entity where the person:

- holds the majority of the voting rights in the legal entity;
- is a member of the legal entity and has the right to appoint the majority of the board of directors (or equivalent management body) of the legal entity;
- is a member of the legal entity and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the legal entity; or
- has the right to exercise, or actually exercises, dominant influence or control over the legal entity.

### Shareholdings and voting rights

Shareholdings and voting rights are aggregated. So, for example, if an individual holds shares in a company both directly and indirectly, both holdings are taken into account in determining the size of that person's shareholding or voting rights.

If a person holds shares through a nominee, that person is treated as the direct holder of the shares.

If a person has granted a security interest in any shares, those shares are treated as being held by that person (and not by the beneficiary of the security) for so long as that person remains entitled to exercise the rights attached to them.

For legal entities which have a share capital, the size of a person's shareholding is determined by the proportion of the nominal value of the aggregate issued share capital that that person's holds. Similarly, for legal entities which hold general meetings, the voting rights that person holds is determined by the proportion of the votes at a general meeting which that person can exercise in respect of substantially all matters. There are additional rules where a legal entity does not have a share capital (where rights to a share in capital or profits must be considered) or hold general meetings.

### Control of rights

Where a person is legally entitled to exercise any rights in relation to a company but another person is able to control the exercise of those rights, the second person is treated as holding the rights. The arrangement under which the second person exercises control does not have to be legally binding.

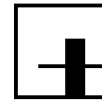
### Joint interests / joint arrangements

Where two or more persons hold an interest or a right jointly or through a joint arrangement, they are each treated as the holder of the entire interest or right.

### Limited partnerships

A limited partner in a UK or overseas limited partnership will not be treated as holding any rights or shares for the purposes of the first three PSC Conditions solely by virtue of being a limited partner, provided that they do not take part in the management of the limited partnership's business. Such rights or shares will be treated as being held by the general partner (where the limited partnership

“*Failure to maintain the PSC register is a criminal offence, with both the company and officers of the company being liable.*”



does not have separate legal personality) or by the limited partnership itself (where the limited partnership has separate legal personality).

### What information must be entered on the PSC register?

From 6 April 2016, a company must have a PSC register and that register must never be empty. So, where the register does not contain the prescribed information for all of the company's RRLEs or PSCs, it must contain one or more statements as to the status of the company's enquiries. Such statements may, for example, be that:

- The company believes a person is a PSC or RRLE, but has not identified the person or has identified the person but has not confirmed the prescribed information in relation to the person.
- The company has not yet completed the process of identifying its PSCs and RRLEs.
- The company has taken steps to identify its PSCs and RRLEs and has concluded that it does not have any.

The particular wording of the statements which are required to be included in any particular circumstance are prescribed by the Regulations and are usefully set out in Annex 2 of the non-statutory guidance.

When it is established that a person is an RRLE or PSC, prescribed information about them must be entered on the company's PSC register. The details of the prescribed information are set out in Chapter 2 of the non-statutory guidance.

Importantly, information about an RRLE or PSC cannot be included in the PSC register unless it has been "confirmed" by the relevant RRLE or PSC or by a third person with their knowledge. Companies will therefore need to go through a process when setting up their PSC register of asking their RRLEs and PSCs to confirm their information, even if the company already holds (or has access to) that information.

### Where must the PSC register be held?

A company's PSC register must be held at its registered office or another location notified to Companies House, although private companies will have the option to elect to hold it at Companies House only after 30 June 2016. If companies take this option, they will be required to update Companies House whenever the identity of or information relating to their PSCs and RRLEs changes, and not just provide this information once a year in their "confirmation statement".

Wherever a company chooses to hold its PSC register, any member of the public is entitled to access to it. However, members of the public are not entitled to be given the usual residential address of a PSC.

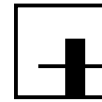
### Duties of companies, PSCs and RRLEs

#### Companies

Companies must take reasonable steps to determine whether they have any PSCs and RRLEs.

A company may give notice to any individual or legal entity which it believes to be a PSC or RRLE requesting them to confirm their status and provide the relevant information. A similar notice may also be given to a third party if the company believes that that third party knows the identity of a person who is or may be a PSC or RRLE. Such third parties may include professional advisers of the possible PSC or RRLE. If a person receives such a notice from

“*There are a number of specific rules which need to be considered when determining who holds a particular right or interest in relation to a company.*”



the company, they have a legal duty to respond to it and provide the relevant information. Failure to respond within one month is a criminal offence.

Once registered, the company has a duty to keep the details up-to-date, and must serve a notice if it knows or has reasonable cause to know that the PSC's particulars have changed.

Failure to maintain the PSC register is a criminal offence, with both the company and officers of the company being liable. A person convicted in this respect may be fined or imprisoned, and therefore company officers must ensure they understand their obligations under the PSC regime.

### PSCs and RRLEs

In addition, if a person knows, or ought to know, that they are a PSC or RRLE, that their information is not stated in the company's PSC register and they have not received a notice from the company, they must notify the company of their status as a PSC or RRLE and provide the relevant information. Such persons also have an ongoing obligation to keep the company up-to-date if there are any changes in their information.

### Warning and restrictions notices

If a person fails to respond to a notice from a company requesting them to confirm whether they are a PSC or RRLE within one month, the company should issue an additional warning notice. If there is no response to the additional warning notice within one month, the company will be able to send a restrictions notice to the relevant person. This will have the effect of applying restrictions to the shares or rights held by the non-responding shareholder, so that no benefit is derived from those shares or rights until the relevant information has been provided. The restrictions include a prohibition on the sale of the relevant shares.

The restrictions must be lifted if the information is supplied, a valid reason for not responding to the notice is given (e.g. the person was in hospital), the restriction is unfairly affecting the rights of a third party, or the court orders the company to do so. If the restrictions are being lifted, the company should issue a notice to inform the individual or legal entity of this.

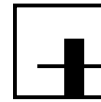
### Next Steps

As of 6 April 2016, non-exempt UK companies must have a PSC register. For some, preparing the PSC register will be a time consuming task. It would therefore be worth companies taking the following steps now:

- Identify the persons who the company's believes are their PSCs and RRLEs. This should involve a consideration of company's ownership structure and the register of members, and the governance arrangements in place in relation to the company. The sort of questions which should be considered are:
  - Who are the shareholders?
  - Are there any individuals or legal entities who exercise, or have the right to exercise, significant influence or control over the company?
  - Are they individuals or legal entities? If they are a legal entity, is it registrable and relevant, and therefore an RRLE?
- When the company has identified a persons who it thinks is a PSC or RRLE, request that person to confirm his, her or its relevant information so that this can be placed on the PSC register. (Prior to 6 April, this can be done informally. It can still be done informally after 6 April but at this point companies should consider whether their obligations to take reasonable

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steps to obtain the information requires them to give a formal notice that the relevant person has a legal duty to respond).

In addition, prior to 6 April, any person with an interest in any UK company should also consider whether they may be a PSC or RRLE in relation to that company. If they think they may be, then they should contact the company to confirm this and provide their relevant information.

By 6 April at the latest, companies should have a PSC register in place which includes the “confirmed” information in relation to all of its PSCs and RRLEs and/or one or more of the prescribed statements as to the status of their enquiries.

Please get in touch with your Shepherd and Wedderburn contact should you require further details about what is required by your company under the PSC regime.

“*As of 6 April 2016, non-exempt UK companies must have a PSC register.*”