

Are you ready for the PSC register?

From 6 April 2016, UK incorporated companies and Limited Liability Partnerships (LLPs) must maintain a register of persons with significant control (the PSC register) available for inspection.

From 30 June 2016 onwards, they will also have to deliver this information to the central public register at Companies House when filing a Confirmation Statement (which replaces the traditional Annual Return).

If you are a "person with significant control" (a PSC) within the scope of the regime then you will be directly affected. You have a duty to supply information to the corporate entity and there are criminal sanctions for failure to comply with the regime. Your details will be publicly available in the future and the Government has confirmed that the public register will be freely available online and searchable by individual name, as well as by corporate entity name.

Public registers of beneficial owners

The aim of the PSC register is to increase transparency around who ultimately owns and controls UK companies and LLPs.

The UK is the first country to roll out a public beneficial ownership register, and as such is entering into uncharted waters with regards to the thresholds imposed on beneficial owners and the level of disclosure required.

In line with this theme of transparency, the EU has also adopted the European Fourth Money Laundering Directive (the Directive), which has to be implemented by member states by June 2017. The Directive will extend the scope of the regime to all corporate and legal entities and will also require a greater level of information in relation to trust structures. The UK is not proposing to implement these measures until 2017, following further consultation.

Please contact us for further details in relation to how the PSC register interacts with the Directive.

What will be included on the PSC register?

The PSC register will include information on a person's:

- name;
- date of birth;
- nationality;

- address; and
- details of their interest in the company or LLP.

With the exception of the residential address, this information will be publicly available, although the full date of birth will not be available on Companies House central register.

For further details on the content and procedural aspects of the PSC register, please see our detailed note: [PSC register – content and procedure](#).

Who is affected?

When identifying PSCs, slightly different provisions apply depending upon whether the entity is a company or LLP. For the purposes of this note, we refer to the rules relating to companies only. However, for further information on how the PSC register will affect LLPs, particularly in the context of typical fund structures, please contact us.

A PSC is an individual who meets one of five conditions.

Conditions one to three

Broadly, these conditions will include individuals who:

- hold more than 25 per cent of the company's shares (condition one);
- hold more than 25 per cent of the company's voting rights (condition two); or
- hold the right to appoint or remove the majority of the board (condition three).

Indirect interests

Importantly, the conditions include both direct and indirect interests.

For these purposes, "indirectly" means an individual holds a "majority stake" in a legal entity and either that entity would be a PSC if it were an individual or it is part of a chain of legal entities each of which has a majority stake in the entity below and the last of which would be a PSC if it were an individual.

"Majority stake" means holding a majority of voting rights; having the right to appoint/remove the majority of the board; otherwise controlling a majority of the voting rights pursuant to an agreement; or having the right to exercise, or actually exercising dominant influence or control over the company.

Aggregation of interests

It is also important to note that direct or indirect interests may need to be aggregated with that of another person if there is an “arrangement” in place (whether legally binding or not), so you cannot simply ignore a small direct or indirect interest.

Nominee shareholder

In addition, shares held by a nominee will be treated as held by the person who controls their exercise.

Rights treated as held by person who controls their exercise

Where a person controls a right, the right is treated as held by that person (and not by the person who in fact holds the right). A person “controls” a right if by virtue of an arrangement between that person and others, that right is exercisable by that person, in accordance with that person’s directions or instructions or with that person’s consent or concurrence.

Beneficial owners of underlying assets

The PSC regime is focused on identifying PSCs in relation to UK companies and LLPs. Where a nominee company holds the legal title to a specific asset (such as real estate) for a beneficial owner (pursuant to a separate nominee agreement or a declaration of trust), this does not in itself mean that the beneficial owner is a PSC in relation to the company.

However, this is an area which is evolving. The Department of Business Innovation and Skills (BIS) has now issued a discussion paper in relation to mandating a register of beneficial owners for foreign companies which own UK property. This is relevant whether the company owns the UK property beneficially or whether the company owns the property as nominee for a beneficial owner. This new focus on the beneficial owner of the asset could therefore lead to a change in disclosures on the part of those who hold property assets via nominee companies.

Condition four

The fourth condition captures individuals who do not meet one or more of conditions one to three but exercise (or have a right to exercise) “significant influence or control” (SIOC) over the company (condition four).

Draft statutory guidance issued by BIS (the Guidance) sets out a non exhaustive list of what constitutes SIOC.

The Guidance also sets out a number of principles and examples which would be indicative of holding the right or actually exercising SIOC.

For example, a person may hold a right to exercise SIOC as a result of:

- the provisions of a company’s constitution;
- the rights attached to shares or securities which a person holds;
- a shareholders’ agreement; and
- other agreements, whether they are legally binding or not.

The right to exercise SIOC over a company may result in that person being a PSC over the company regardless of whether or not they actually exercise that right.

