

PSC Registers

February 2016



Introduction

Part 21A of the Companies Act 2006, introduced by The Small Business, Enterprise and Employment Act 2015, requires companies and limited liability partnerships (LLPs) to keep a register of people with significant control (PSC Register) as one of their statutory registers. It imposes duties on companies and LLPs 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 annual confirmation statement (which replaces the annual return).

The obligation to hold a PSC Register (and associated obligations to gather and 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 LLPs 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?

An individual or legal entity has significant control over a **company** 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 a right to share in more than 25% of the capital or profits for a company without share capital;
- they hold, directly or indirectly, more than 25% of the voting rights of the Company, excluding voting rights held by the company;
- they hold the right, directly or indirectly, to appoint or remove directors with the majority of voting rights at board level;
- 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.

An individual or legal entity has significant control over an **LLP** if they meet one or more of the following tests:

- they hold, directly or indirectly, the right to share in more than 25% of any surplus assets of the LLP on a winding up (if no agreement specifies any rights to surplus assets on winding up, the assets should be treated as being split equally between the members of the LLP);
- they hold, directly or indirectly, more than 25% of the members' voting rights;
- they hold, directly or indirectly, the right to appoint or remove the majority of those entitled to take part in the management of the LLP;
- they have the right to exercise, or actually exercise, significant influence or control over the LLP (the statutory guidance referred to below gives, as an example, someone who is likely to receive more than 25% of the profits);
- they have the right to exercise, or actually exercise, significant influence or control over a trust, or a firm which is not a legal person, that itself meets any of the above conditions.

An individual or legal entity holds a share or right "**indirectly**" if they have 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. "**Majority stake**" in relation to a legal entity means:

- holding a majority of the voting rights in the legal entity;
- being a member of the legal entity and having the right to appoint or remove a majority of its board of directors;
- being a member of the legal entity and controlling alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the legal entity; or
- having the right to exercise, or actually exercising, dominant influence or control over the legal entity.

There are detailed rules dealing with such matters as joint interests and arrangements, shares held by nominees and rights controlled by someone other than the person who holds the right. There is also statutory guidance (currently in draft) on the interpretation of the right to exercise, or actual exercise of, "significant influence" and "control".

The PSC Register

A company or LLP's PSC Register must include details of:

- each individual who qualifies as a PSC and is registrable in relation to the company or LLP, 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 or LLP.

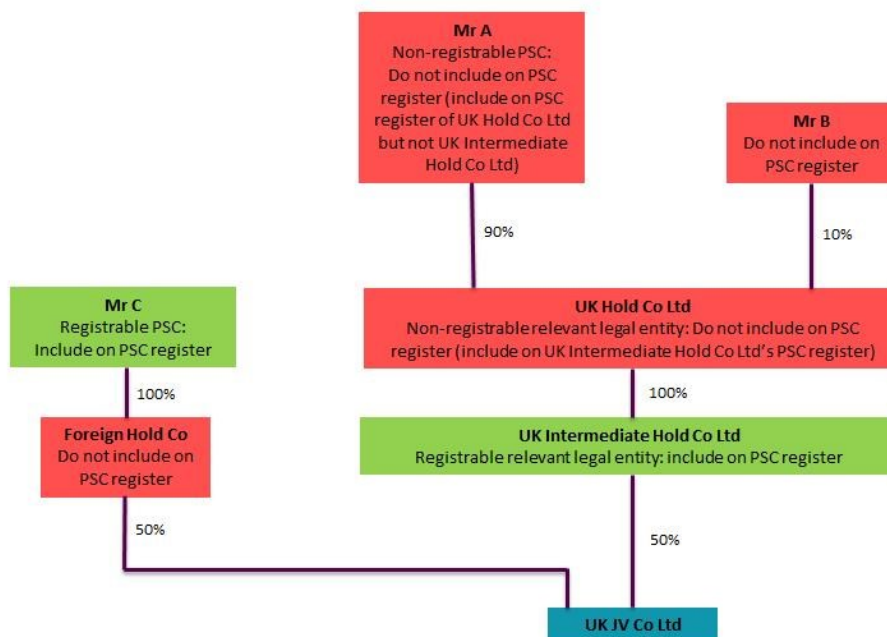
A "**relevant legal entity**" is an entity which is a legal person under its governing law and which is itself subject to a requirement to disclose details of those who control it, either because it is required to keep a PSC Register or because it is an AIM company, is listed in the UK or has voting 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 should not be entered in a company or LLP's PSC Register if it is not '**registrable**' in relation to that company or LLP. To avoid having to duplicate information in PSC Registers at each level of a chain of legal entities, an individual or relevant legal entity will not be registrable in relation to a company or LLP if its only interest in that company or LLP is an indirect interest held through another one or more legal entities, at least one of which is a relevant legal entity. Only the lowest relevant legal entity in the chain will be registrable. If there is no relevant legal entity in the chain, only an individual with a majority stake in the highest legal entity in the chain will be registrable.

