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# REGISTERS OF PEOPLE WITH SIGNIFICANT CONTROL

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An Overview of the PSC Regime and Guidance

# Registers of People with Significant Control – An overview of the PSC Regime and Guidance

This briefing forms part of our [series](#) which focuses on the [Small Business, Enterprise and Employment Act 2015 \(SBEEA\)](#). Please note that this briefing **replaces the document published in January 2016** as it is based on final, as opposed to draft, government guidance on the requirement to keep and maintain a register of people with significant control (**PSC Regime**). To review our updated SBEEA implementation bulletin, [click here](#). We have divided this briefing into five parts as follows:

## Contents:

- 1: [Introduction](#)
- 2: [To whom does the PSC Regime apply?](#)
- 3: [Actions companies must take to comply with the PSC Regime](#)
- 4: [Public and Protected Information](#)
- 5: [Conclusion](#)

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# 1. Introduction

## *The Government's guidance*

Under the PSC Regime, companies and LLPs will be required to keep a register of people with significant control (**PSC register**) from 6 April 2016. This is in preparation for the need to file this information at Companies House from 30 June 2016. As previously reported, the Government set up a working group to help draft the statutory and non-statutory guidance required to support the implementation of the PSC Regime and, in particular, explain what is meant by the expression 'significant influence or control'. Drafts of this guidance (**Guidance**) were published for comment just before Christmas with final versions of the statutory guidance laid before parliament at the end of January and final versions of the non-statutory guidance published in February.

This briefing focuses on some of the key areas covered by the Guidance, in particular it looks at who are 'people with significant control' (**PSCs**) and what is a 'relevant legal entity' (**RLE**). It also summarises the steps that companies must take to identify them. We have included examples taken or adapted from those set out in the Guidance to illustrate how the PSC Regime works in practice.

In this briefing, we will look at the PSC Regime in relation to companies. The regime applies equally to LLPs, and whilst the Guidance confirms that most of its chapters should generally be read as applying equally to LLPs, there is additional guidance for LLPs in Annex 4 of the non-statutory guidance (see below).

## *Why do we have a PSC Regime?*

Underpinning the regime is the Government's desire to increase transparency in relation to who owns and controls UK companies and, in doing so, to reduce tax evasion. It is also argued that this information should help inform investors when considering investment and support law enforcement agencies in money laundering investigations.

The regime has 'teeth'. Failure to comply (by companies, their officers and those required to provide the relevant information) will be a criminal offence. If found guilty, those in breach face up to two years imprisonment and/or a fine.

## *Where can the new PSC Regime provisions and Guidance be found?*

The SBEEA will insert a new Part 21A into the Companies Act 2006 together with new schedules 1A and 1B (as amended by the [Companies Act 2006 \(Amendment of Part 21A\) Regulations 2016](#)). In addition, further draft secondary legislation has now been published in the form of the [Register of People with Significant Control Regulations 2016](#) and the [Limited Liability Partnership \(Register of People with Significant Control\) Regulations 2016](#) (of application to LLPs) (together, **the Regulations**) which both supplement the SBEEA.

To access the non-statutory guidance as at 22 February (version 6) which sets out what companies and LLPs must do **to identify** and **register** PSCs (**PSC Guidance**), [click here](#)

To access the statutory guidance which explains the meaning of '**significant influence or control**' (**SIOC**) for companies (**SIOC Guidance**), [click here](#).

To access the statutory guidance which explains the meaning of '**significant influence or control**' (**SIOC**) for LLPs, [click here](#).

## *What does the PSC Guidance cover?*

The PSC Guidance seeks to assist companies and their directors, LLPs and their members, and each of their respective advisers, in understanding and applying the PSC Regime. Each of the concepts is explained in more detail later in this briefing. The PSC Guidance deals with:

- ▶ How to **identify** people deemed to have 'significant control'. As companies are under an obligation to take '**reasonable steps**' to identify PSCs, the PSC Guidance explains what this might entail. Specimen notices that must or, in some cases, may be served are contained in the PSC Guidance at annex 3 (for companies) and annex 5 (for LLPs). Where a company is unable to immediately identify its PSCs, the PSC Guidance summarises what steps should be followed.
- ▶ The information which must be entered on PSC registers in relation to a company's PSCs and registrable RLEs. The PSC Guidance contains the various forms of official wording to include in the PSC register. Broadly, a PSC register will contain (i) a statement of the company's progress as regards identifying its PSCs (e.g. it is in the process of identifying them; or it has identified them but is awaiting confirmation on the information to be included) and/or (ii) the relevant information on those PSCs and/or registrable RLEs that it has identified.
- ▶ Further explanatory information on each of the five specified conditions set out in the legislation which determine whether a person has 'significant control' over a company (**PSC Conditions**) and so is considered to be a PSC or registrable RLE.

