The PSC register

The requirement for a register of persons with significant control over UK entities

Hogan Lovells

Since 6 April 2016, UK companies have been required to maintain a register of persons with significant control over them (a "**PSC register**"). This requirement is intended to increase the transparency of corporate ownership, by making public who the ultimate beneficial owners of companies are.

The relevant legislation is contained in Part 21A of the Companies Act 2006 (which was inserted by the Small Enterprise, Business and Employment Act 2015), as supplemented by related statutory instruments. The legislation was amended with effect from 26 June 2017 in order to meet the requirements of the Fourth Money Laundering Directive.

Action companies must take

A company must:

- identify the people with significant control ("**PSCs**") over it;
- record and update the details of the PSCs in its register at its registered office or its single alternative inspection location ("**SAIL**");
- grant the public access to its PSC register; and
- update its own PSC register within 14 days of any change and provide this information to Companies House within a further 14 days.

Even a company which does not have a PSC has to maintain a PSC register and include an appropriate entry to that effect.

Exempt companies

Companies are exempt if they have shares traded on the LSE's main market, a regulated market in an EEA state or a specified market in the USA, Japan, Switzerland or Israel (as a result of which they must comply with equivalent disclosure obligations under international standards). However, their UK subsidiaries will still need to comply (Prior to the changes to the PSC regime introduced in June 2017, AIM listed companies were also exempt but this is no longer the case).

Identification of PSCs

An individual will be a PSC in relation to a company if he:

1. holds, directly or indirectly, more than 25% of its shares;
2. holds, directly or indirectly, more than 25% of its voting rights;
3. holds, directly or indirectly, the right to appoint or remove directors holding a majority of the votes that can be cast at a meeting of its board of directors;
4. has the right to exercise, or actually exercises, significant influence or control over it; or
5. has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity and whose trustees or members meet any of the above conditions or would do so if they were individuals.

In addition to individuals, any of the following can be a PSC: a government, an international organisation, a local government body or a corporation sole.

Significant influence or control

Statutory guidance explains some principles for the interpretation of 'significant influence or control' in points 4 and 5 above. In summary, a person will have significant influence or control if he can direct the activities of the relevant body or ensure that it adopts the activities which he desires. This is likely to be the case if he alone can determine the business plan, appointment of the CEO, arrangements for option and incentive schemes or the company's borrowings. Veto rights over such matters can also suffice, though not where the veto rights are held in relation to certain fundamental matters for the purposes of protecting minority interests in the company (for instance, over dilution, fundamental business change or winding up).

The guidance also lists some positions which will not generally be regarded as conferring significant influence or control, including those of directors, advisers and commercial counterparties. However, all relationships that an individual has with the company, trust or firm must be considered cumulatively; for instance, a director may exercise significant influence over a company by dint of owning a key asset used by the company.

Indirect interests, corporate groups and ownership chains

In addition to individual PSCs, a company must identify legal entities which would be PSCs if they were individuals. Any such entity which either is a UK company (or limited liability partnership or societas europaea) or has shares traded on one of the markets referred to under 'Exempt Companies' above (a "**relevant legal entity**") must be registered in the PSC register as if it were an individual PSC. No entities or individuals higher up the ownership chain need then be registered (unless they have a disclosable additional interest other than through the registrable relevant legal entity); anyone interested in understanding the ownership chain should instead obtain the necessary information from the entities' own disclosures, either in their PSC registers or under DTR5 or equivalent rules.

Any other legal entity which would be a PSC if it were an individual (in essence, a foreign entity not traded on a relevant market) should not be entered in the PSC register and will not be a "relevant legal entity". Instead, the PSC register must record the next individual or relevant legal entity up the chain which is treated as indirectly having an interest, control or influence in the company, by virtue of holding a majority stake in the legal entity with the direct interest. Someone will hold a majority stake if he:

– holds a majority of the voting rights in the legal entity;

– is a member of the legal entity and has the right to appoint or remove a majority of its board of directors;

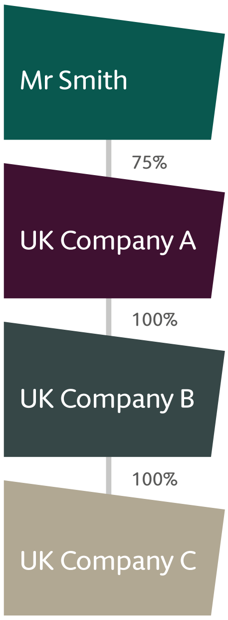
– is a member of the legal entity and controls a majority of the voting rights by agreement with other shareholders or members; or

– has the right to exercise or actually exercises *dominant* influence or control over the legal entity.