In relation to **UK groups**, this means that subsidiary companies will generally need to include only their immediate parent company in their PSC Register.

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 or LLP's obligation to investigate

The company or LLP **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 or LLP 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 or LLP has already been informed of the person or entity's status as a registrable person or relevant 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, or by the LLP and every designated member in default, (punishable by imprisonment for up to two years or an unlimited fine) if the company or LLP fails to do so.

The company or LLP **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;
- give notice to a person it knows or has reasonable cause to believe knows the identity of someone likely to have that knowledge;

requiring them to state whether they have such knowledge, and supply or confirm particulars.

A notice from the company or LLP **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 or LLP 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:

- someone knows or ought reasonably to know that they are a registrable person or relevant legal entity in relation to a company or LLP;
- their particulars are not already registered in the company or LLP's PSC Register;
- they have not received a notice from the company or LLP requiring them to state whether they are a registrable person or relevant legal entity; and
- 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 or LLP 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 or LLP 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 or LLP may apply

Where a person or entity fails to comply with a notice from a 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.

Where a person or entity fails to comply with a notice from an LLP, and that person holds any interest or voting rights in the LLP, or the right to appoint or remove any person entitled to manage the LLP, the LLP may give that person or entity a warning notice.

If the person or entity 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 or LLP may issue a restrictions notice. This means that any transfer of the relevant shares, interest or rights will be void, no rights may be exercised and no shares may be issued in right of any relevant shares or interest or in pursuance of an offer made to the shareholder or interest-holder.

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

The company or LLP 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 or LLP's notice;
- the notice is complied with; or
- the company or LLP discovers that the rights of a third party are being unfairly affected by the restrictions notice.

The company or LLP 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 or LLP must have regard to the rights of third parties in respect of the relevant shares, interests or rights. An aggrieved person may apply to the court if it considers that a restrictions notice unfairly affects the rights of third parties in respect of the shares, interests or rights subject to restrictions.

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

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

Companies House filings

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

If it keeps its own PSC Register, the company or LLP 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 and LLPs do now?

- Consider each registered shareholder or member who is an individual, to see if he/she qualifies as a PSC.
- Consider each registered shareholder or member which is a legal entity, to see if it both (i) qualifies as a PSC and (ii) is a "relevant legal entity".
- For UK groups, each subsidiary should enter only its immediate parent company in its PSC Register. There is no need to send any statutory notice where details of the parent are known, as the information does not need to be confirmed by the parent. The process may be managed centrally by a group company secretariat.
- Where a registered shareholder or member which is a legal entity qualifies as a PSC but is not a "relevant legal entity", consider whether anyone has a "majority stake" in that entity and may therefore qualify as a PSC and, if so, whether they are "registrable".
- Review the rights attaching to shares (usually set out in the articles of association) to identify whether anyone holds more than 25% of the voting rights at general meetings or is able to appoint or remove a majority of the board.
- Review any shareholder/LLP agreement or similar agreements for relevant rights or arrangements on how relevant rights are to be exercised.
- Consider whether voting patterns suggest some parties (for example members of the same family or groups of investors or partners) might be acting together.
- Consider whether there are any other persons who may qualify as a PSC, for example, by having a "majority stake" in one or more registered shareholders who together hold more

than 25% of the company's shares, or by exercising significant influence or control (the Department for Business Innovation and Skills 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 and note whether they would be "registrable".
- Give notice, seeking confirmation of PSC status and relevant details, to each person on the list where there is any doubt and, in any event to any individual who appears to qualify as a PSC and to be registrable.
- Create a draft PSC Register detailing any registrable relevant legal entity as soon as its details are known; any registrable individual once the details have been confirmed; and, if applicable, statements about the steps it is taking to identify PSCs. Official wording must be used. If there are no PSCs, the PSC Register must say so.
- On 6 April 2016, ensure the PSC Register is up to date and contains all required information and statements. If required, send statutory notices seeking information about PSCs or confirmation of details of registrable individuals and note this in the PSC Register.

What should shareholders and controllers do now?

Legal entities should consider whether they are a "relevant legal entity" for this purpose (required to keep their own PSC Register, or with voting shares traded on certain markets). If not, they need take no further action as they will not be registrable on any company or LLP's PSC Register.

Other legal entities and individuals should:

- Consider whether they have any direct interest in any UK company or LLP which means they qualify as a PSC of that company or LLP.
- Consider whether they have any indirect interest in a UK company or LLP (via a "majority stake" in a legal entity or chain of legal entities) which, on its own or together with any direct stake, mean they qualify as a PSC of that company or LLP.
- Bear in mind any shareholder/LLP agreement or similar agreement, or arrangement with other people on how rights in any UK company or LLP are to be exercised.
- Respond promptly to any request for information or statutory notice received from any UK company or LLP. It is a criminal offence not to respond within one month.
- Make a disclosure to the company or LLP directly if they qualify as a PSC and are "registrable" in relation to that company or LLP. It is a criminal offence not to do so by 6 June 2016, if they have not received a statutory notice from the company or LLP by 6 May 2016.

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