



Updated July 2017

The PSC regime - a guide for UK companies on their obligations

Since 6 April 2016, unlisted UK companies and LLPs have been required to identify individuals who have significant interests in their shares, and publicly disclose their details in a "PSC Register". The regime was expanded in June 2017 to bring other entities, including AIM companies, Scottish limited partnerships and some Scottish general partnerships within scope. Failure to comply carries criminal penalties.

These obligations derive from the 2013 G8 agreement to make it harder to use corporate structures to hide criminal activity, and the relevant legislation has recently been updated to comply with the new beneficial ownership register requirements of the EU Fourth Money Laundering Directive (MLD4) by the Information about People with Significant Control (Amendment) Regulations 2017 and the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (the "**2017 Regulations**"). The PSC Register provisions are not straightforward, and impose a considerable administrative burden on many companies, particularly corporate groups with complex ownership structures. Individuals with significant shareholdings also need to assess whether they have obligations to notify their interests.

The table below outlines the key obligations under the PSC regime. Existing private companies and LLPs should have been keeping a PSC Register since April 2016 (or incorporation, if later), but should note the new, more onerous, updating and filing requirements introduced by the 2017 Regulations. Entities which are newly in scope of the regime should note the timings and transitional provisions described in "Changes under the 2017 Regulations" below.

At a glance	
Obligations for companies	Obligations for shareholders
<ul style="list-style-type: none"> ● Take reasonable steps to identify PSCs ● Contact the company's PSCs, or those who may know them, to obtain/confirm PSC information ● Write up the company's PSC Register ● File PSC information at Companies House ● Keep PSC information in the PSC Register up to date ● File changes to the company's PSC information at Companies House within 14 days 	<ul style="list-style-type: none"> ● Ascertain whether they are a PSC/RLE (Relevant Legal Entity – see below) in relation to any UK company ● Respond to any requests for information in relation to their PSC/RLE status ● If no requests are received, report their PSC/RLE status to relevant companies ● Notify any changes to their PSC/RLE status

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Who is caught by the regime?

The PSC regime applies to all UK companies other than listed companies, which are exempt as they are already subject to transparency obligations under the FCA's Disclosure and Transparency Rules (or their relevant overseas equivalent). In this context, "listed" only means companies listed on the Official List and those with voting shares admitted to trading on a regulated market in another EEA state, or certain markets in the US, Japan, Switzerland or Israel). Since the 2017 Regulations took effect on 26 June 2017, the exemption has not applied to companies quoted on markets such as AIM or the NEX Exchange Growth Market and therefore such companies will be required to keep a PSC register from 24 July.

The unlisted subsidiaries of exempt listed companies are not themselves exempt. LLPs are subject to the PSC regime via separate regulations, and the 2017 Regulations expand the regime to cover additional types of entities, including Scottish limited partnerships, Scottish general partnerships whose partners are all corporate bodies (together "**Eligible Scottish Partnerships**") and unregistered companies.

Guidance

The Government has issued [non-statutory guidance](#) for companies and other entities on their PSC obligations, and separate guidance for PSCs themselves. This is in addition to the statutory guidance for [companies](#), [LLPs](#) and [Eligible Scottish Partnerships](#) on the concept of "significant influence or control" which is key to the PSC regime – see below.

Changes under the 2017 Regulations

The PSC regime came into force on 6 April 2016, so all UK unquoted companies and LLPs should already be maintaining a PSC register. Following the implementation of the 2017 Regulations, however, there are more onerous updating and filing requirements. Companies will now be required to update their PSC information on the central register within 14 days of updating their own register. Changes to a company's own register must be made 14 days from confirmation of the relevant change (for PSCs) or 14 days from the date when the company receives details of the change (for RLEs).

To the extent that, as at 26 June 2017, changes had been made to an existing company's register and not filed at Companies House on its last confirmation statement, the 2017 Regulations gave such a company 14 days to file details of that change. Where previously PSC information was filed at Companies House upon incorporation and then with each annual "confirmation statement", changes must now be filed within the timelines set out above on Forms PSC01 to PSC09.

