

# PEOPLE WITH SIGNIFICANT CONTROL

## A Quick Guide to the PSC Regime

July 2017

### What is the PSC Regime?

The PSC regime is a set of rules that require certain entities to identify and report details of people – either individuals (PSCs) or relevant legal entities (RLEs) – who have significant control over them. The following entities are caught by the rules:

- most UK companies (ie companies formed under the UK Companies Act, as well as registered companies);
- UK LLPs;
- Societates Europaeae; and
- eligible Scottish partnerships\*.

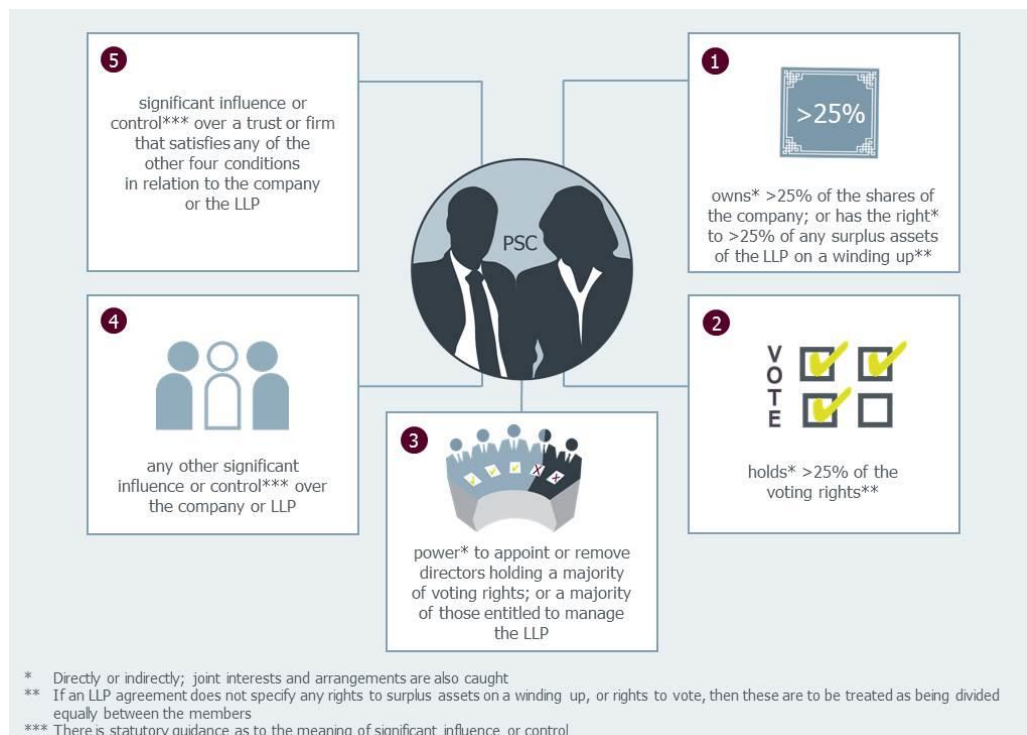
Companies (but not their UK subsidiaries) are exempt if:

- they have shares admitted to trading on a regulated market in the EEA\*; or
- they have shares admitted to trading on certain other prescribed markets in the USA, Japan, Israel and Switzerland.

Recent changes to the PSC regime (made in June 2017) are marked with an asterisk and detailed at the end. Those changes included extending the regime to eligible Scottish partnerships (but, unlike companies and LLPs, they do not have to keep their own PSC register). This guidance focuses on the position of companies and LLPs.

### Who is a PSC?

A PSC is an individual who meets any one or more of the following 5 conditions:



## What is a Relevant Legal Entity (RLE)?

An RLE is:

- a legal entity – ie a body corporate or firm that is a legal person;
- that would qualify as a PSC if it were an individual; and
- that is subject to its own disclosure requirements (ie it has its own PSC Register or is subject to equivalent disclosure requirements, eg it has shares admitted to trading on a regulated market in the EEA\*).

## When is a PSC/RLE registrable?

A PSC or RLE is registrable unless they only have control indirectly through an RLE or a chain of legal entities, at least one of which is an RLE.

So, if a PSC or RLE holds control in any other way they will be registrable; and if they hold control through an RLE (or a chain of legal entities which includes an RLE) they will be still be registrable if they also hold a direct interest.

