

PSC Registers

December 2015



Introduction

Part 21A of the Companies Act 2006, introduced by The Small Business, Enterprise and Employment Act 2015, requires companies to keep a register of people with significant control (PSC Register) as one of their statutory registers. It imposes duties on companies to gather information, and obligations on others to supply information, to enable the PSC Register to be kept. The information must also be passed to Companies House via the company's annual confirmation statement (which replaces its annual return).

The obligation on a company to hold a PSC Register (and associated obligations on companies to gather information and on others to supply information) will come into force on 6 April 2016.

The requirement to pass information to Companies House via the annual confirmation statement will take effect from 30 June 2016.

Who must keep a PSC Register?

All UK registered companies (limited by shares or guarantee, or unlimited) and Limited Liability Partnerships must keep a PSC Register **except**:

- companies required to comply with Rule 5 of the Disclosure and Transparency Rules (including UK listed and AIM companies); and
- companies with voting shares admitted to trading on a regulated market in any EEA state, or on certain markets in Japan, the USA, Switzerland and Israel.

Who is a PSC?

Someone will be a Person with Significant Control if they meet one or more of the following tests:

- they hold, directly or indirectly, more than 25% of the nominal value of the company's shares, or of the capital or profits for a company without share capital;
- they hold, directly or indirectly, more than 25% of the voting rights, excluding voting rights held by the company;
- they hold the right, directly or indirectly, to appoint or remove a majority of the board of directors or equivalent management body;
- they have the right to exercise, or actually exercise, significant influence or control over the company;
- they have the right to exercise, or actually exercise, significant influence or control over the activities of a trust, or a firm which is not a legal person, which itself meets any of the above conditions.

A person holds a share or right "indirectly" if he has a majority stake in a legal entity which holds the share or right or which is part of a chain of legal entities each holding a majority stake in the one below and the last of which holds the share or right.

The PSC Register

A PSC Register must include details of:

- each individual who qualifies as a PSC and is registrable in relation to the company, but **only** once all the required particulars of that individual have been confirmed by the individual; and
- each relevant legal entity that qualifies as a PSC and which is registrable in relation to the company.

A "**relevant legal entity**" is an entity which is a legal person under its governing law and which is itself subject to a requirement to disclose details of those who control it, either because it is required to keep a PSC Register or because it is an AIM company, is listed in the UK or has voting shares admitted to trading on a regulated market in an EEA state, or on certain markets in Japan, the USA, Switzerland and Israel.

An individual or relevant legal entity is **non-registrable** in relation to a company if they do not hold any interest in the company except through one or more legal entities over each of which they have significant control and each of which is a relevant legal entity in relation to the company. Otherwise, they are registrable. In relation to **wholly owned group companies**, this means that they will generally need only to include their immediate parent company in their PSC Register.

A company must note on its PSC Register if it knows or has reasonable cause to believe there is no registrable person or relevant legal entity, and information about the company's investigations into registrable persons or relevant legal entities.

