

CLIENT ALERT

April 13, 2016

Register of Persons with Significant Control: A Guide for UK Companies

SPEED READ

From 6 April 2016, UK companies and LLPs are required to maintain a publicly available register of people with significant control. UK companies and LLPs must take "reasonable steps" to obtain required particulars about their PSC and issue notices as appropriate to confirm the identity of their PSCs. To facilitate compliance with the new regime under the SBEE Act, UK companies have broad powers to impose restrictions on shares held by the person who has failed to comply with PSC information requests, which can include bans on exercising rights, being issued more shares or being paid dividends. Failure to comply with the obligations under the SBEE Act is also a criminal offence, which can include imprisonment and/or a fine.

From 6 April 2016, UK companies and limited liability partnerships (LLPs) are required to maintain a publicly available register of people with significant control (PSC Register). **From 30 June 2016**, the information on the PSC Register will also need to be made available at Companies House when UK companies file their annual Confirmation Statement (which replaces the Annual Return). The new requirements are one of a number of changes to the Companies Act 2006 implemented under the Small Business, Enterprise and Employment Act 2015 (SBEE Act), which aims to create greater transparency in the ownership and control of UK companies.

UK companies have a duty to take reasonable steps to identify persons with significant control, whilst shareholders of UK companies are required to disclose their particulars to UK companies where they ought to reasonably know that they are a person with significant control.

UK companies and shareholders of UK companies should be aware of their obligations under the SBEE Act since failure to comply is a criminal offence.

Who must be included in the PSC Register?

The PSC Register must include required particulars of (i) "persons with significant control" and (ii) legal entities that are relevant and registrable.

PSCs

A person with significant control (PSC) is an individual (either alone or as one of a number of joint holders of the share or right in question) who meets one or more of the following conditions in relation to a UK company:

- **Condition 1:** directly or indirectly holds more than 25% of the shares;
- **Condition 2:** directly or indirectly holds more than 25% of the voting rights in the company;
- **Condition 3:** directly or indirectly holds the right to appoint or remove a majority of the board of directors;
- **Condition 4:** otherwise has the right to exercise, or actually exercises, significant influence or control over the company; or
- **Condition 5:** has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm (not being a legal person, such as a partnership), which itself satisfies one or more of the first four PSC conditions.

Conditions 4 and 5 are broader tests and the government has published draft statutory guidance on the meaning of "significant influence or control". A person has "control" over an organisation where he can direct its policies or activities. A person has "significant influence" if he can ensure the organisation adopts the policies or activities he wants. The guidance includes a non-exhaustive list of examples of a right to exercise significant influence or control. This includes a person having absolute decision rights or veto rights related to the running of the business, for example adopting or amending the company's business plan, or the appointment or removal of the CEO. However, veto rights that exist for the purposes of protecting minority interests are unlikely to constitute significant influence or control.

RLEs

The PSC Register must also include particulars of a "relevant legal entity" that is registrable (RLE). A legal entity is **relevant** if it meets any one or more of the five PSC conditions set out above and:

- it keeps its own PSC Register; or
- it is subject to Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules (DTR5); or
- it is a company traded on a regulated market in the UK or European Economic Area or on specified markets in Switzerland, the United States, Japan and Israel.

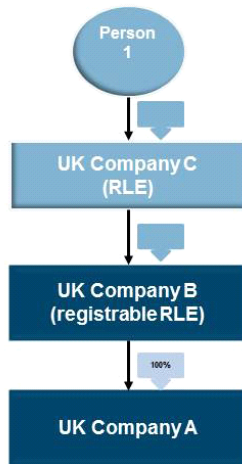
A legal entity is **registrable** in relation to a UK company if it is the first relevant legal entity in the UK company's ownership chain.

