

## PSC register

# The register of persons with significant control

It is now a requirement for most UK companies and limited liability partnerships (LLPs) to create and manage a new public register. This is a register of persons with significant control (PSCs) over the company or partnership. From 30 June 2016, the PSC information will have to be included on the new confirmation statement which will replace the current annual return that is filed at Companies House.

### Why is this being introduced?

The introduction of the PSC register is one of a number of changes to the Companies Act 2006 brought about by the Small Business, Enterprise and Employment Act 2015. The aim of the relevant parts of that Act is to create greater transparency in the ownership and control of UK companies and to help in the fight against money laundering, whilst increasing trust in UK companies.

### Must my company have a PSC register?

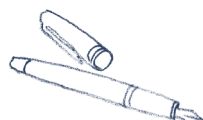
Most UK companies (excluding those whose shares are traded on LSE, AIM, a regulated market in the EEA or certain other regulated markets in Japan, the USA, Switzerland and Israel) and LLPs will be required to produce and maintain a PSC register.

### Who is a PSC?

A 'person with significant control' will meet at least one of the following five conditions:

1. Directly or indirectly **holds more than 25%** of the nominal share capital; or
2. Directly or indirectly **controls more than 25%** of the votes at general meetings; or
3. Directly or indirectly is able to **control the appointment or removal of a majority of the board**; or
4. Actually exercises, or has the right to exercise, **significant influence or control** over the company; or
5. Actually exercises, or has the right to exercise, **significant influence or control** over any trust or firm (which is not a legal entity) which has significant control (under one of the four conditions above) over the company.

Calculations relating to the percentage of shares held where shareholding is indirect can be quite complicated.



A company's PSC register may need to record not just the name of "relevant legal entities" having control, but also any relevant individuals who satisfy the indirect control conditions. Broadly speaking, a "relevant legal entity" is a company or other entity (i) which is itself required to maintain a PSC register or is subject to onerous disclosure requirements and (ii) would have been classed as a person with significant control if it was an individual.

The relevant legislation and extensive related guidance notes contain detailed provisions and explanations about how the five conditions above should be interpreted. If you are in any doubt as to whether somebody or an entity is a PSC, we would be very happy to help you interpret the rules and ensure that you prepare the register correctly.

### What details must be recorded?

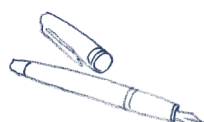
Identification details and details of the nature of the control exercised must be recorded using the prescribed language. At the end of this note is a diagram showing the information to be recorded, which varies depending on whether it is a person or another kind of legal entity whose details are required to be recorded. In the table there is reference to 'other registrable person'; this covers very exceptional circumstances and it is unlikely that it will be relevant in general practice.

The following details relating to the nature of the control exercised are required: the date on which the individual became a registrable person in relation to the company in question and the nature of the control exercised. If the control is exercised by meeting either condition 1 or 2, then the percentage of shares or votes held must also be recorded in the following manner: (i) greater than 25% but less than or equal to 50%, (ii) greater than 50% but less than 75% or (iii) greater than or equal to 75%.

### How must the register be kept and made available?

Generally speaking, the PSC register must be kept at the registered office or inspection address and be available for public inspection.

Additionally, the information held will need to be confirmed to Companies House at least once every 12 months and the information will be made available on the publicly searchable database. Companies are also obliged to provide free access to the PSC register and copies of it to any person on request for a flat fee of £12. As with other statutory registers, companies can keep the PSC register in electronic form, as well as or instead of a hard copy. From June 2016, companies will be able to elect to keep the PSC register (together with their other statutory registers if they wish) at Companies House rather than the registered office.

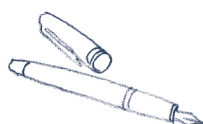


Both the company and the persons of significant control have obligations in relation to the register. The company is required to take reasonable steps to find out if anyone is a registrable person or registrable relevant legal entity and identify them. Investigations by the company are to be made by notices served on suspected registrable persons or entities, or on persons who may know who registrable persons or entities are. We can provide you with drafts of these notices if you need them as part of your investigation.

If this information has not been requested by the company, the registrable individuals or relevant legal entities have an obligation proactively to inform the company of their interest. Failing to comply with these duties may result in criminal penalties for companies and their officers and the relevant individuals or relevant legal entities.

### What should companies do now?

- 1) Consider each registered shareholder who is an individual, to see if he/she qualifies as a PSC.
- 2) Consider each registered shareholder which is a legal entity, to see if it both
  - (i) qualifies as a PSC; and
  - (ii) is a "relevant legal entity".
- 3) For UK groups, each wholly owned subsidiary should enter only its immediate parent company in its PSC register.
- 4) Where a registered shareholder which is a legal entity qualifies as a PSC but it 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".
- 5) Review the rights attached 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.
- 6) Review any shareholder agreement or similar agreements for relevant rights or arrangements on how relevant rights are to be exercised.
- 7) 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 of control (the Department for Business Innovation and Skills has published statutory guidance on what this means).



8) 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”.

9) 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.

10) Create a 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 PSC’s. Prescribed wording must be used. If there are no PSCs, the PSC register must say so.

11) 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”. If not, they do not need to take any further action as they will not be registrable on any PSC register.

Relevant legal entities and individuals should:

1) Consider whether they have any direct interest in any UK company which means they qualify as a PSC of that company.

2) Consider whether they have any indirect interest in a UK company (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.

3) Bear in mind any shareholder agreement or similar agreement, or arrangement with other people on how rights in any UK company are to be exercised.

4) Respond promptly to any request for information or statutory notice received from any UK company. It is a criminal offence not to respond within one month.

5) Make a disclosure to the company directly if they qualify as a PSC and are “registrable” in relation to that company if they have not received a statutory notice from the company by 6 May 2016. It is a criminal offence not to do so by 6 June 2016.

This document is for information only and is believed to be correct at the date of publication. This document provides advice of a general nature and should not be relied on as a substitute for specific legal advice. No action should be taken without speaking to your legal adviser.

May 2016

