

# PSC Regime

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## Register of People with Significant Control for Sponsor controlled companies

From 6 April 2016 most UK companies and LLPs will be required to keep a register of people with significant control (“PSCs”). The rules are aimed at increasing transparency over ownership and control of UK companies and LLPs and see the UK lead the way on implementation of the EU Fourth Money Laundering Directive.

This Alert considers the rules from the perspective of portfolio companies controlled by financial sponsor investors and sets out what the new requirements are and what steps you need to take to comply.

### The New Obligations

All UK companies and LLPs, with the exception of issuers on certain regulated markets, must:

- maintain a register of registrable PSCs;
- take reasonable steps to identify any PSCs and obtain/confirm their relevant details;
- if they become aware of a change to the particulars in the PSC register, give notice to the relevant PSC to confirm the change;
- make their PSC register available for public inspection at their registered office (or another address notified to Companies House) and respond to requests for copies; and
- include details of any PSCs in their annual confirmation statements submitted to Companies House.

Any person who is a PSC in respect of a company or LLP, and who knows or ought reasonably to have known this, and whose up to date particulars are not on the relevant PSC register must notify the company or LLP of any required amendments. PSCs must also provide information in response to a valid request from the relevant company or LLP.

### Who must be included on the PSC register?

- Any ‘registrable’ individual with significant control over the company. (Individuals are non-registrable if they only hold their interest through one or more relevant legal entities over which they have significant control – i.e. in a chain of registrable undertakings only the bottom entity need be registered); and
- Any ‘registrable relevant legal entity’, meaning a legal entity that (a) would be a registrable individual with significant control were it an individual and (b) is either a UK company or LLP, or certain regulated issuers.

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## What are the specified conditions for being a PSC?

- The individual holds, directly or indirectly, more than 25% of the shares (calculated by nominal value of shares or by right to share in profits/capital); and/or
- The individual holds, directly or indirectly, more than 25% of the voting rights; and/or
- The individual holds, directly or indirectly, the right to appoint or remove a majority of the board; or
- The individual has the right to exercise, or actually exercises, *significant influence or control* over the company; or
- The individual has the right to exercise, or actually exercises, *significant influence or control* over a trust or firm which itself satisfies at least one of the above conditions.

## What is ‘significant influence or control’?

This is not clearly defined but, broadly, is the ability to direct actions of the company or LLP or to ensure the company or LLP adopts desired activities. Statutory guidance provides a non-exhaustive list of examples that *might* constitute significant influence or control, including:

- Absolute decision rights over matters relating to running the business, such as adopting or amending the business plan, changing the nature of the business or making additional borrowing from lenders, will likely constitute ‘control’. However neither (a) veto rights for the purpose of protecting a minority interest nor (b) veto rights applying in limited circumstances (e.g. step-in rights) are likely alone to amount to control.
- The *right* to exercise control may be achieved through a combination of constitutional documents and shareholders agreements, and is regardless of whether or not the right is actually exercised.
- Whether a person *actually* exercises significant influence or control will depend on a cumulation of all relationships that person has with the company or LLP and would include a person whose “recommendations are almost always followed”.

Examples of ‘safe harbour’ relationships that would not usually, on their own, result in significant influence or control include directors, employees, professional advisors and commercial arrangements.

While the rules are not completely clear, and their application will be fact specific, for a portfolio company controlled by a sponsor with a typical English limited partnership fund structure, it is likely the general partner and fund manager will be PSCs (and, depending on their legal form and structure, PSCs behind the general partner or fund manager may also be registrable).

In situations where there is one or more significant minority investors, including for example investors/lenders who may hold warrants rather than direct shareholdings, the analysis will be more complex. Holders of warrants will not generally be caught by the share ownership PSC condition until such time as they exercise their warrants, although PSC conditions could be triggered if they are treated contractually as shareholders for voting or broader decision-making powers prior to exercise or the circumstances in which such rights are exercisable are within their control. Assuming neither the 25% shareholding nor the 25% voting thresholds are triggered, it will likely come down to whether a combination of the rights and the influence actually exerted exceed the “significant influence or control” threshold.

In certain circumstances, for example when they are also warrant holders, lenders to a company or LLP may also be deemed to be PSCs. See [our Client Alert “Unintended consequences in the search for transparency”](#) for further discussion of this.