- ▶ What companies must do when **updating** or removing information on their PSCs. The PSC Guidance highlights that there are some subtle differences to be aware of when updating a company's own PSC register, the central register to be kept at Companies House, or its own register that it has elected to keep at Companies House.
- ▶ What PSC register information is to be made publicly available and what can be **protected from public disclosure**. The PSC Guidance covers how companies should deal with requests for access to its PSC register and when certain information may be suppressed/withheld.
- ▶ Further information on the ability for companies to **elect to hold their own PSC register** at Companies House (how popular this will prove to be remains to be seen).
- ▶ What companies must do when they are **unable** to get hold of the information on their PSCs. It covers the steps to take where information cannot be found and contains guidance on when **restrictions** can be placed on the exercise of rights of relevant shares and what those restrictions mean in practice.

### *What does the SIOC Guidance cover?*

The SIOC Guidance published in relation to companies and LLPs should be used to help determine whether an individual has 'significant influence or control' over an entity. Further details can be found in [Appendix 2](#).

## 2. To whom does the PSC Regime apply?

### *Which entities must maintain a PSC register?*

Before looking at PSC registers and the Guidance in any detail, it is important to understand which entities the PSC Regime applies to. In summary, the following entities **must** maintain a PSC register:

- ▶ UK incorporated companies limited by shares or by guarantee, including dormant companies and community interest companies and unlimited companies;
- ▶ UK Societas Europaea; and
- ▶ UK LLPs.

### *Are there any exemptions?*

Yes, the PSC Regime does **not** apply to:

- ▶ UK listed companies, being those subject to [Chapter 5](#) of the Financial Conduct Authority's Disclosure Rules and Transparency Rules. This includes companies with securities listed on the main market of the London Stock Exchange and quoted on AIM (**DTR 5 issuers**). Note that the unlisted subsidiaries of such companies are **not** exempt and **will** be subject to the regime.
- ▶ UK companies with voting shares admitted to trading on a **regulated market** in another EEA state<sup>1</sup> or on specified markets in Switzerland, USA, Japan or Israel. This is because the Government is satisfied that those companies are subject to sufficiently similar disclosure requirements as DTR 5 issuers.

It should be noted that whilst **overseas entities** may be subject to similar provisions in their own jurisdiction, the SBEEA does not apply to them. However, having an overseas company in a group structure does **not** mean the trail of identifying PSCs stops with that company and the PSC Guidance includes an example group structure (see [figure 8](#) in Appendix 1) which helps to illustrate what needs to happen in these circumstances.

## 3. Actions companies must take to comply with the PSC Regime

Assuming the PSC Regime applies, a company must undertake the following **five** steps:

[Step 1](#). **Identify** people with significant control over the company by taking 'reasonable steps'.

[Step 2](#). **Obtain** and **Confirm** their information.

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<sup>1</sup> Note that the legislation refers to 'a regulated market in an EEA states other than the UK' whilst the PSC Guidance (at paragraph 1.2.4) refers to 'a regulated market in the UK or EEA (other than the UK). We are seeking clarification from BIS.

[Step 3.](#) **Record** details of the PSC and/or registrable RLEs in the company's PSC register.

[Step 4.](#) **Provide** this information to Companies House.

[Step 5.](#) **Monitor/update** the information on the company's own register when it changes and update the information at Companies House when it makes its next 'annual confirmation statement'.

Taking each of these steps in turn.

## [Step 1: Identifying PSCs](#)

The PSC Regime requires a company to take **'reasonable steps'** to identify any PSCs and RLEs. The paragraph below headed "[What does taking 'reasonable steps' to identify PSCs and RLEs involve?](#)" summarises the PSC Guidance on this issue. It is important to remember that even if a company has identified that it does not have any PSCs or registrable RLEs, it will still need to keep a register and make a note of this fact, using the form of wording set out in the PSC Guidance.