Entities such as AIM companies which are newly subject to the regime will, from 26 June 2017, have to take reasonable steps to ascertain who their PSCs are, and maintain a PSC Register from 24 July 2017 (for more detail on what "reasonable steps" means, see below under "Duty to identify PSCs/RLEs"). The company should enter its PSC information (or a statement as to the status of its investigations) within 14 days of 24 July. Any entries in the PSC register (including any entry stating that the company has no PSCs or is still completing its investigations) should be filed within 14 days of making the entry.

Eligible Scottish Partnerships are now required to identify their PSCs (from 26 June 2017) and register their PSC information at Companies House within a period of 14 days from 24 July 2017. They are not required to maintain their own PSC register.

Who, or what, is a "PSC"?

A PSC in relation to a company¹ is an individual who:

- holds, *directly or indirectly*, **more than 25%** of a company's shares (**Condition 1**)
- holds, *directly or indirectly*, **more than 25%** of a company's voting rights (**Condition 2**)
- holds, *directly or indirectly*, the right to appoint or remove a majority of the company's directors (**Condition 3**)
- has the right to exercise, or actually exercises, *significant influence or control* over the company (**Condition 4**) or
- where shares or rights in a company are held by a trust or partnership which meets one of these conditions, an individual who has the right to exercise, or actually exercises, *significant influence or control* over the trust or partnership may also be a PSC in relation to the company (**Condition 5**).

The meaning of "*significant influence or control*" is clearly key to understanding the PSC definition, and is the subject of statutory guidance for [companies](#), [LLPs](#) and [Eligible Scottish Partnerships](#). The statutory guidance gives examples of situations in which a person will be deemed to have the right to exercise, or actually exercise significant influence or control, and lists various safe harbours for directors, advisers and others (for more detail, see the box below entitled "Significant influence or control" - what does it mean?).

In some cases, the practical application of the examples given in the statutory guidance will be intuitive (for example, a founder with a retained minority stake who nonetheless continues to exert control because he or she owns IP assets or has relationships which are key to the business and whose recommendations are generally followed by the board). In other cases, however, it may be a matter of judgement as to whether a person has absolute decision rights over company policy or activities which are sufficiently important to constitute "significant influence or control".

"Significant influence or control" – what does it mean?	
Examples	Safe harbours
<ul style="list-style-type: none">• A person who can direct, or who has absolute veto rights over, the company's policies and activities in relation to, for example:<ul style="list-style-type: none">- the company's business plan or strategic direction- the appointment of a majority of the board- the company's borrowings, or- the establishment of any employee incentive arrangements• A person who is not a director but is involved in or regularly consulted on the day-to-day management of the company's business and/or their recommendations are generally followed by the board• A person who owns assets (e.g. IP rights) or relationships which are key to the business, and exploited by that person in order to influence the company's activities	<p>The statutory guidance states that certain roles and relationships would not <i>normally</i>¹ result in a PSC interest, including:</p> <ul style="list-style-type: none">• professional advisers• customers and suppliers• lenders• regulators/liquidators• persons acting in the course of employment, including an employee of a third party who has significant influence or control over the company (this might apply to an investor director, for example)• directors²• shareholders whose veto rights exist solely for the purpose of protecting minority interests• prospective purchasers of the company's shares holding rights temporarily pending completion of the purchase

¹ Separate specified conditions apply to LLPs and Eligible Scottish Partnerships

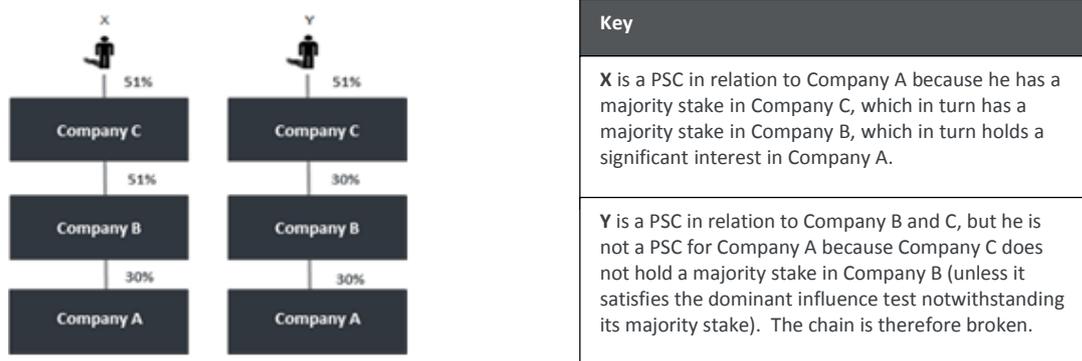
² The safe harbours may not apply where any such role or relationship is performed in a materially "non-standard" way. For example, a director who owns key IP rights may use this as a means of exerting additional influence over the company, beyond the normal remit of a director, and might lose safe harbour protection as a result.