The Guidance further confirms that an individual (such as the company founder) could be caught if they regularly or consistently direct or influence a significant section of the board, or if they are regularly consulted on board decisions and if their views influence decisions made by such board or their recommendations are always or almost always followed by shareholders who hold the majority of the voting rights of the company, when they are deciding how to vote.

Trusts - the fifth condition

The fifth condition relates to both trustees and members of a firm that is not a legal person. However, for the purposes of this note, we will only consider how the condition applies to trusts.

The fifth condition relating to trustees is complex and needs to be considered carefully. This applies if:

- the trustee(s) of the trust meet(s) any of the other specified conditions (in their capacity as trustee) in relation to the company, or would do so if they were individuals (for example, if they own more than 25 per cent of the company’s shares – condition one); and
- an individual has the right to exercise, or actually exercises, SIOC over the activities of that trust.

The Guidance sets out the following examples which would mean an individual has this right and is therefore a PSC:

- the right to appoint or remove any of the trustees;
- the right to direct distributions;
- the right to direct investment decisions of the trust;
- the power to amend the trust deed; or
- the power to revoke to the trust.

On the face of it, it is enough simply to have the power to appoint trustees to be considered as a person with SIOC. It is possible to argue that the individual must also have the power to remove trustees (i.e. to change the trustees) but it appears from the Guidance that having either power will be sufficient. It is therefore expected that this will catch many UK trusts which may not expect to be caught.

The Guidance further confirms that a person is likely to exercise SIOC over the trust if they are involved in the running of the trust, for example, they issue instructions, which are generally followed, as to the activities of the trust.

PSCs may therefore be the settlor, beneficiaries, protectors / enforcers and appointors who hold powers in relation to the trust or who are actively involved in directing the activities of the trust.

It is therefore essential that the terms of the trust deed and the nature of the arrangements between the trustees and relevant parties are considered carefully in order to identify if there are any PSCs.

Relevant Legal Entities

In addition, in certain cases, legal entities (known as Relevant Legal Entities (RLEs)) will also need to be included in the PSC register.

A company / LLP is a RLE if it would have been a PSC had it been an individual and it is either a company / LLP that is required to keep a PSC register or, broadly, a company that is listed on a specified exchange.

The protection regime

There is a protection regime, which enables some or all of the information on the PSC register to be withheld.

Residential addresses of registrable persons can be withheld from disclosure to credit reference agencies where the person can demonstrate that disclosure will put them at a serious risk of violence or intimidation due to the activities of the company.

The regulations also set out the possible grounds for a person to apply to Companies House to stop any of their information from appearing on the public register or being disclosed.

The protection regime is modelled on the existing regime for protection of director's residential addresses. It is expected to be very restricted in its application and any application to stop information from appearing on the public register

or being disclosed will likely require written or photographic evidence. It is unlikely to be enough to argue that a person is at significant risk of violence or intimidation merely because of his or her substantial wealth. Instead, they will have to rely on the fact that their association with the company means that they (or someone they live with) is put at serious risk of violence or intimidation.

What's next?

Whilst it might be relatively straightforward to identify whether you are a PSC, this will not always be clear, particularly where shares are owned by trustees or there are complex family arrangements.

We have set out some examples in the appendix to this note in order to demonstrate how the regime may operate in practice.

Contact details

If you would like further information or specific advice please contact:



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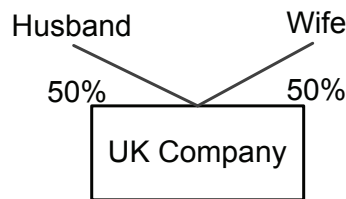
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March 2016

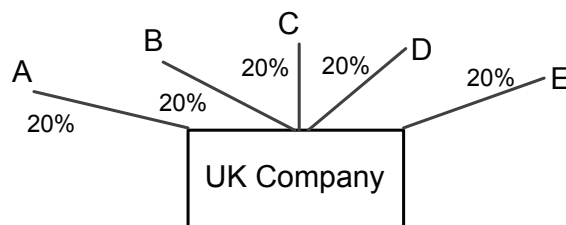
For the purposes of this appendix, it is assumed that:

- the person holding the shares or rights does not hold them on behalf of anyone else, no one else has the right to control them and voting rights follow the shareholdings;
- there are no other persons who have rights in relation to the company or who actually exercise SIOC over the company;
- no “arrangements” are in place between the shareholders to exercise rights over the company; and
- none of the overseas companies are listed on a specified exchange and therefore cannot be a RLE.