### **Giving notice to suspected PSCs, RLEs or those who may know their identity**

A company **must give notice** to anyone whom it either **knows** to be registrable or has **reasonable cause to believe is registrable**. If a company knows or has reasonable cause to believe that another person knows the identity of a PSC or RLE (or they know of someone else who is likely to have that knowledge), it may also give that person notice (for further details see '[What happens if a company cannot immediately identify its PSCs](#)').

A company need not make enquiry where it has already been told about an individual's or legal entity's status and it has all the relevant particulars it needs to enter in the PSC register **and** the information and particulars were either provided by that person or obtained with his/her knowledge. All notices must specify the one month statutory time period for responses.

The requirement to issue notices is widely drafted which means that companies will need to give careful consideration as to whom they need to make enquiry of. The aim of these notices is to obtain:

- ▶ confirmation that the individual meets one or more of the five conditions set out in the legislation (for details see '[Who will be a PSC in relation to a company](#)'); and, if so
- ▶ confirm, correct or supply the 'relevant information' to be added to the PSC register (see [Step 3](#) below).

### [Obligations on PSCs](#)

In certain circumstances, where a person knows, or ought reasonably to know, they are a PSC (or a registrable RLE) they are obliged to notify the company and confirm or provide details of any relevant information subsequently requested. This requirement to supply information applies where a PSC/RLE has **not** already been entered into the PSC register or where they have not received a notice from the company and those circumstances have continued for at least one month. In these circumstances, failure to notify the company and provide details within one month of being a PSC or registrable RLE (thus by 6 June 2016 for PSCs/registrable RLEs qualifying as such on 6 April 2016) is a criminal offence. There are similar provisions dealing with the obligation to notify the company of relevant changes and provide updated information.

It is also an offence for a PSC/RLE (or other addressee) to either fail to respond to a notice issued under the PSC Regime or, in responding, to do so by knowingly or recklessly making false statements. For further details on the notices that companies must or may issue under the PSC Regime, see '[What happens if a company cannot immediately identify its PSCs](#)'

### [Who will be a PSC in relation to a company?](#)

Firstly, and most importantly, a PSC must be an individual<sup>2</sup>. That individual must meet one or more of the following five PSC Conditions such that he/she:

- 1 directly or indirectly owns more than 25% of the shares of the company;
- 2 directly or indirectly holds more than 25% of the voting rights of the company;
- 3 directly or indirectly holds the right to appoint or remove the majority of the directors to the board;
- 4 otherwise has the right to exercise, or actually exercise, significant influence or control; and/or

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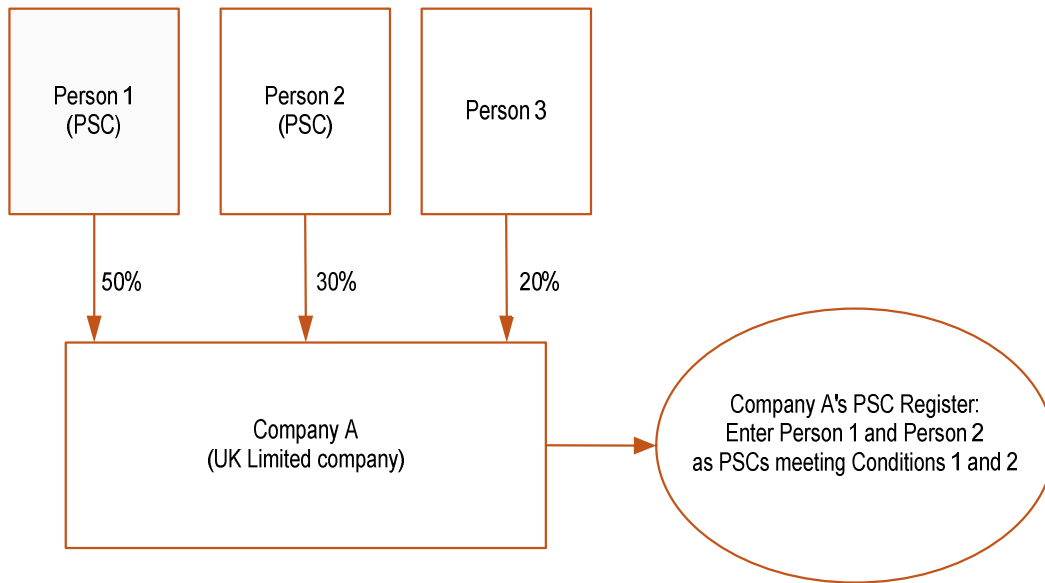
<sup>2</sup> Note that local or national government or government departments, or a corporation sole or an international organisation whose members include two or more countries, territories or their governments, are the only exception to this principle.