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Indirect PSCs

Individuals can meet the PSC criteria by virtue of direct or indirect interests in the underlying company. A person will be deemed to hold a share or interest in a company (Company A) *indirectly* where the person holds a "majority stake" (see box – "Indirect PSCs – what is a "majority stake"?") in a legal entity (Company C) and Company C holds the share in Company A either directly, or through a chain of legal entities, each of which holds a *majority stake* in the next one down, until you get to the entity holding the share or interest in Company A. This is illustrated in Scenario 1 below.

Scenario 1



This *majority stake* definition (which is similar to the control test for a subsidiary undertaking in section 1162 of the Companies Act 2006) uses a higher control threshold than the PSC definition.

However, it will be possible to satisfy the *majority stake* definition with less than a 50% stake if the shareholder in question exercises, or has the right to exercise, a dominant influence over the relevant company's affairs.

"Majority stake" – what does it mean?
A person will hold a "majority stake" in a legal entity if he or she: <ul style="list-style-type: none">● holds a majority of the voting rights, or is a member and controls alone, pursuant to a shareholders agreement, a majority of the voting rights in the legal entity● is a member and has the right to appoint or remove a majority its board of directors● exercises, or has the right to exercise a dominant influence or control over that entity

Corporate holders / group companies – "Relevant Legal Entities" (or "RLEs")

A PSC is by definition an individual, but UK companies (and overseas companies who are listed in the UK or on certain overseas markets) may also appear in the PSC Register if they are both "relevant" (i.e. they satisfy the criteria for a Relevant Legal Entity (or RLE) and they are also "registrable" (see below). The concept of an RLE is key to understanding who appears in the PSC Register of a particular company.

A legal entity will be a "Relevant Legal Entity" if it is:

- capable of satisfying one or more of the PSC Conditions; and
- required to keep a PSC Register itself or is listed on an EEA regulated market or is subject to a specified equivalent overseas regime (see below).

So, in scenario 1 above, Company B (assuming it is a UK private company) will be an RLE in relation to Company A since it satisfies Condition 1 (and possibly also 2 and 3) and is required by the Companies Act 2006 to maintain its own PSC Register.

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The PSC Regulations³ also bring legal entities (including those incorporated overseas) with voting shares admitted to trading on certain markets in the US, Japan, Switzerland and Israel within the definition of RLE. Typically, therefore, unlisted companies incorporated overseas would not be RLEs on that basis.

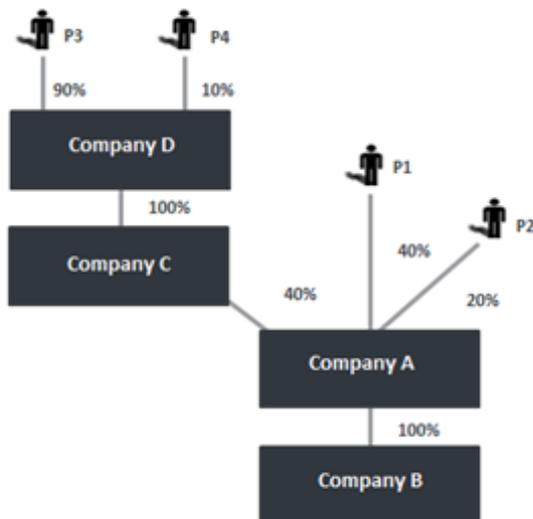
Note, however, that the "majority stake" concept for indirect holdings relies on there being a chain of "legal entities", and this term includes both UK companies and overseas legal entities, whether or not they satisfy the RLE definition.

Group companies – whose interest is registrable?

Having identified a PSC or RLE, either direct or indirect, you then need to consider if they are registrable in relation to a particular company. The Act distinguishes between "registrable" and "non-registrable" PSCs and RLEs in order to avoid multiple registrations.