If a legal entity is not relevant and registrable in relation to a UK company, its details cannot be entered in the PSC Register of that UK company and that UK company will need to look higher up the chain at the indirect interests to identify an individual PSC or RLE. A legal entity might not be an RLE because:

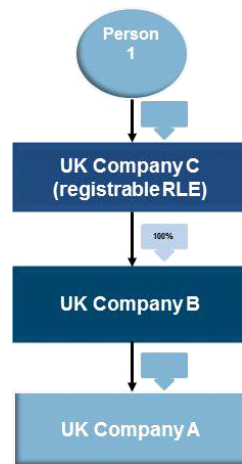
- it is a UK company which is not a company, LLP or Societates Europaeae; or
- it is a non-UK company or other legal entity that does not satisfy the conditions set out above for RLEs. General partnerships, including limited partnerships, with no legal personality (such as an English limited partnership) are not RLEs and therefore are not registrable.

Most overseas companies cannot be entered on a PSC Register, so UK companies need to look through them to the individuals or RLEs behind them.

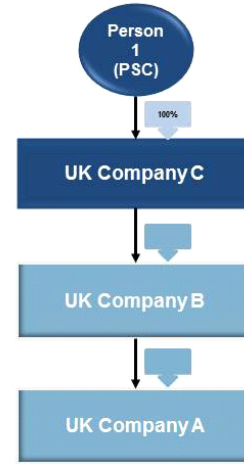
**Figure 1: Company A's
PSC register**



**Figure 2: Company B's
PSC register**



**Figure 3: Company C's
PSC register**



Source: Guidance on the Register of People with Significant Control from the Department for Business Innovation & Skills.

In Figure 1, Company B is the registrable RLE in relation to Company A and its details must be entered on Company A's PSC Register. This is because Company B owns 100% of the shares in Company A and Company B is a UK company that keeps a PSC Register. Company A is not required to look further at its chain of ownership for any indirect interests held via Company B as these are not registrable in relation to Company A.

In Figure 2, Company C is a UK company and its details will be entered on Company B's PSC Register. As the first RLE in Company B's chain of ownership, Company C is registrable in relation to Company B only. Person 1 also does not go on Company B's PSC Register even though he or she again holds an interest in Company B indirectly. Instead, Person 1 is only required to be entered on Company C's PSC Register, as per Figure 3 above.

When is an indirect interest required to be entered in the PSC Register?

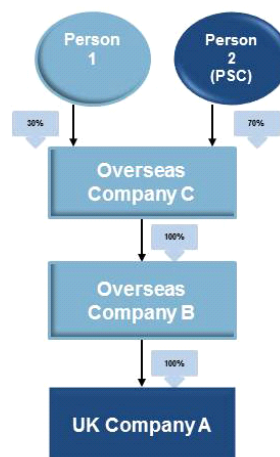
Where a legal entity satisfies one of the PSC conditions in relation to a UK company and a person has a majority stake in that legal entity, that person is required to be entered on the UK company's PSC Register unless the legal entity through which they hold their interest is an RLE.

In this instance, the ownership and control of that legal entity must be reviewed to identify any PSCs or RLEs that have a majority stake in the legal entity whose details must be entered on the PSC Register. Someone will hold a majority stake if:

- they hold a majority of the voting rights in the legal entity; or
- they are a member of the legal entity and have the right to appoint or remove a majority of its board of directors; or
- they are a member of the legal entity and control a majority of the voting rights by agreement with other shareholders or members; or
- they have the right to exercise or actually exercise dominant influence or control over the legal entity.

If there is another legal entity that is not an RLE but has a majority stake, the ownership and control of that legal entity (and so on) will need to be reviewed until a PSC or an RLE with a majority stake is identified. If there is no one who meets these criteria, this must be recorded in the PSC Register.

Figure 4



Source: Guidance on the Register of People with Significant Control from the Department for Business Innovation & Skills.

In Figure 4 Company A cannot put Company B's details on the PSC Register even though it owns 100% of the shares in Company A because Company B is an overseas company that does not meet the test above and is therefore not an RLE. Instead Company A must look at the ownership and control of Company B. Although Company C has a majority stake (holding 100% of the voting rights) in Company B, it also is not an RLE because it is an overseas company and does not meet the test above for RLEs and its details cannot be entered on the PSC Register. Company A must therefore look at the ownership and control of Company C. Person 2 has a majority stake (holding more than 50% of the voting rights) in Company C, which means they are a PSC in

relation to Company A and their details must be entered on the PSC Register.

What about interests held through a limited partnership (such as investors in a private fund or joint ventures)?