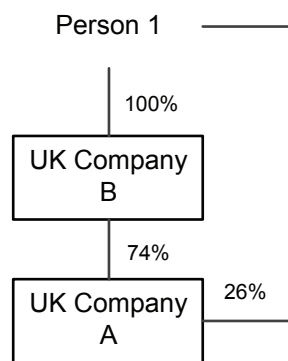
1. **Both husband and wife must be included on the PSC register of the UK company since they will satisfy conditions one to two.**



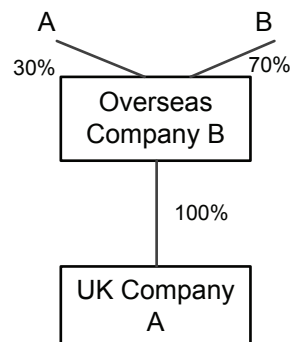
2. **The UK Company will have no PSCs because none of its shareholders own enough shares or voting rights.**



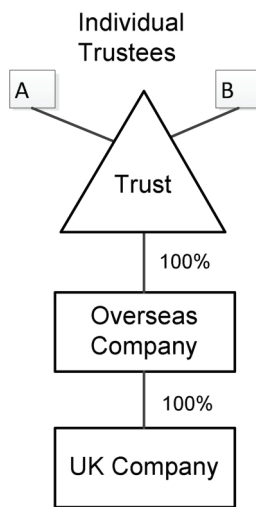
3. Person 1 will be on the PSC register of UK Company A and UK Company B since he/she will satisfy the conditions one to three. UK Company B will also be on UK Company A's register as a RLE.



4. B will be included on UK Company A's PSC register since B holds a "majority stake" in Overseas Company B and Overseas Company B would be a PSC if it were an individual.



5. Both of the individual trustees will need to be included on the PSC register, together with any other PSCs who satisfy condition five.



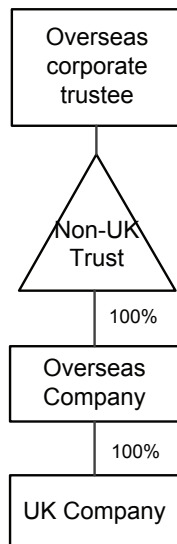
Individual trustees will initially need to analyse whether they meet any of the first three conditions or failing that the fourth condition.

The trustees will likely hold the interest jointly and on that basis each trustee will be treated as holding the entire interest.

Secondly, because the trust, if it were an individual, would meet one of the conditions, the UK company will need to analyse whether anyone has the right to exercise, or actually exercises, SIOC over the activities of the trust.

This could include the settlor, a protector and/or the beneficiaries depending on the terms of the trust deed and the nature of the arrangements between the trustees and any individuals involved.

6. The overseas corporate trustee will not be registrable on the UK company's PSC register. There may however be other PSCs which satisfy condition five.

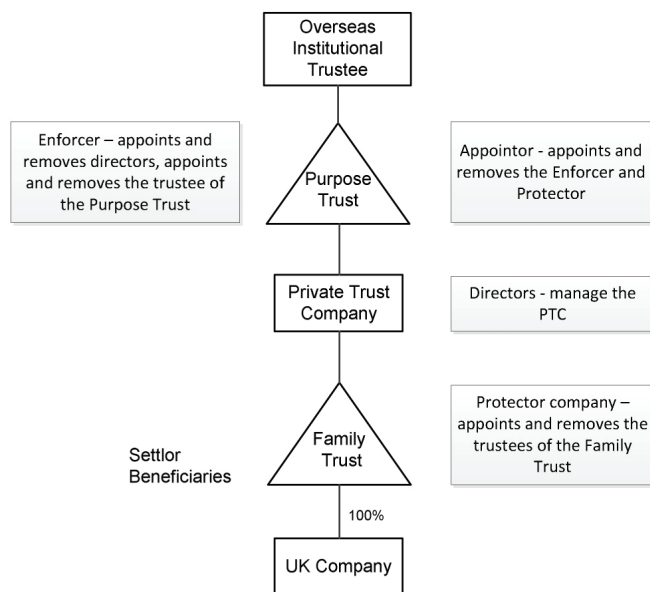


The overseas corporate trustee is not a RLE so cannot go on the register.

If the overseas corporate trustee is closely held by an individual who holds a "majority stake" in the trust company, then that individual will be recorded as a PSC.

The fifth condition is also relevant because the trust, if it were an individual would meet one of the conditions, so any person who has the right to exercise or actually exercises SIOC over the activities of the company and/or the trust will also need to be included in the PSC register of the UK Company.

7. **Within a complex family ownership structure, there may be a number of PSCs and detailed legal advice will be required.**



The Family Trust will meet conditions one to three as it owns 100 per cent of the UK Company. It is therefore necessary to also consider condition five: does any individual have the right to exercise, or actually exercise, SIOC over the activities of that trust? If they do, they will need to be included in the UK Company's PSC register.

Any individual who has the following rights will be considered as a person with SIOC over the activities of the trust: (1) the right to appoint or remove any of the trustees; (2) the right to direct the distributions of funds or assets; (3) the right to direct investment decisions of the trust; (4) the power to amend the trust deed; or (5) the power to revoke the trust.

It is also important to consider whether any individual issues instructions, which are generally followed. This could therefore include the settlor, beneficiaries, protectors, enforcers and appointors, depending on the terms of the trust and the nature of the arrangements.

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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