## What indirect interests count?

A person holds an indirect interest in a company or LLP if that person has a 'majority stake' in a legal entity and that legal entity either:

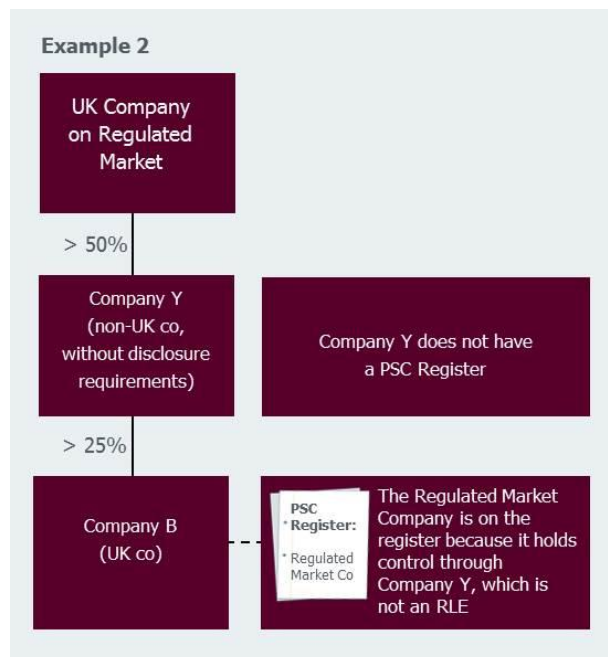
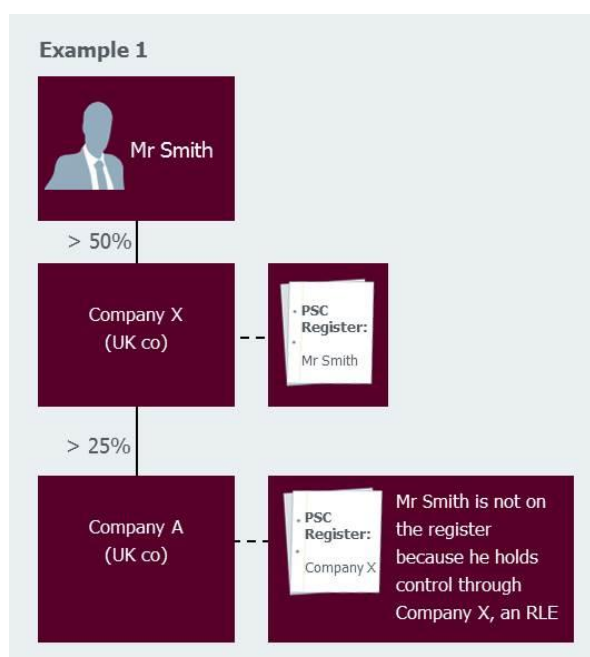
- holds the shares in the company or rights in the LLP directly; or
- is part of a chain of legal entities, each of which has a majority stake in the entity immediately below it, except for the last one which holds the shares in the company or rights in the LLP.

Broadly, a person holds a majority stake in an entity if that person holds (or controls by agreement with other members) a majority of the voting rights in it, or has the right to appoint or remove directors (or members of an equivalent management body) holding a majority of the voting rights, or can exercise dominant influence or control over it.

## How far do you look up an ownership chain?

Where control is held indirectly, the company/LLP need only enter in its PSC Register the first RLE (if any) above it in the chain of ownership. Any ultimate PSC/RLE will then be identifiable from that RLE's PSC Register or, if there is another RLE above it, a PSC Register further up the chain (or, in each case from disclosure requirements equivalent to a PSC Register): see example 1 below.

Where a legal entity in an ownership chain is not an RLE it is necessary to examine the ownership or control of that legal entity (ie you effectively look through it) in order to identify any indirect interests in the company or LLP concerned: see example 2 below.



## What steps must be taken to complete the PSC Register?

The company or LLP must take reasonable steps to identify any registrable PSC or RLE and keep the register up to date. As part of those steps:

- it must give notice to someone it knows or has reasonable cause to believe is a registrable PSC or RLE; and

- it may give notice to anyone it knows or has reasonable cause to believe knows the identity of registrable PSC or RLE or knows someone likely to have that knowledge.

### **What information is required to be kept on the PSC Register?**

The register must be kept up to date and must never be blank.

While the company or LLP is in the process of taking steps to identify whether it has any registrable PSCs or RLEs, the register must say that: "The company/LLP has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company/LLP."

There is also prescribed wording for numerous other situations – for example, where the company or LLP has no registrable PSC or RLE or has an unidentified PSC or has unconfirmed details. The wording is set out in Annex 2 (for companies) and Annex 4 (for LLPs) of the government guidance.

If there is a registrable PSC or RLE, the details required are set out below. Details must only be included when they are complete and, in the case of an individual, after they have been confirmed (and details of a person will be treated as confirmed if they were provided by that person or with that person's knowledge). But once the details are complete and, if applicable, confirmed, the register must be updated as soon as reasonably practicable and in any event within 14 days.