- 5 holds the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm which is not a legal entity, but which would itself satisfy any of the first four conditions if it were an individual.

Since individuals can be PSCs of a company where they hold their interests **indirectly**, it is important to understand the provisions around indirect ownership. This is considered in more detail in the paragraph headed '[Legal entities: identifying and entering them in the PSC register](#)' below. Note that the [Limited Liability Partnership \(Register of People with Significant Control\) Regulations 2016](#) set out the conditions to be met for a person to have significant control in the context of an LLP (the detail of which is outside of the scope of this briefing).

The PSC Guidance provides some helpful illustrations of when an individual is, or is not, a PSC. Examples, including some that have been extracted from the PSC Guidance, are set out below:

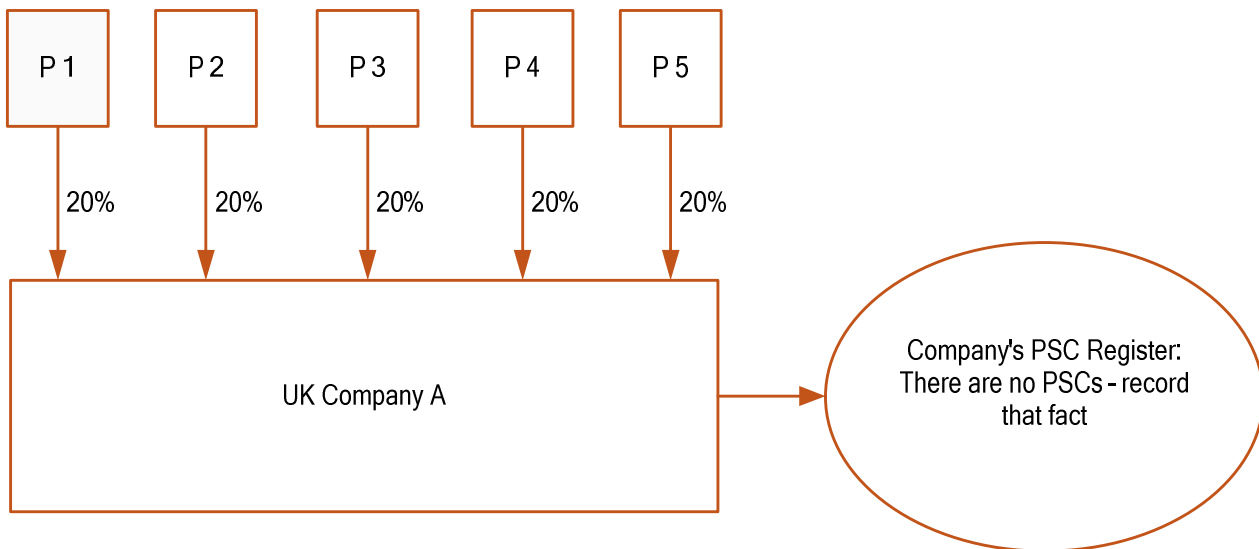
Figure 1 (Adapted from example in PSC Guidance)



Person 1 and Person 2 are both PSCs of Company A as each own more than 25% of the shares in Company A and so satisfy PSC Condition 1. Assuming one vote per share, each holds more than 25% of voting rights in Company A, so also satisfying PSC Condition 2.

Person 3 does not hold sufficient shares/votes to satisfy PSC Conditions 1 or 2 - unless other arrangements exist between the shareholders that may satisfy these the conditions (see Appendix 1). This is also assuming Person 3 does not satisfy PSC Conditions 3 or 4 regarding significant influence or control. Consequently, in these circumstances, Person 3 will not be a PSC. Condition 5 is not relevant here as there is no trust or firm involved.

Figure 2 (Extracted from the PSC Guidance)



None of P1 to P5 satisfy the PSC Conditions as none hold enough shares or voting rights. It is assumed for the purpose of this example that none can remove majority of the directors or otherwise exercise significant influence or control. The register must record that Company A has no PSCs.

### Legal entities: identifying and entering them in the PSC register

Given that a PSC is, by definition, an individual (save for very limited exceptions referred to in the PSC Guidance) what does this mean for companies where some or all of its shares are owned or controlled by a legal entity (e.g. a subsidiary in a typical group structure)? What do those companies enter into their PSC registers?