So, where there is a chain of ownership and one or more of the companies in the chain are RLEs, only the RLE directly above a company will be registrable in relation to it. Any RLEs further up the chain will not be registrable in relation to the underlying company. This is illustrated in Scenario 2 below.

Scenario 2



Key	
Companies A, B and C are UK private companies, subject to the PSC regime. Company D is an unlisted overseas company.	
Company A	Only Company C (a registrable RLE) and P1 (a registrable PSC) need be shown on Company A's PSC Register. P2 is not a PSC. As Company C is an RLE registered in Company A's PSC Register, it is unnecessary to look further up the chain, so although P3 is a PSC of Company A, he is not registrable in relation to Company A, but should be traceable through Company C's own PSC Register.
Company B	Company A is a registrable RLE in relation to Company B, and will alone be noted as such in its PSC Register.
Company C	Company D is an unlisted overseas company and is therefore not an RLE. P3 is a PSC in relation to Company C and is registrable because he holds his shares indirectly through Company D which is not an RLE. P4 is not a PSC.
Company D	Overseas companies are not obliged to keep a PSC Register.

Indirect PSCs – who is registrable in relation to the underlying company?

In Scenario 2 above, it was assumed that Company C was a UK company subject to the PSC regime, so it would be a registrable RLE for Company A. Therefore, although P3 is a PSC of Company A, he is not registrable for Company A as he holds his interest indirectly through a registrable RLE.

³ Register of People with Significant Control Regulations 2016 as amended by the 2017 Regulations

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If *both* Company C and Company D were unlisted overseas companies, and therefore not RLEs, P3 would become a registrable PSC for Company A on a look-through basis because he owns a *majority stake* in Company D, which in turn owns a *majority stake* in Company C, which in turn owns a *significant interest* in Company A.

If the chain was broken because Company D held only 40% of Company C (i.e. not a majority stake) and did not otherwise exercise, or have the right to exercise, a dominant influence over Company C, then P3 would cease to be a PSC for Company A. Whether or not P3 would then be identifiable via Company C or Company D would depend on the transparency rules applicable in the territories in which Companies C and D were incorporated.

EU territories may end up with similar regimes once they have implemented the beneficial owner register requirements of MLD4, which had an implementation deadline of 26 June 2017. Non-EU territories may have different transparency regimes.

Duty to identify PSCs / RLEs

In order to compile the PSC Register, companies must take "reasonable steps" (see box – "What does "reasonable steps" mean?") to find out who has relevant interests in their shares, by serving notice on anyone the company knows or has reasonable cause to believe is a registrable PSC or RLE in relation to the company, asking them to confirm the nature of their interest (a "**PSC notice**"). The company can also make enquiries of anyone else it suspects may know the identity of a PSC or RLE. Companies must also send notices to PSCs and RLEs requiring details of any change to their status which the company has cause to believe has occurred.

Registrable PSCs and RLEs themselves will have a parallel obligation to notify the company of their interest within one month of acquiring it if they have not, during that time, received a PSC notice from the company. They must also update the company if the nature of their interest changes.

What does "reasonable steps" mean?		
	Condition	Steps
i	Directly or indirectly owning more than 25% of the company's shares (i.e. nominal value)	Review members' registers, articles of association, statements of capital
ii	Directly or indirectly holding more than 25% of the company's voting rights	Review members' registers, articles of association, statements of capital, shareholders' agreements, and consider voting patterns suggesting parties acting together (who may be considered to have a " joint arrangement " ⁴)
iii	Directly or indirectly holding the right to appoint or remove the majority of the directors	Review articles of association and any shareholders' agreements or covenants concerning the appointment or removal or directors holding the majority of votes at board level
iv	Otherwise having the right to exercise, or actually exercising, significant influence or control	Consider statutory guidance (see box "Significant influence or control" – what does it mean?) and establish if anyone meets the suggested criteria, irrespective of any formal role or appointment
v	Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or non-incorporated firm which would otherwise satisfy any of the above conditions	Consider statutory guidance as above

Sanctions for non-compliance

⁴ Where shares are deemed subject to a "joint arrangement", each party to the arrangement is treated as holding the shares held by all parties to the joint arrangement combined. "Joint arrangement" is defined as an arrangement between holders of shares or rights that they will exercise all or substantially all their rights jointly in a way that is pre-determined by the arrangement.

