

PSC RULES – YOUR QUESTIONS ANSWERED

Register of People with Significant Control (PSCs)

February 2016



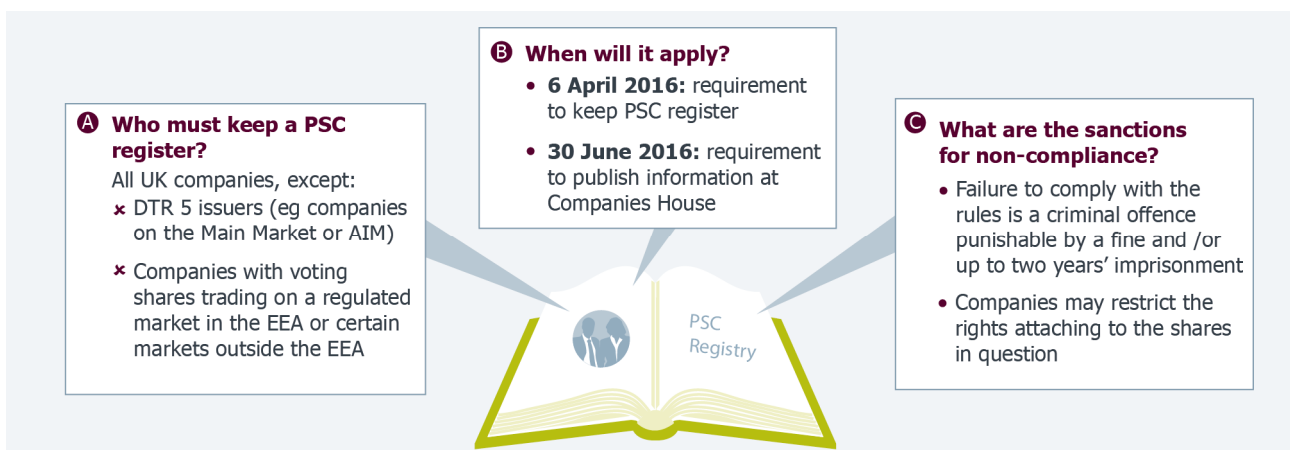
Overview

From 6 April 2016 new rules will be introduced to make the ownership and control of UK companies more transparent. They have been brought in by the Small Business Enterprise and Employment Act 2015 – and are also being applied to LLPs (but for convenience this guide mainly refers just to companies). The rules will require most UK companies to keep a register of People with Significant Control (PSCs). The PSC register must be available for public inspection and updated details of all PSCs must be published annually at Companies House.

Broadly, a PSC is an individual who holds – directly or indirectly - more than 25% of the shares or voting rights of the company, can appoint or remove directors holding a majority of board voting rights or who can otherwise exercise significant influence or control over the company. Where a body corporate or firm would be a PSC if it were an individual it may be required to be entered on the register if it is a 'Relevant Legal Entity' (RLE). A company must take reasonable steps to identify its PSCs and/or RLEs - and any PSCs or RLEs are required to make themselves known to the company.

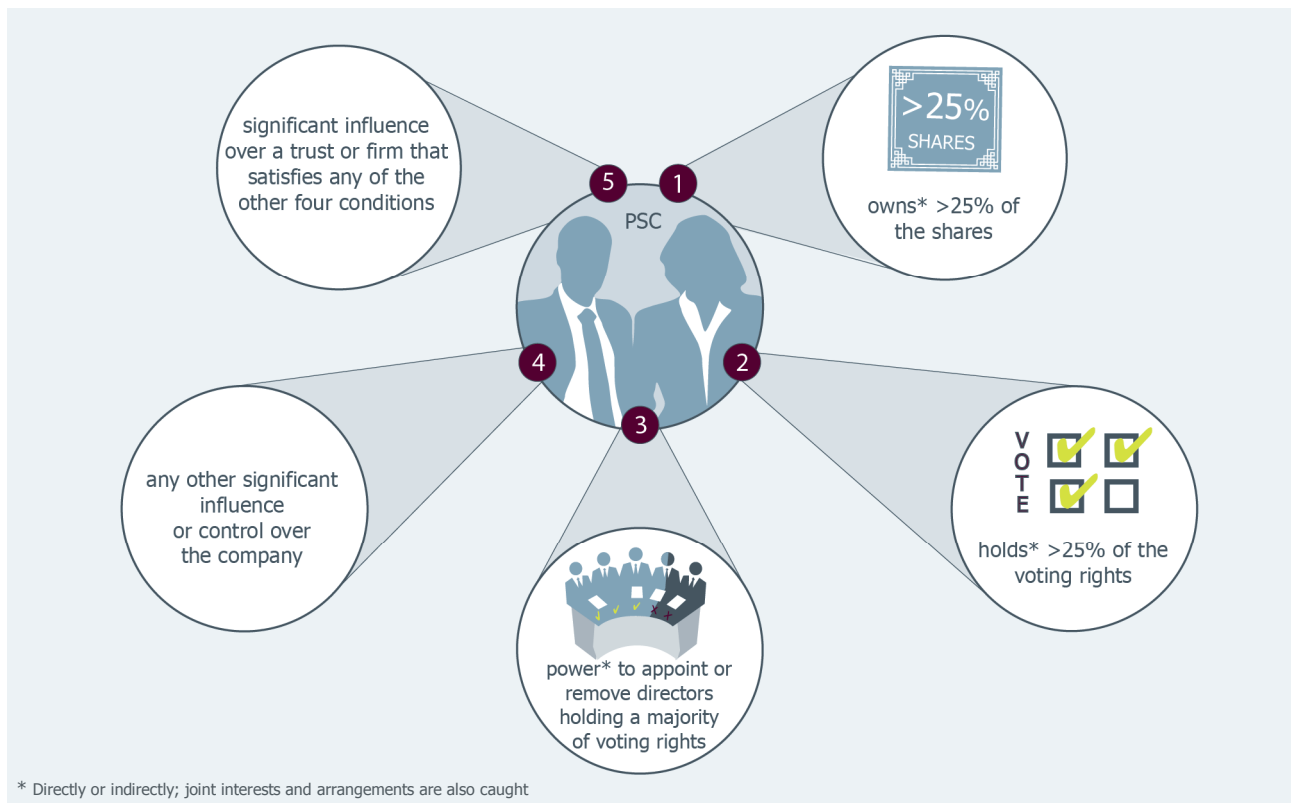
DTR 5 issuers (ie a companies on the Main Market or AIM or otherwise subject to the Disclosure Rules and Transparency Rules) are exempt from the requirement to keep a PSC register. However, their UK subsidiaries are not exempt. Also, DTR 5 issuers will need to consider whether they are an RLE in relation to other UK companies and LLPs – and notify those entities accordingly (eg joint venture companies).