If a majority stake is held by a person who is neither an individual nor a relevant legal entity, the same tests must be applied to that person and so on, until either an individual or a relevant legal entity with a majority stake is reached (if there is one).

Examples of application of the rules to indirect interests

Example 1

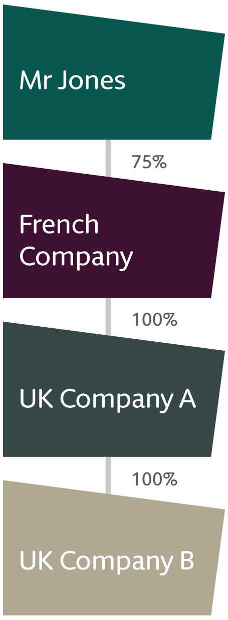


Company B should be registered as a PSC of Company C in Company C's register – it is a registrable relevant legal entity.

Company A should likewise be registered as a PSC of Company B in Company B's register (but it is not registrable in relation to Company C, as it does not hold any interest in Company C other than through another legal entity, Company B, over which it has significant control and which is itself a relevant legal entity in relation to Company C).

Mr Smith should be registered as a PSC of Company A in Company A's register, as he holds more than 25% of the shares and voting rights in Company A. (He is not a PSC of Company B or Company C, as he does not hold any interest in either other than through another legal entity over which he has significant control and which is itself a relevant legal entity in relation to the company in question.)

Example 2

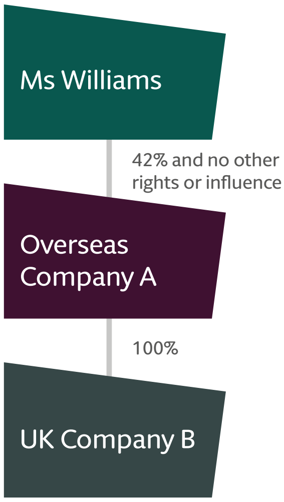


Company A should be registered as a PSC of Company B in Company B's register.

French Company should not be registered as a PSC of Company A (or Company B)) as, being incorporated in France and not having shares traded on a relevant market, it is not a relevant legal entity.

But Mr Jones should be registered as a PSC of Company A, as he has a majority stake in French Company and is therefore treated as indirectly holding the shares in Company A owned by French Company. (He is not a PSC of Company B, as he does not hold any interest in either other than through another legal entity over which he has significant control and which is itself a relevant legal entity in relation to Company B.)

Example 3



Company A is not a relevant legal entity in relation to Company B because it is an overseas company whose shares are not traded on one of the relevant markets.

Ms Williams is not a PSC of Company B. She is not treated as indirectly holding the shares in Company B owned by Company A, because she does not have a majority stake in Company A.

Example 4

Company C cannot put Company B's details on its PSC register as Company B is not a relevant legal entity because it is an overseas company and does not have shares traded on a relevant market. (If Company B had its shares traded on a relevant market, then it would be a registrable relevant legal entity in relation to Company C.)

Company A is also not a relevant legal entity in relation to Company C for the same reason.

Company C must therefore look at the ownership and control of Company A. Mrs Davies has a majority stake in Company A, which holds a majority stake in Company B, which in turn has a majority stake in Company C. This means that she is treated as indirectly holding the shares in Company C owned by Company B and must be entered as a PSC on Company C's PSC register. Mr Taylor does not have such a majority stake and is therefore not registrable.

Limited Liability Partnerships and Societates Europaeae

The regime for registering PSCs applies to UK registered limited liability partnerships (“**LLPs**”) and societates europaeae (“**SEs**”). The requirements are essentially the same as for companies with, in the case of LLPs, appropriate modifications as regards the definition of a PSC.

