

Client Guide

Small Business, Enterprise and Employment Act 2015 - Register of People with Significant Control

What is it?

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The majority of UK registered companies and LLPs must keep a PSC Register.

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The Register of People with Significant Control (the “PSC Register”) is a central register containing details of those people who, other than those who are exempted, control UK registered companies and limited liability partnerships (“LLPs”) in particular ways.

Introduced by The Small Business, Enterprise and Employment Act 2015, the PSC regime requires companies and LLPs (but not limited partnerships - “LPs”):

1. to prepare and maintain a register from 6 April 2016; and
2. to provide the Registrar of Companies with relevant details of entries contained in their PSC Register with effect from 30 June 2016.

Information contained in the PSC Register will be made available to the public via records held at Companies House.

Why is there a requirement to maintain such a register?

It is the Government’s intention that the PSC Register will help increase transparency, help inform investors, and give support to law enforcement agencies in the war against crime, terrorism and money laundering.

Who must keep a register?

The majority of UK registered companies and LLPs.

Companies and LLPs which are exempt from the PSC Register include:

- Listed companies who have a requirement to make disclosure under the Financial Conduct Authority’s Disclosure and Transparency Rule 5 (“DTR5”).
- Companies whose shares are traded in markets in the USA, Japan, Switzerland or any EEA State.

What is a Person with Significant Control (a “PSC”)?

A PSC is defined as a person with “significant control”. The position differs from what is considered to be a person with significant control between companies and LLPs.

Companies

A person is a PSC in a company if they:

1. Hold, directly or indirectly, more than 25% of the shares in the capital of the company;
2. Control, directly or indirectly, more than 25% of the voting rights in the company;
3. Hold, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
4. 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 which itself meets any of the above conditions.

Limited Liability Partnerships

A person is a PSC in an LLP if they:

1. Hold, directly or indirectly, the right to share in more than 25% of the LLP's surplus assets on a winding up;
2. Hold, directly or indirectly, more than 25% of the rights to vote on matters to be decided by a vote of members of the LLP (including rights only exercisable in certain circumstances);
3. Hold, directly or indirectly, the right to appoint or remove the majority of persons entitled to take part in the LLP's management;
4. Have the right to exercise, or actually exercise, significant influence or control over the LLP; or
5. Have the right to exercise, or actually exercise, significant influence or control over the trustees or members of a trust or firm that is not a legal person, where the trustees or members would meet any of the specified conditions (or would if they were individuals).

What information is entered into the PSC Register?

Companies and LLPs will have a duty to **take reasonable steps** to investigate, update and obtain information in order to record the relevant statutory details in the register.

Individuals

In the case of an individual, a company/LLP must record the individual's:

- Name;
- Service address;
- Country or state of usual residence;
- Nationality;
- Date of birth; and
- Usual residential address (this will remain private and not published on the records at Companies House)

Corporate shareholders/members of an LLP

Where a PSC is not a natural person, and that entity has an obligation to maintain its own PSC Register, it is defined as a registrable **Relevant Legal Entity** (a "RLE") and a statement must be included in the PSC Register to that effect. A legal entity is considered to be an RLE if it meets any of the conditions to be recorded as a PSC, and:

- i. It holds its own PSC register; or
- ii. It is subject to rule 5 of the FCA Disclosure and Transparency Rules; or
- iii. It has voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or on specified markets in Switzerland, the USA, Japan or Israel.

An RLE is registrable in relation to a company/LLP if it is the first RLE in a company's ownership chain. The qualifying criteria must be recorded against any registrable RLE, since it is still a PSC.

Companies/LLPs without a PSC

The PSC Register must never be blank. The PSC requirements apply whether a company/LLP has a PSC or not. Providing the company/LLP has taken all reasonable steps and is confident that there are no individuals or legal entities which meet any of the conditions to be considered as a PSC or registrable RLE, the company/LLP must enter that fact on its PSC Register.

What if I cannot obtain all information about a potential PSC?