An individual or legal entity will not meet PSC condition 1, 2 or 3 above by virtue of only:

- being a limited partner of a limited partnership with no legal personality; or
- holding shares or rights (whether directly or indirectly) in a corporate limited partner.

Ordinarily investors in funds do not need to be registered where shares or rights in a UK company are held as assets of a limited partnership without legal personality, and only particulars of the general partner(s)/ manager should be entered on the PSC Register, provided they are individual PSCs or RLEs.

What about rights attached to shares held by way of security?

Where a person has used their shares as security (e.g., to secure a loan from a bank) those shares should be treated as being held by that person for the purposes of the PSC Register if:

- they retain the rights over the shares;
- they retain control, except for when the lender exercises rights relating to the shares for the purpose of preserving or realising the value of the security; or
- the lender controls the rights relating to the shares but, other than the right to exercise them for the purposes of preserving or realising the value of the security, must exercise them in the interests of the owner.

What steps must be taken to identify a PSC or an RLE?

UK companies must take "reasonable steps" to identify PSCs and RLEs and keep up-to-date the PSC Register which may include a review of the available and existing information such as the register of members, articles of association and statements of capital. The government's detailed guidance on the regime gives examples of the information requests that companies must send to potential PSCs and RLEs, and to which PSCs and RLEs have a duty to respond. PSCs and RLEs also have a proactive duty to disclose their details to UK companies once they are aware of their status.

What information should be recorded in the PSC Register?

FOR AN INDIVIDUAL PSC:	FOR AN RLE:
<ul style="list-style-type: none">• Name• Date of birth• Nationality• Country of residence• Service address• Residential address (this will not appear on the public record)• Date became a PSC• Which of the conditions for being a PSC are met	<ul style="list-style-type: none">• Corporate/firm name• Registered/principal office• Legal form and governing law• Applicable company register and number• Date became a PSC• Which of the conditions for being a PSC are met

The information about an individual PSC or an RLE must be **confirmed** before it is entered on the PSC Register. The UK company must ensure that its PSC Register is kept up-to-date and, after 30 June 2016, ensure that it keeps the information at Companies House up-to-date by filing an annual Confirmation Statement (which replaces the existing Annual Return). From 30 June 2016, a UK company can choose to keep its own PSC Register at Companies House instead of at its registered address, in which case the UK company will need to promptly file any updated information at Companies House.

A protective regime exists under which a UK company may, on behalf of a PSC, apply to the registrar requiring the registrar to refrain from publicly disclosing information about the PSC if the company reasonably believes that disclosure will result in a serious risk of the PSC being subjected to violence or intimidation.

What are the penalties for noncompliance?

There are criminal penalties for noncompliance by UK companies and PSCs, which can include imprisonment and/or a fine.

UK companies may find that the information they require to comply with the regime may not be forthcoming; therefore companies have been given broad powers to obtain information and restrictions can be imposed on shares if the information is not provided. A company has the power to issue notices to a person whom it knows or has reasonable cause to believe that the person knows the identity of the relevant PSC or RLE, or knows someone else likely to have that knowledge. If the company is unable to obtain the information it needs, it can take steps, after issuing a "warning notice" followed by a "restriction notice," to impose restrictions on the shares held by the person who has failed to comply with the information requests, which can include bans on exercising rights, transferring shares, being issued more shares or being paid dividends.

What steps should I take now?

UK companies and LLPs should take steps to identify PSCs and RLEs and have in place processes to obtain (and update) relevant information to be entered into the PSC Register. Companies and LLPs should review their register of members and statement of capital to identify individuals or entities that hold more than 25% of the company's shares or voting rights. Companies and LLPs with more complex

ownership structures should also review their constitutional documents and any shareholders' agreements and consider whether anyone has "significant influence or control." From 6 April 2016, companies and LLPs must have their registers in place and, if they do not have the information to complete the PSC Register by this date, they should note the status of their identification process in the PSC Register. The PSC Register cannot be blank.

For questions, please contact Richard Lever, Glynn Barwick, Gemma Roberts or Kristina Wahidullah, any member of Goodwin's Private Equity Group or Financial Institutions Group, or your regular Goodwin contact.

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