## What information must be included on the register?

The following details, once confirmed with the PSC, must be included on the PSC register and anyone inspecting the register must be informed of the most recent date of any alterations and whether there are further alterations to make:

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- *For all registrable persons*: name, service address / registered or principal office, date of becoming registrable and nature and extent of control;
  - *For legal entities*: legal form, the law by which it is governed, relevant companies registrar and registration number; and
  - *For individuals*: usual residential address<sup>1</sup>, nationality, country of residence, date of birth<sup>2</sup> and any restrictions on using or disclosing particulars.

## Who can access the register?

Any person may inspect a PSC register without charge, or request a copy for a fixed fee of £12. A company or LLP must comply with a request for inspection or else seek a court order to reject the request if it is not considered to be for a 'proper purpose' (which is to be interpreted widely in light of the objective of transparency).

The majority of information on the PSC register will also be publicly available from Companies House.

For PSCs who are individuals there is a protection regime against disclosure of personal information to third parties in certain circumstances where there is a risk of violence or intimidation.

## What are the sanctions for non-compliance?

Companies and directors who fail to comply with these obligations will commit an offence punishable by imprisonment or fine.

If a registrable person fails to comply with the disclosure obligations, the company or LLP can serve a warning notice that it intends to follow-up with a restrictions notice. A restrictions notice can be served one month later if the original notice has still not been complied with for no valid reason. The effect of a restrictions notice in relation to a particular shareholding is that any transfers of those shares are void, no rights may be exercised in respect of them and the company may not pay any sums due on them except in a liquidation.

## What do you need to do now?

1. Establish whether any companies or LLPs in your group are required to maintain a PSC register. If required, create a PSC register, use reasonable efforts to identify any PSCs and record them in the PSC register and keep the information up to date.
2. Establish whether you are a PSC in respect of any relevant UK company or LLP. If so, provide appropriate details and keep them updated of any changes.
3. When your companies or LLPs file their annual confirmation statement with Companies House, include PSC details.

The above is a summary only of the new rules, and their application will be fact dependent and require analysis on a case-by-case basis. Therefore, unless your structure is very straightforward, you will likely need to take advice to assist you in the steps above.

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<sup>1</sup> Note however that the usual residential address is not included on the public register and is not publicly available.

<sup>2</sup> Note that, although the *day* of birth is not included on the public register, it is publicly available on request.

## Flowchart to identify PSC registration requirements

Is a PSC condition met?

**(i)**  
More than 25% shares

**(ii)**  
More than 25% voting rights

**(iii)**  
Right appoint/remove majority board

**(iv)**  
SIOC over company

**(v)**  
SIOC over trust or firm meeting a PSC condition

Who holds the shares/rights (directly or indirectly) or meets an SIOC PSC condition?

**1**  
Individual (including governments)?  
If not, go to box 2

**2**  
Legal entity which qualifies as an RLE?  
If not, go to box 3

**3**  
Legal entity which does *not* qualify as an RLE (e.g. overseas unlisted)?  
If so, look through it to identify any individuals/RLEs behind it who are PSCs with majority stake in it. If none, go to box 4

**4**  
Trustees or partners?  
Consider...

If yes

Individual registrable unless:  
(a) Only holds through majority stake in legal entity/ies which include an RLE  
(b) Excepted role & no separate basis SIOC  
(c) Other exception e.g. rights controlled by someone else who is registrable instead

If yes

RLE registrable unless:  
(a) Only holds through majority stake in legal entity/ies which include an RLE  
(b) Excepted role & no separate basis SIOC  
(c) Other exception e.g. rights controlled by someone else who is registrable instead

If yes

Individuals or RLEs in question registrable unless:  
(a) Only hold through majority stake in legal entity/ies which include an RLE  
(b) Excepted role & no separate basis SIOC  
(c) Other exception e.g. rights controlled by someone else who is registrable instead

If trustees hold shares, go to box 1 for trustees who are individuals and boxes 2 or 3 for legal entities – usually trustees registrable

Do trustees exercise SIOC over company? If yes, registrable

Does an individual exercise SIOC over trust? If yes, registrable

Limited partners not registrable under 1<sup>st</sup> 3 PSC conditions if not involved in management

General partner in limited partnership and/or individuals or RLEs behind general partner who are PSCs usually registrable



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