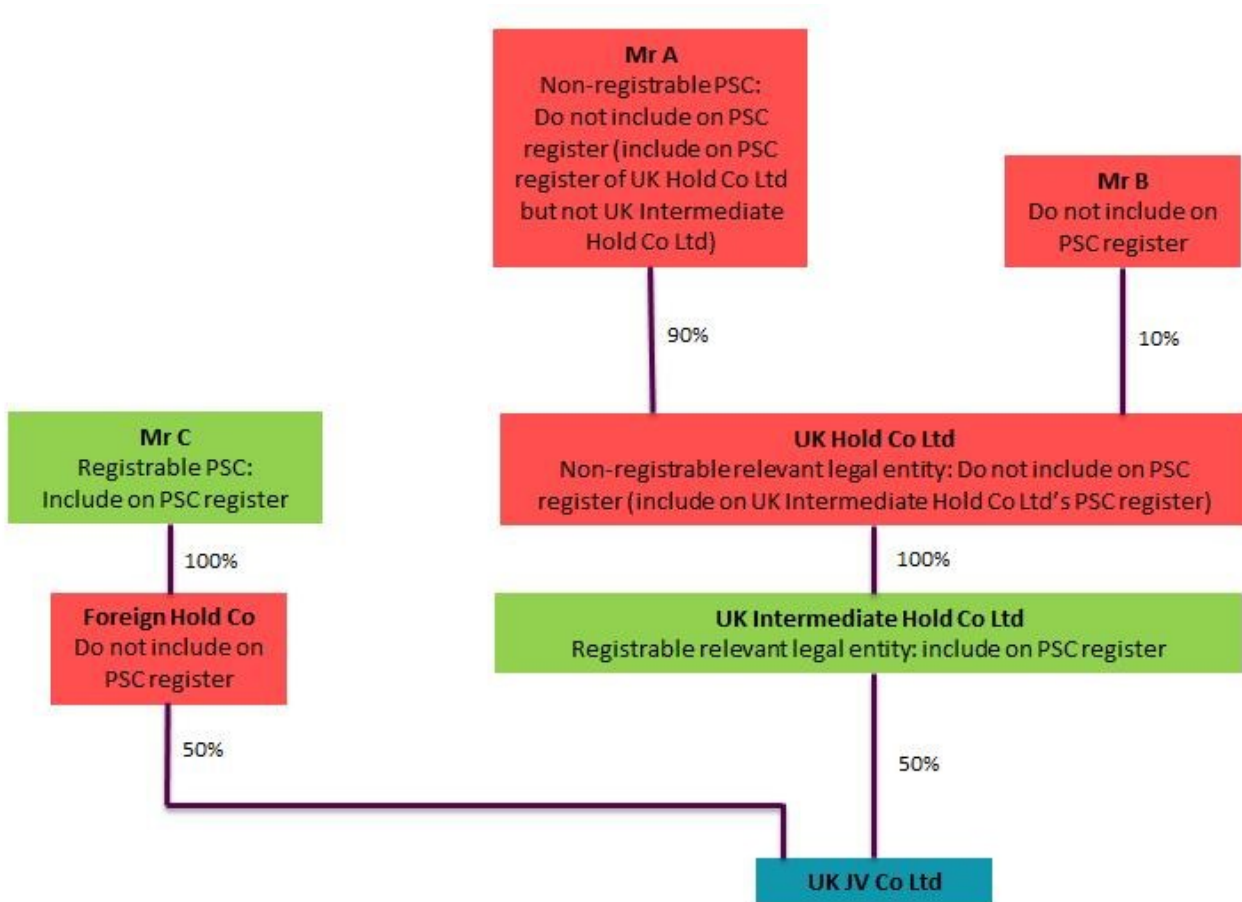
Companies should not make any notes on the PSC Register other than those required by the legislation.

There are similar provisions for the protection of the residential addresses of PSCs as apply to the protection of directors' residential addresses.

The PSC Register must be available for inspection by the public, without charge. A copy of the register can be requested, for which the company may charge up to £12. A request for inspection or a copy must state the name and address of the person making the request and the purpose for which the information is to be used and the company can apply to court for an order not to comply if the court is satisfied that the information is not sought for a proper purpose.

Example structure chart

The following example structure chart indicates who should be included in the PSC Register maintained by UK JV Co Ltd.



The company's obligation to investigate

The company **must**

- take reasonable steps to find out if there is anyone who is a registrable person or relevant legal entity in relation to it, and to identify them;
- give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or relevant legal entity, requiring them to state whether they are a registrable person or relevant legal entity, and supply or confirm particulars;
- give notice to a registrable person or relevant legal entity as soon as reasonably practicable if the company knows or has reasonable cause to believe that they have ceased to be a registrable person or relevant legal entity or there has been a change in their particulars, requiring confirmation of the change;

unless the company has already been informed of the person or entity's status as a registrable person or legal entity or, as the case may be, of the relevant change and has been supplied with the required particulars; and, in the case of a registrable person, the information was provided by that person or with his knowledge.

An offence is committed by the company and every officer in default (punishable by imprisonment for up to two years or an unlimited fine) if the company fails to do so.

The company **may**:

- give notice to a person it knows or has reasonable cause to believe knows the identity of a registrable person, a relevant legal entity or an entity that would be a relevant legal entity but for the fact that it is not subject to its own disclosure requirements, requiring them to state whether it has such knowledge, and supply or confirm particulars;
- give notice to a person it knows or has reasonable cause to believe knows the identity of someone likely to have that knowledge.

A notice from the company must state that the addressee is to comply by no later than the end of one month beginning with the date of the notice. If the addressee fails to comply, the company may apply sanctions (see below) and the person or entity commits an offence unless the disclosure requirement is frivolous or vexatious.