This guide is an overview to help you prepare for the new rules. Further details are set out in the [government guidance](#), recently published, including [draft statutory guidance](#) as to the meaning of significant influence and control.



Who is a PSC?

A PSC is an individual who meets one or more of the following 5 conditions in relation to a company:



Conditions 4 and 5 only need to be considered in relation to a person, if that person does not meet any of conditions 1, 2 or 3. Where they do need to be considered, the statutory guidance gives examples as to what might constitute significant influence or control (eg absolute decision rights over the business plan or borrowings) as well as and what would not, on its own, constitute significant influence or control (eg veto rights, to protect a minority interest, over matters such as changing the constitution, dilution of share rights, additional borrowings and fundamental changes to the business).

A person who holds a right that constitutes significant influence or control may be a PSC even though they do not exercise that right. On the other hand, a person may be a PSC if they actually exercise significant influence or control, regardless of whether they have a right to do so (eg a person who influences the decisions of the board or whose recommendations are followed by shareholders holding a majority of voting rights). However, there are 'safe harbours' for persons who provide advice in a professional capacity or who are dealing with the company under a commercial or financial agreement.

What is a Relevant Legal Entity (RLE)?

A PSC must be entered on the company's register – and is called a 'registrable person' - unless he or she only has control indirectly through a 'Relevant Legal Entity' (RLE) or a chain of legal entities, at least one of which is an RLE.

An RLE is:

- a body corporate or firm;
- that would qualify as a PSC of the company if it were an individual; and
- which is subject to its own disclosure requirements (ie it has its own PSC register or is subject to equivalent disclosure requirements).

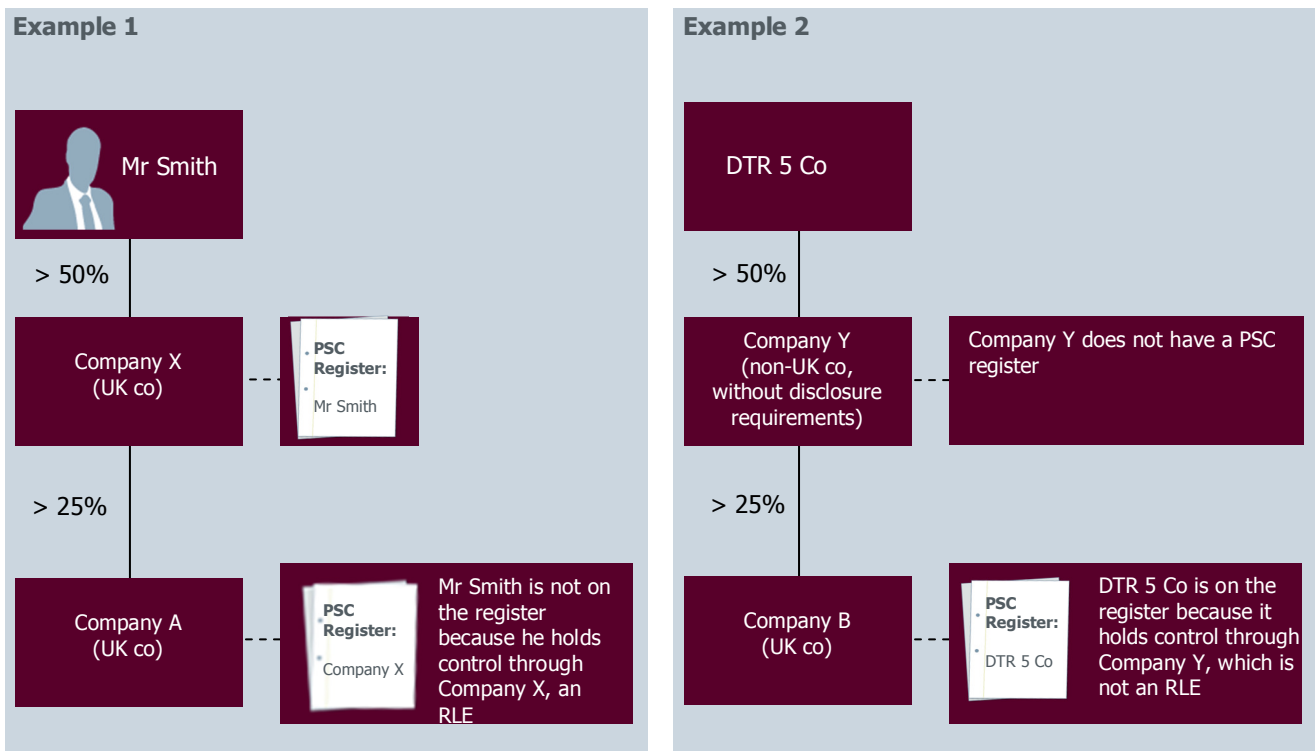
An RLE must be entered on the company's register unless it only holds indirect interests in the company through one or another RLE or a chain of legal entities, at least one of which is an RLE. Where control is established in this way, the company need only register the first RLE above it (the 'registrable RLE'). Any ultimate PSC/RLE will then be identifiable from that RLE's register (or, if there is another RLE above it, a register further up the chain).