<b>PSC</b>	<b>RLE</b>
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	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 (using the prescribed wording)	Which of the conditions for being an RLE is met (using the prescribed wording)

When recording the nature of control, if condition 1, 2 and/or 3 is satisfied, there is no need to consider whether (or register that) condition 4 is satisfied. But if you satisfy one or more of conditions 1, 2, 3 and 5, you must record each condition that is satisfied.

Personal residential address details will not be generally available to the public. Also, where there is a serious risk of violence or intimidation, protection may be applied for to prevent any information relating to a PSC from being made available. However, in each case, information will be available to public authorities and credit and financial institutions\*.

A PSC or RLE's details can only be removed from the register 10 years after the date on which they are no longer registrable.

### **What are the obligations of a PSC/RLE?**

Persons who know or ought to know that they are registrable must notify the company/LLP of their status (ie that they are a PSC or RLE) and provide the required details.

In addition, any person who receives a notice from the company or LLP (because they may be a registrable PSC or RLE, or know the identity of a registrable PSC or RLE, or know someone likely to have that knowledge) must confirm or supply the information requested within a month.

### **Where is the PSC Register kept?**

The register must be kept with the company's or LLP's other registers at its registered office or other nominated place for inspection. Alternatively, the company or LLP may elect to keep the register at the Central Register at Companies House.

## **Who has access to the register?**

The register must be available for public inspection (without charge). Also, the company or LLP must provide a copy of the register within five working days of a request (subject to a charge of no more than £12).

If the company or LLP has elected to keep its register at the Central Register at Companies House, then the register can be accessed from there.

## **What information must be provided to Companies House?**

Changes to the register must be notified to Companies House within 14 days of being made\*.

If the company or LLP has elected to keep its register at the Central Register at Companies House, then the register must be updated in the same way as if it were held by the company or LLP itself (ie within 14 days of the relevant change\*).

## **What are the sanctions for failure to comply?**

Failure to comply with the PSC requirements can amount to a criminal offence punishable by a fine and/or up to two years' imprisonment. Offences include:

- failure by the company/LLP to take reasonable steps to identify any registrable PSC or RLE (and the offence is committed by the company/LLP and every officer/designated member in default);
- failure by a PSC or RLE to comply with a duty to make their status known; and
- failure to comply with a notice from the company/LLP - or knowingly or recklessly making a false statement.

Also, if a person fails to provide information required by a company or LLP in order to complete its PSC Register, the company/LLP may, after serving a warning notice, impose restrictions on the shares/LLP interest in question (as regards voting, transfer and the right to appoint a director or persons entitled to manage the LLP). The company/LLP may also apply to court for an order that the shares/LLP interest be sold.

## **\*What is the impact of Fourth Anti-Money Laundering Directive (AMLD4)?**

This guide includes changes to the PSC regime (marked with an asterisk) which have been made – generally with effect from 26 June 2017- in order to reflect the requirements of AMLD4, as follows:

### **DTR 5 issuer exemption no longer applies – so UK AIM companies are caught**

The DTR5 issuer exemption no longer applies and is effectively replaced by the regulated market exemption. Consequently, UK companies on UK prescribed markets such as AIM and NEX Exchange Growth Market are caught by the PSC rules. They must start investigating who their registrable PSC/RLEs are straight away, but do not need to have a PSC Register until 24 July 2017. Also, it appears that they then have 14 days to make an entry (eg to add a PSC/RLE or a statement that their investigations are ongoing) and must then notify Companies House within 14 days of making the entry.

### **New 14 day reporting**

Companies and LLPs must update their PSC register within 14 days - and must notify Companies House within 14 days of changing their register. Annual confirmation statements still have to be filed to confirm that the information filed with Companies House is up to date. Where a Company or LLP has changed its register before 26 June 2017 - and that change is not reflected in the PSC information held at Companies House (in its confirmation statement or statement of initial significant control) - that change must be notified within 14 days of 26 June 2017 (ie 9 July 2017).

### **Eligible Scottish partnerships are caught - and can be RLEs**

The PSC regime is extended to eligible Scottish limited partnerships – ie:

- Limited partnerships registered in Scotland; and
- Scottish general partnerships which, broadly, have all corporate partners, being 'qualifying partnerships' under the Partnership (Accounts) Regulations 2008 (and they will have to register with Companies House for the first time so that it can hold their PSC details).

The PSC regime applies slightly differently to eligible Scottish partnerships. Unlike other reporting entities, they do not have to keep their own register, but simply have to file details with Companies House. They must start investigating who their registrable PSC/RLEs are straight away, but the reporting requirements do not apply until 24 July 2017. Finally, it should be noted that eligible Scottish partnerships now have their own disclosure requirements and can be RLEs: accordingly, holding structures that include them will need to be reassessed and changes may need to be made to existing PSC registers as appropriate.

### **Protection of information changes**

The protection of information regime has been changed so that credit and financial institutions, as well as public authorities, have access to PSC information that is protected from disclosure to the public.