

PSC Regime

What is changing and when?

On **6 April 2016**, changes to the Companies Act 2006 (through the Small Business, Enterprise and Employment Act 2015, which inserts new Part 21A and schedules into Companies Act 2006) will introduce a new PSC Regime.

This will require **unlisted UK companies (including LLPs)** to take reasonable steps to:

1. identify those **"people with significant control"** (known as "PSC") over them, and
2. record their details in a new statutory register now known as the **"PSC register"**.

What is the point?

The PSC regime aims to increase transparency around who owns and controls UK companies.

Who should be registered on PSC register?

A. Individuals who are PSC's

A person with "significant control" over a company is an individual who meets one or more of the conditions (either directly or indirectly) set out in Part 1 of Schedule 1A to the Companies Act 2006. The conditions are that the person:

1. holds, directly or indirectly, more than 25% of shares or voting rights in the company;
2. holds, directly or indirectly, the right to appoint or remove a majority of its board of directors of the company;
3. otherwise has the right to exercise, or actually exercises, significant influence or control over the company; or
4. has the right to exercise, or exercises, significant influence or control over an arrangement such as a trust, which is not a legal entity but which meets any of the other specified conditions in relation to the company, or would do so if it were an individual.

B. Legal Entities who are RLE's

Where the owner or controller of the company is a legal entity (such as a company or LLP) rather than an individual, that legal entity will need to be put on the company's PSC register if it is a registerable "relevant legal entity" (RLE).

Where such an entity is a RLE will depend on the following factors:

1. It will be relevant if:
 - a. had it been an individual it would have met one of the conditions for being a PSC; and
 - b. it is subject to its own disclosure requirements, that is, it is itself covered by the PSC regime or by an equivalent disclosure regime.
2. It will be registrable if it is the first RLE in the company's ownership chain.

C. Examples

Scenario A

A, a UK incorporated company, is wholly owned by B, another UK incorporated company. A does not need to trace ownership up the corporate chain beyond B. The information about ownership of B (as the first RLE) will be evident from B's own PSC register or from its own equivalent disclosure regime. A's register would simply refer to B.

Scenario B

A is wholly owned by C, a legal entity which is not an RLE by virtue of being an overseas company or an entity outside of the PSC regime or equivalent disclosure regime. In those circumstances, A will need to determine whether any individuals or RLE's hold a **majority stake** in C.

Individuals or RLE's will be considered to hold a majority stake for these purposes if they satisfy one of the PSC conditions.

Any individuals or RLE's which have a majority stake in C must be entered into A's PSC register. If another legal entity has a majority stake in C but is not an RLE, then ownership and control of that legal entity must be determined in the same way.

What is the meaning of "significant influence and control"?

The Government has issued draft statutory guidance, which may be referred to (<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>).

The key points are:

1. Where a person can direct the activities of a company = indicative of control.
2. Where a person can ensure the company adopts activities he desires = indicative of significant influence.

3. Rights to exercise significant influence or control may arise from provisions in company's constitution, rights attached to its shares, shareholders' or other agreements.
4. Veto rights over decisions relating to the running of the company's business may constitute a right to exercise significant influence or control (this does not include veto rights over matters protecting minority interests).
5. Shadow directors are considered to have significant influence or control.
6. Significant influence or control over a trust or firm which satisfies the PSC condition is likely to arise when a person has the right to direct or influence its activities.

How are PSC's identified?

A. Company's obligations

No exhaustive list, but includes:

1. Companies must take "reasonable steps" to identify its PSC's or registrable RLE's (again, Government issued guidance on the "reasonable steps" <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>).
2. If the company does not have the information it needs, it must give a formal notice to anyone it knows or believes to be a PSC or registrable RLE asking them to confirm the nature and extent of their interest.
3. Companies are given powers to serve a notice requesting information on anyone that knows, or that it suspects may know, the identity of a PSC or registrable RLE.
4. Companies must keep its PSC register up to date (by taking steps to amend its register when it knows or suspects that information on register has changed).

B. PSC's and RLE's obligations

PSC's and RLE's have proactive disclosure obligations.

How can a company enforce the PSC regime?

Failure to comply with the regime is a criminal offence punishable by a fine and/or up to 2 years imprisonment. Criminal sanctions apply to:

1. companies and their officers if they fail to comply with these duties;
2. those who fail to respond to a company's request for information; and
3. those who do not comply with their duty to disclose.

As well as criminal sanctions, a company can apply "restrictions" to shares or interests held by any person or legal entity who, without valid reason, repeatedly fails to respond to a request for information. Such restrictions "freeze" their interests in company until the information is received.

What should the PSC register look like?

Particulars for PSC Register	
PSC	RLE
Name	Corporate or firm name
Date of birth (the day of birth will not be publicly available unless the company has elected to keep its register at Companies House)	N/A
Nationality	Legal form of the entity and governing law
Country/area of residence	N/A
Service Address	Registered or principal office
Usual residential address (this will not be publicly available but will be available to public authorities and credit reference agencies)	The register of companies in which it is entered and registration number
Date on which the person became registrable	Date on which it became registrable
Which of the conditions for being a PSC are met (there is prescribed wording that must be used)	Which of the conditions for being an RLE is met (there is prescribed wording that must be used)

Notes:

1. The above information should be obtained before entry on the register (and in relation to PSC's, the information must be confirmed by the individual as correct).
2. A register must never be empty. If the company is conducting investigations or there are no PSC's or registrable RLE's, the company must note this in its register (using the prescribed statements in the supporting regulations).

Where should the PSC register be kept?

A company must keep its PSC register available for inspection:

1. at its registered office; or
2. at another inspection address if notified Companies House; or
3. from 30 June 2016, at Companies House.

From **June 2016**, companies will have to **file this information** on the public register at Companies House, as part of the **new annual confirmation process** (which will replace annual returns).

What steps should a company take to comply?

1. Review the register of members to identify whether any registered member holds more than 25% of the share capital (by nominal value) or voting rights. If that member is an individual, they may be a PSC; if the member is a company, then it may be an RLE.
2. Look at any shareholders' agreements and other legal agreements to understand whether anyone has rights of control or veto over the appointment or removal of a majority of the board of directors.
3. Look at any shareholders' agreements, other legal agreements and the overall circumstances and relationships of the company to work out whether anyone else has the right to exercise, or actually exercises, "significant influence or control" over the company.
4. If there is anyone who appears to satisfy the criteria for being a PSC and is a nominee, an overseas company, a partnership or a trust, then further investigation will be needed to establish whether behind them, there is either:
 - a. an individual who meets the criteria for being a PSC; or
 - b. an RLE.
5. Where PSC's are identified, contact them to confirm the relevant details to be included on the register.
6. Take any other reasonable steps to identify PSC's and find out the relevant details, including by serving notice on anyone they believe is, or may be able to identify, a PSC. If a shareholder is uncooperative, companies have powers to impose restrictions over the relevant shares.

What about LLPs?

Requirement to maintain a PSC Register will apply to LLPs in broadly the same way as to companies.

The criteria for determining whether someone is a PSC (or RLE) will be slightly different, and is satisfied where a person or legal entity, directly or indirectly:

1. holds rights to more than 25% of the surplus assets on winding up, or more than 25% of the voting rights;
2. has the right to appoint or remove the majority of those entitled to take part in the management of the LLP; or
3. has the right to exercise, or actually exercises, significant influence or control over the LLP (whether directly, or by exercising significant influence or control over a trust or firm that is not a legal entity and which satisfies one or more of the other criteria).

Draft guidance in context of LLPs can be found here https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495414/LLP_Statutory_Guidance_for_PSC_register.pdf).