What indirect interests count?

A person holds an indirect interest if they have a 'majority stake' in a legal entity and that entity either:

- holds the shares or right 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 or right.

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



What are a Company's obligations?

The company 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 PSC or RLE. Also, 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 are the obligations of a PSC/RLE?

Any person who knows or ought to know that they are registrable must notify the company of their status (ie that they are a PSC or RLE) and provide the required details (see further below).

In addition, any person who receives a notice from the company (because they may be a registrable person 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.

What are the sanctions for failure to comply?

The new rules create a number of criminal offences - punishable by a fine and/or up to two years' imprisonment – eg for:

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

In addition, the company may impose sanctions. If a person fails to comply with a warning notice, the company may impose restrictions on the shares in question – eg as regards voting, transfer and the right to appoint a director. The company may even apply to court for an order that the shares be sold.

Where is the register kept?

The register must be kept with the company's other registers at its registered office or other nominated place for inspection.

Alternatively, from 30 June 2016, a company 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 must provide a copy of the register within five working days of a request (subject to a charge of no more than £12).

From 30 June 2016, details of the register must be published at Companies House and updated annually as part of the new Confirmation Statement (which replaces the Annual Return). If the company elects to keep its register at the central register at Companies House, then it will need to update that register in real time.

What information is required on the register?

The register must never be blank. While the company is in the process of taking steps to identify whether it has any PSCs or registrable RLEs, the register must say that:

"The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable PSC or RLE or a registrable relevant legal entity in relation to the company."

There is also official standard wording for numerous other situations – eg where the company has no registrable PSC or RLE or has an unidentified PSC or has unconfirmed details.

If there is a registrable PSC or RLE, the details required are set out below. But details must only be included when they are complete and, in the case of an individual, after they have been confirmed. Details of a person will be treated as confirmed if they were provided by that person or with that person's knowledge.

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)

Residential address details will not be generally available to the public – but will be available to public authorities and credit reference agencies. However, in exceptional circumstances, where there is a serious risk of violence or intimidation, there is a regime for preventing any information relating to a PSC from being made public or shared (other than with law enforcement agencies).

What key steps should be taken to comply?

If you are required to maintain a PSC register:

- Produce the register - ie a document headed 'The Register of People with Significant Control'
- If it is a simple situation, complete the register accordingly on 6 April: eg:
 - include the required details of all PSCs or RLEs (so long as all the information is complete and, in the case of an individual, has been confirmed); or
 - if there are no PSCs or RLEs a statement that ***"The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company"***.
- If the situation is more complex remember that the register must never be blank and:
 - include an appropriate statement, such as: ***"The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable PSC or RLE or a registrable relevant legal entity in relation to the company"***; and
 - consider whether the company may have any PSCs or registrable RLEs and (not before April 6) issue notices as appropriate to persons who may be registrable or may know someone who knows the identity of a registrable PSC or RLE or knows someone likely to have that knowledge.

If you may be required to be registered on a PSC register:

- Determine whether you are required to be registered by reference to the government guidance.
- If you are, notify the relevant company within one month from 6 April, unless you are already on its PSC register.
- Respond to any notices that you receive enquiring as to your status as a PSC/RLE.

The rules and guidance are lengthy and complex: we are here to help.

For further information, please contact your usual contact or:



THEO JONES

Associate Director - Knowledge
Development Lawyer
Corporate Finance
T: +44 (0)20 3400 2283
theo.jones@blplaw.com

This document provides a general overview only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.