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There is a range of fairly penal sanctions for non-compliance with the PSC regime, including the following:

Failure to provide information on PSC/RLE interests – a recipient of a PSC notice will normally have one month to respond to it. Failure to do so may result in the relevant shares being restricted, so that all voting, dividend and other share rights would be suspended and no transfers would be permissible without a court order. Failure to provide information is also a criminal offence punishable with 2 years' imprisonment or a fine or both. The effects of a "restrictions notice" are set out in the statute so can be triggered without an express provision in the company's articles. The interests of third parties who may be prejudiced by the restrictions (e.g. the legal owners or holders of security interests) must be taken into account, however, and an aggrieved third party has the right to apply to court to have the restrictions lifted.

Provision of false information on PSC/RLE interests – anyone who provides false information on PSC/RLE interests commits a criminal offence, punishable with up to 2 years' imprisonment or a fine or both. Where the offence is committed by a company, the directors will also be criminally liable.

Company failure to maintain a PSC Register or refusal of a request to inspect the Register – a criminal offence is committed by the company and its directors, punishable by a fine.

Failure to take reasonable steps to identify PSCs or send notices to PSCs/RLEs with regard to changes – this is a criminal offence, punishable by 2 years' imprisonment or a fine or both.

Failure to file changes at Companies House – this is a criminal offence, punishable by a fine.

Publication of the PSC Register

When a new company is first registered, it must file a "statement of initial significant control" at Companies House. For existing companies, changes must be written up in the PSC Register within 14 days of being confirmed by the relevant PSC (or in the case of an RLE, within 14 days of the company having all the relevant details – RLEs are not required to confirm their details). Details of changes must be filed at Companies House within 14 days of entry in the company's register.

Private companies have the power to opt out of the requirement to keep company books at the registered office, relying instead on the central register at Companies House. If a company has elected to dispense with keeping its own registers, it must file all changes directly at Companies House not later than the date on which it would otherwise have had to update its own register.

For those seeking PSC information on a company, the company's own PSC Register will usually be more up to date than the version at Companies House. If the company does not keep its own PSC Register, the Companies House version should be up to date, but in either case, the company can be asked to confirm whether any entries are pending. The RLE concept also means that it may be necessary to inspect the PSC Registers of several different companies in order to identify the ultimate owner(s) of a company in the chain of ownership.

Content of the PSC Register

The PSC Regulations prescribe the scope of the disclosures in the PSC Register (see below). They also set out a protection regime, whereby the residential address of all PSCs will be kept by the company but will not be disclosed to the public except to specified public authorities and credit reference agencies. Individuals who can establish that they are at serious risk of violence or intimidation can apply to Companies House to prevent their PSC information appearing on the public register.

The PSC Register must never be blank, so companies with no PSCs must note that fact in their PSC Register, and where a company is aware that the PSC Register is incomplete, because for example it is still investigating its PSCs, it must note the status of its investigations.

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Content of the PSC Register	
PSC Information	RLE Information
● full name	● company name
● service address/usual residential address	● registered/principal office address
● country/state of residence	● legal form and governing law
● nationality	● company registration number and place of registration
● date of birth	● date on which RLE became registrable
● date on which PSC became registrable	● nature and extent of control
● nature and extent of control ⁵	

Status of Investigations

The PSC Register must never be empty. The [non-statutory guidance](#) has standard wording (Annex 2) for entering details of the status of investigations into the company's PSCs/RLEs covering situations where the company has:

- no PSCs or registrable RLEs
- unidentified PSCs/registrable RLEs
- identified a PSC but has not confirmed their particulars
- not yet completed reasonable steps to identify PSCs/registrable RLEs

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⁵ If a PSC/RLE satisfies more than one of Conditions 1, 2 or 3, the PSC Register must note each relevant Condition satisfied and the manner in which it is so satisfied. It is only necessary to consider whether a person or entity satisfies Conditions 4 or 5, and to note that fact in the PSC Register, if that person or entity does not satisfy any of Conditions 1, 2 or 3. If a person has both a direct and indirect interest in the same company, both will be taken into account and must be disclosed.