Information about PSCs and RLEs must be complete before being entered into the PSC Register. If further details are required, the company/LLP must serve notice on an individual or legal entity, requesting details of who has an interest in the shareholding.

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Failure to Comply

Failing to comply with the PSC requirements may result in criminal sanctions which can be as severe as two years' imprisonment or a fine.

Filing obligations

From 30 June 2016, details of any PSC or RLE will be included in the confirmation statement (which replaces the annual return) with the Registrar of Companies. A statement of any initial PSC is provided to Companies House during the incorporation process, and updated every 12 months thereafter by way of the annual confirmation statement filed by a company or LLP, or earlier if the company/LLP chooses to submit a confirmation statement sooner than the anniversary of filing.

Accessing the PSC Register

The PSC Register is required to be accessible and should be kept at the registered office or other Single Alternative Inspection Location (SAIL Address) as notified to Companies House. A proper purpose test will be applied to any request to access the register. The request must set out:

- The name of the applicant;
- Their address; and
- The purpose in seeking the information.

The company/LLP must respond within five days of receipt of the request, including the information requested. The statutory fee has been set at £12 for a copy of the PSC register, irrespective of how many parts are required to be copied.

If there is a belief that the request is not for a proper purpose and the company/LLP wishes to refuse the request, it must apply to the court

within five working days of receipt of the request to have the request refused. The court will then decide whether the company/LLP must comply with the request. It is a criminal offence to refuse a request without going to court.

Restrictions to PSC Shares

In circumstances where requests for information about a potential PSC have not been forthcoming, the company may wish to consider applying restrictions to PSC shareholdings. This is of course a significant step which can only be taken if the required steps to identify any PSC have been properly taken. A company/LLP is not required by law to impose restrictions, but it must seriously consider it as part of meeting legal requirements to take reasonable steps to identify any PSC and record details in the PSC Register. If a company/LLP is in this situation and chooses not to impose restrictions, it should be able to justify its decision.

Imposing restrictions is not the end of taking reasonable steps. There may be other lines of investigation that the company/LLP should take until it has identified all PSCs and registrable RLEs in relation to the company/LLP or there is nothing more that can be reasonably done.

It is evident from the draft guidance issued by HM Government and the commentary on the same from the Institute of Chartered Secretaries and Administrators (ICSA) that the preparation and maintenance of the PSC Register will require considerable analysis and investigation to ensure that companies and their boards of directors are confident in the information they are recording in their PSC Register to ensure initial and ongoing compliance with these regulations.

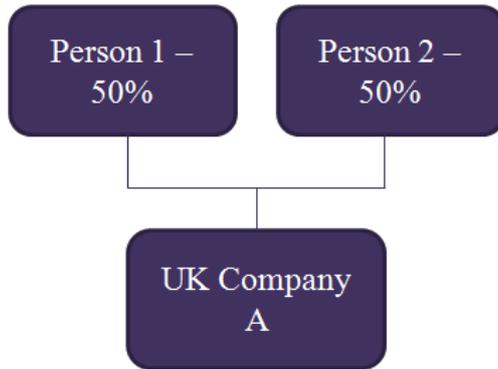
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EXAMPLES

Example 1



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The conditions under which each person is considered to be a PSC should be recorded in the PSC Register.

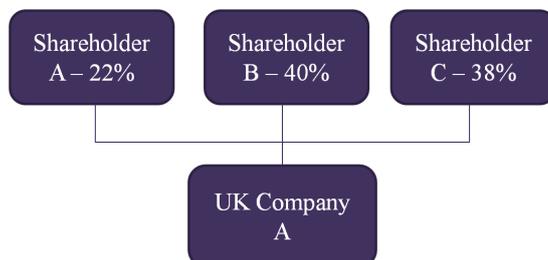
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In the example above, both Person 1 and Person 2 would be considered a PSC of UK Company A under condition (1) and (2), as they each hold more than 25% of the shares and 25% of the voting rights (assuming all shares rank equally).

