



UK Companies: Beneficial Owners Register/Persons with Significant Control

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# UK Companies: Beneficial Owners Register/Persons with Significant Control

## Important update for all directors, trustees and beneficial owners of UK companies and Limited Liability Partnerships.

As advised in our previous bulletins, from 6 April 2016, UK companies and Limited Liability Partnerships (LLPs) are required to keep and maintain a Register of Persons with Significant Control (PSC Register). The PSC Register will include details of persons that have control over the company or LLP.

From 30 June 2016 that PSC information must be filed at Companies House either on incorporation or when the company annual confirmation statement is delivered (which replaces the annual return).

Information on PSCs will be held on a central register at Companies House and will be made publicly available for free on an electronic searchable register.

Any person (an individual or organisation with a proper purpose) may have access to a company's/LLP's own PSC Register (which must be kept at the registered office or at another specified location).

A person meeting one or more of the following conditions is a Person with Significant Control (PSC):

<b>Condition 1</b>	Direct or indirect ownership of more than 25% of a company's shares (or surplus assets of a LLP on winding up)
<b>Condition 2</b>	Direct or indirect control of more than 25% of a company's or LLP's voting rights
<b>Condition 3</b>	Direct or indirect right to appoint or remove a majority of the board of directors (or members of an LLP)
<b>Condition 4</b>	Has the right to exercise, or actually exercises, significant influence or control over a company or LLP
<b>Condition 5</b>	Has the right to exercise, or actually exercises, significant influence or control over activities of a trust or firm which itself meets one of the first four conditions

As well as the type of control, the PSC Register must record, where appropriate, an indication of the extent of control. For share ownership, there are three broad bands to indicate whether the PSC owns more than 25% up to 50%, more than 50% up to 75% or 75% or more of the share capital. The same approach applies in relation to voting rights.

## Relevant Legal Entities

In cases where a company is owned or controlled by one or more legal entities, then only those legal entities that are a "Registrable Relevant Legal Entity" (RLE) will be entered on the register.

By definition, a Registrable RLE is subject to its own transparency obligations (ie holds its own PSC Register). Generally only certain listed entities will qualify as RLE's. Corporate entities between the UK company/LLP and individuals who are PSCs will not be disclosed unless they are an RLE.



## Information to be included in the PSC Register for an individual

- Name
- Service address
- Country of residence
- Nationality
- Date of birth
- Usual residential address
- Date on which the person became a PSC
- Nature of control

## Significant influence or control (Conditions 4 and 5)

Government has published draft statutory (which when approved by Parliament will have a legal footing) and non-statutory guidance to support the implementation of the PSC regime.

Statutory guidance is confined to explaining the meaning of “significant influence or control”.

“Control” is defined as having the power to direct the activities of a company or trust. Whereas “significant influence” indicates that a person can ensure that a company or trust generally adopts the activities which they desire. Control and significant influence do not have to be exercised with a view to gaining an economic benefit.

## Significant Influence or control in the context of trusts

If a trust has any ownership or control over the company, it must be considered whether that trust satisfies any of the conditions 1 to 4. Where this is the case, the trustee would be entered on the PSC Register.

It then needs to be considered whether any individual or legal entity has significant control over the activities of that trust. The draft statutory guidance states that a person has the right to exercise “significant influence or control” over a trust if that person has the right to direct or influence the running of the activities of the trust, for example if they have the right to appoint or remove any of the trustees (except through application to the courts, or as a result of a breach of fiduciary duty by the trustees); to direct the distribution of funds or assets; to direct investment decisions of the trust; to amend the trust deed; or to revoke the trust

A person is also likely to exercise significant influence or control over a trust if they are regularly involved in the running of that trust. For example a person who issues instructions to the trustees, which are generally followed, as to the activities of the trust. This may be a settlor or beneficiary.

## Protection regime

Persons who consider themselves to be at serious risk of violence or intimidation will be able to apply to Companies House for their information not to be made public on the central public register, the information will still need to be supplied.

Applications will be considered on a case by case basis.



## What next?

Companies and LLPs should take reasonable steps to determine whether they have one or more PSCs or Registrable RLEs. Those persons must be identified and contacted.

If a trust has any ownership or control, it must be considered whether any individual or legal entity has significant influence or control over that trust.

## Further changes

Government is widely expected to introduce further measures in due course to comply with the 4th AML Directive such as reporting on a current basis rather than on an annual basis.

## Other changes introduced by the Small Business, Enterprise and Employment Act 2015

As of May 2015 no further bearer shares can be issued by UK companies and existing bearer shares are subject to a 9 month transitional period.

From October 2016 UK companies will not be able to appoint corporate directors (subject to limited exemptions). There is a one year transitional period for existing corporate directors.

**For further information please contact your usual SMP adviser or email [info@smppartners.com](mailto:info@smppartners.com).**

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