Eligible Scottish Partnerships (ESPs)

Since 26 June 2017 limited partnerships registered in Scotland and general partnerships constituted under the law of Scotland (together ESPs) are now also required to file their PSC information with the central public registry at Companies House but are not required to keep their own PSC registers.

Steps to identify PSCs and update PSC register – obligations on companies and PSCs

A company must take reasonable steps to find out if there are any PSCs in relation to itself (and, for the sake of simplicity, we are including here registrable relevant legal entities in the term “PSC”) and, if so, to identify them. This includes, but is not limited to, sending to anyone whom the company knows or has reasonable cause to believe to be a PSC a notice requiring the person to confirm whether or not he is a PSC and to confirm or correct his particulars. The company may also send a notice to anyone it believes may be able to help it to identify its PSCs. If the company believes that a PSC is no longer a PSC, or that his particulars have changed, the company must similarly send the PSC a notice requiring confirmation of the facts.

Recipients of these notices must reply within a month. In addition, anyone who knows he is a PSC, or that his status as a PSC or his particulars have changed, but does not receive a notice from the company within a month must notify the company of the relevant particulars.

In the case of a registrable relevant legal entity, a company must update its register as soon as it becomes aware of the relevant particulars; but, in the case of individual PSCs, the company must not update its register until the particulars have been confirmed by the PSC (or with his knowledge).

Contents of PSC register

The particulars which need to be given in the register are set out in the Companies Act 2006 and, where the person is a PSC by virtue of his shareholding and/or voting rights, must include the level of his shares and voting rights within the following categories:

- over 25% up to (and including) 50%;
- more than 50% and less than 75%; or
- 75% or more.

In addition, a company must record in its PSC register the status of its investigations into its PSCs – for instance, that it has no PSCs, or that it has identified a PSC but his particulars have not yet been confirmed. There is official wording which must be used in the PSC register in each of these cases, and also to describe why each PSC is a PSC. A reference guide can be found in Annex 2 of the Guidance for Companies, LLPs and SEs which has been issued by the Department for Business, Innovation & Skills – see the link at the end of this note.

Publicity: inspection of PSC register and filings at Companies House

In the same way as a register of members, a PSC register must be kept at the company's registered office or its SAIL. It must be open for inspection within five working days of request. However, if the company believes that a request for inspection is not for a proper purpose, it can apply to the court to be allowed to prohibit inspection. A company must also provide a copy of the register or any part of it within the same period on payment of a £12 fee.

From 26 June 2017, a company must make any changes to its PSC register within 14 days and it must file that information with Companies House within a further 14 days. The information filed will be available for public inspection on the register at Companies House.

Private companies have the option, instead of keeping their own PSC register, of electing to keep the relevant information on the register kept by Companies House known as the "central register". In that case it will have to notify Companies House whenever an amendment to its PSC register would have been required, so that the central register can be updated.

There is a regime for suppressing all information relating to PSCs or preventing their residential addresses being shared with credit reference agencies. This is available in exceptional circumstances, which means where there is a serious risk of violence or intimidation.

Consequences of non-compliance

A failure by a company to keep a PSC register up to date or seek information necessary for the purpose will give rise to a criminal offence on the part of the company and its officers. A person who fails to respond to a notice given by a company for the purpose will also commit an offence.

In addition, if a person fails to respond to a company's notice requesting information, the company can (subject to certain safeguards) impose restrictions on that person so that the person:

- cannot sell or transfer his shares or other interest in the company;
- cannot exercise rights in respect of the interest;
- cannot be issued shares by reference to the interest; and
- cannot receive dividends or other distributions on the interest (except in liquidation).

Further information

Current versions of the various guidance notes issued by the Department for Business, Innovation & Skills can be found at https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships. This includes the statutory guidance on the meaning of "significant influence or control" and the non-statutory guidance for companies, LLPs and SEs referred to above, as well as guidance for PSCs.

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For assistance on the PSC regime, please contact one of the people named below or your usual contact at Hogan Lovells.

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