Conditions (4) and (5) need only be considered in situations where a person or legal entity is not considered to be a PSC under conditions (1) - (3).

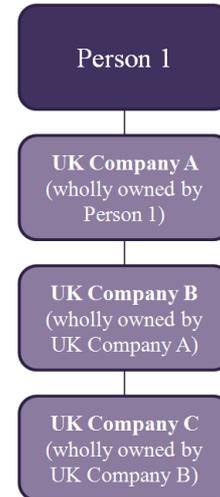
The conditions under which each person is considered to be a PSC should be recorded in the PSC Register.

Example 2



In this example, Shareholder B and Shareholder C would be recorded as PSCs but not Shareholder A, unless Shareholder A held enhanced voting rights, or the right to appoint or remove a majority of the board, or had the ability to exercise significant influence over the control of the Company.

Example 3

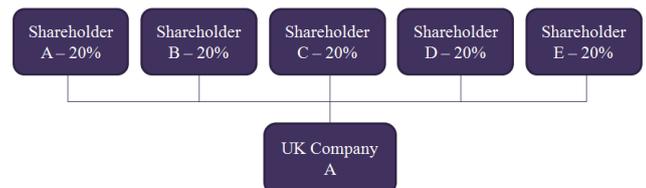


In the above example, UK Company A is wholly-owned by Person 1. Person 1 is recorded as its PSC.

Company B is wholly-owned by Company A. In this case, as Company A is a UK registered company with its own obligation to maintain a PSC Register, Company A is recorded as an RLE in the PSC Register of Company B. Whilst Person 1 owns Company A, which in turn indirectly owns Company B, Person 1 does not feature in Company B's PSC Register.

Company C is wholly-owned by Company B, and indirectly by Company A and Person 1. Since Company B is an RLE, it is recorded in the PSC Register of Company C and no further entries are required.

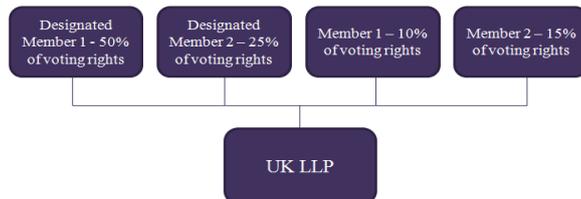
Example 4



In example 4 above, no shareholder is classed as a PSC and consequently a statement is

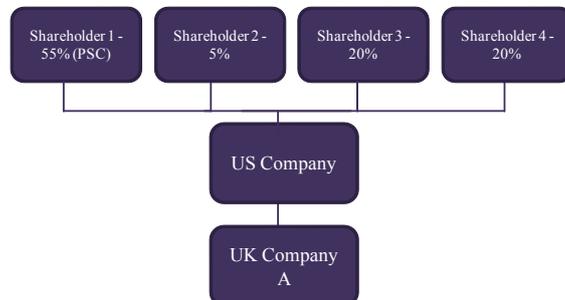
recorded in the PSC Register to note that the company has no People with Significant Control.

Example 5



In the above example, a UK registered LLP has four members, each with varying rights in respect of votes on decisions of the LLP. In this instance, the two designated members would be recorded in the PSC Register, whilst the ordinary members would not (subject to considering any of the remaining criteria under which a member would be considered a PSC).

Example 6



Company A is a wholly-owned subsidiary of a US registered company. The US registered company does not have any publicly traded shares, is not regulated and has no equivalent statutory requirement to hold a PSC Register.

Consequently, the US registered shareholder is a non-registrable RLE, so further investigation is required to establish who has control of the US registered company and whether such investigation will identify a PSC. As shown in the diagram, the US registered company is owned by a number of shareholders, but only one has more than 25% of its shares, so only that shareholder will be recorded as a PSC of Company A.

Contact Us

This briefing note is intended as general guidance on current issues in the law. It is not a substitute for advice and it may not be relied upon as such.

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