Obligations on registrable persons and relevant legal entities

A disclosure obligation is triggered if all the following criteria are satisfied:

- a person knows or ought reasonably to know that they are a registrable person or relevant legal entity in relation to a company;
- their particulars are not already registered in the company's PSC Register;
- they have not received a notice from the company requiring them to state whether they are a registrable person or relevant legal entity;
- these circumstances have continued for a period of at least one month.

Once all the above are satisfied, the person or entity has one month to make a notification to the company of its status as a registrable person or relevant legal entity, the date it acquired that status and the particulars required for the PSC Register.

An obligation to notify the company of any change in status or registrable particulars arises if similar criteria are satisfied and must be complied with by the later of (a) two months from the date of the change or (b) one month from the date on which the person or entity discovered the change.

If a person or entity fails to comply with these disclosure obligations, the person or entity commits an offence.

Sanctions a company may apply

Where a person or entity fails to comply with a notice from the company, and that person or entity holds shares or voting rights in the company, or the right to appoint or remove any director, the company may give that person or entity a warning notice.

If the person has not complied and has not provided a valid reason for non-compliance within one month of the date of the warning notice, the company may issue a restrictions notice. This means that any transfer of the relevant shares or rights will be void, no rights may be exercised and no shares may be issued in right of any relevant shares or in pursuance of an offer made to the shareholder.

An offence is committed (punishable by an unlimited fine) if someone does a specified act knowing of the restriction notice, including voting (as shareholder or proxy) or appointing a proxy.

The company must withdraw the restrictions notice if:

- it is satisfied there is a valid reason for the failure of the person or entity to comply with the company's notice;
- the notice is complied with; or

- the company discovers that the rights of a third party are being unfairly affected by the restrictions notice.

The company must give a withdrawal notice within 14 days of the duty to withdraw the restrictions notice arising.

In deciding whether to issue a restrictions notice, the company must have regard to the rights of third parties in respect of the relevant shares or rights. An aggrieved person may apply to the court if it considers that a restrictions notice issued by the company unfairly affects the rights of third parties in respect of the shares or rights subject to restrictions.

The company or a person aggrieved may apply to the court for the restrictions to be lifted. However, the court may only do so if certain conditions are met (specifically, that the relevant facts about the interest have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make the disclosure).

The company may seek an order that relevant shares or rights subject to restrictions are sold, with the proceeds paid into court for the benefit of those beneficially interested in the shares or rights.

Companies House filings

As an alternative to keeping its own PSC Register, a company can elect to keep the relevant information on the central register kept by Companies House.

If it keeps its own PSC Register, the company will have to include details of any changes in its PSC information when it delivers its confirmation statement (which replaces the annual return) to Companies House.

What should companies do now?

- Consider each registered shareholder who is an individual, to see if he/she qualifies as a PSC.
- Consider each registered shareholder which is a legal entity, to see if it both (i) qualifies as a PSC and (ii) is required to disclose details of its own shareholders.
- Where a registered shareholder which is a legal entity qualifies as a PSC but is not required to disclose details of its own shareholders, consider who controls that entity and may therefore qualify as a PSC of the company.
- Consider whether there are any other persons who may qualify as a PSC of the company, for example, by controlling two or more registered shareholders who together hold more than 25% of the company's shares or by exercising significant influence or control (The Institute of Chartered Secretaries and Administrators has published [draft statutory guidance](#) on what this means).

- Create a list of anyone it knows or has reasonable cause to believe to qualify as a PSC, unless (i) they (in the case of a legal entity) are not required to disclose details of their own shareholders, or (ii) they do not hold any interest in the company except through one or more legal entities over each of which they have significant control and each of which is required to disclose details of its own shareholders.
- Give notice, seeking confirmation of PSC status and relevant details, to each person on the list.
- Create a draft PSC Register detailing the notices sent or, if no notices are sent, indicating that it knows or has reasonable cause to believe there is no registrable person or relevant legal entity to be included in the PSC Register.
- Update the draft PSC Register with information received in response to the notices.

Contacts



Andrew Blankfield

Partner - London

E: andrew.blankfield@fieldfisher.com

T: +44 (0)20 7861 4114

M: +44 (0)7768 713006



Jonathan Brooks

Partner - London

E: jonathan.brooks@fieldfisher.com

T: +44 (0)20 7861 4748

M: +44 (0)7725 619189



Tim Bird

Partner - London

E: tim.bird@fieldfisher.com

T: +44 (0)20 7861 4031

M: +44 (0)7889 110116

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