In these cases, the company **must enter that legal entity** in its PSC register **if**, in relation to that company, it is both **relevant** and **registrable**. These entities are referred to in the legislation as 'registrable relevant legal entities' (**registrable RLEs**). Where the PSC's interest is held through a registrable RLE, it is the registrable RLE that should be entered into the Company's PSC register. One would then look to the registrable RLE's PSC register to obtain information about those PSCs which may exist further up the chain of company ownership.

Consequently, some companies' PSC registers will contain details of:

- (i) **individuals only** (see, for example, the PSC register that "UK Company C" in [figure 5](#) and that "Company X" in [figure 9](#) must keep);
- (ii) **registrable RLEs only** (see, for example, the PSC register that "UK Company A" in [figure 3](#), "UK Company B" in [figure 4](#), "UK Company A" in [figure 7](#) and companies "Y" and "Z" in [figure 9](#) must keep); or
- (iii) **both PSCs and registrable RLEs** (see, for example, the PSC register that "Company A" in [figure 6](#) must keep).

This means that, as well as identifying PSCs, companies must also identify any RLEs. This regime is designed to allow groups to avoid multiple disclosures up the chain of ownership.

### When is a legal entity 'relevant' and 'registrable'?

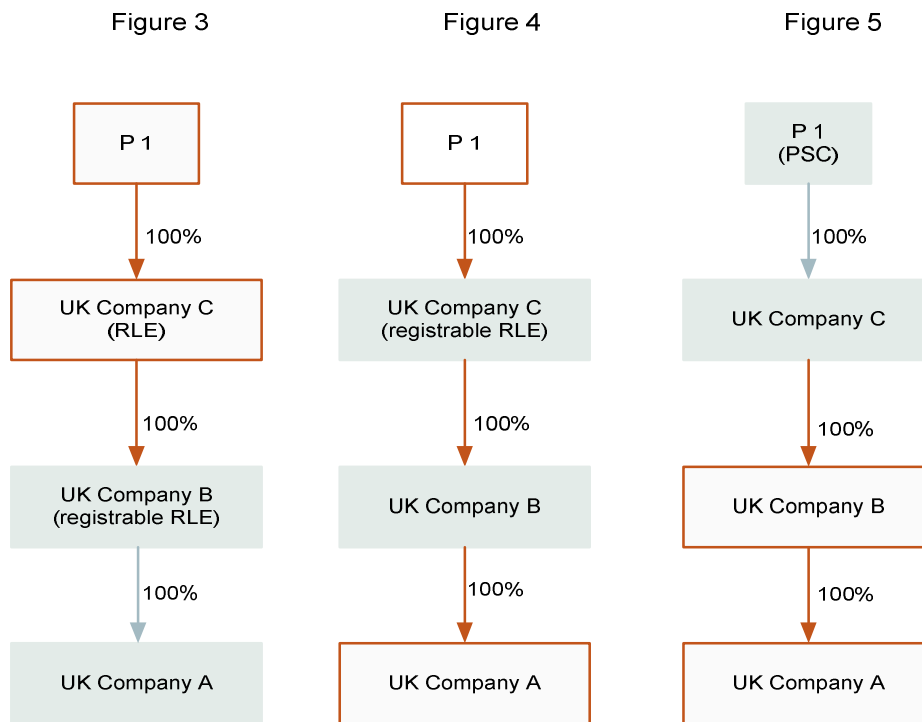
A legal entity is **relevant** in relation to a company if it meets **one or more** of the five PSC Conditions (see above) **and** it is itself also subject to transparency obligations. For example:

- ▶ it holds its own PSC register; or
- ▶ it is a DTR 5 issuer; or

- ▶ it has voting shares admitted to trading on a regulated market in the UK<sup>3</sup> or EEA or on specified markets in Switzerland, USA, Japan and Israel.

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

Example of PSCs and/or RLEs being noted in PSC registers (Extracted from the PSC Guidance)



**Figure 3** illustrates that Company B should be entered into Company A's PSC register as it is a registrable RLE. Company B holds more than 25% of the shares of Company A and, as a UK company, Company A is required to maintain its own PSC register. Thus, Company A need not look any further up the chain as regards what it must put in its PSC register - whilst Company C is an RLE, it is not 'registrable' because it is not the **first** RLE sitting above Company A. In addition, as Company A is 100% owned by Company B (which is an RLE), it does not need to consider if there are any other individual PSCs or RLEs.

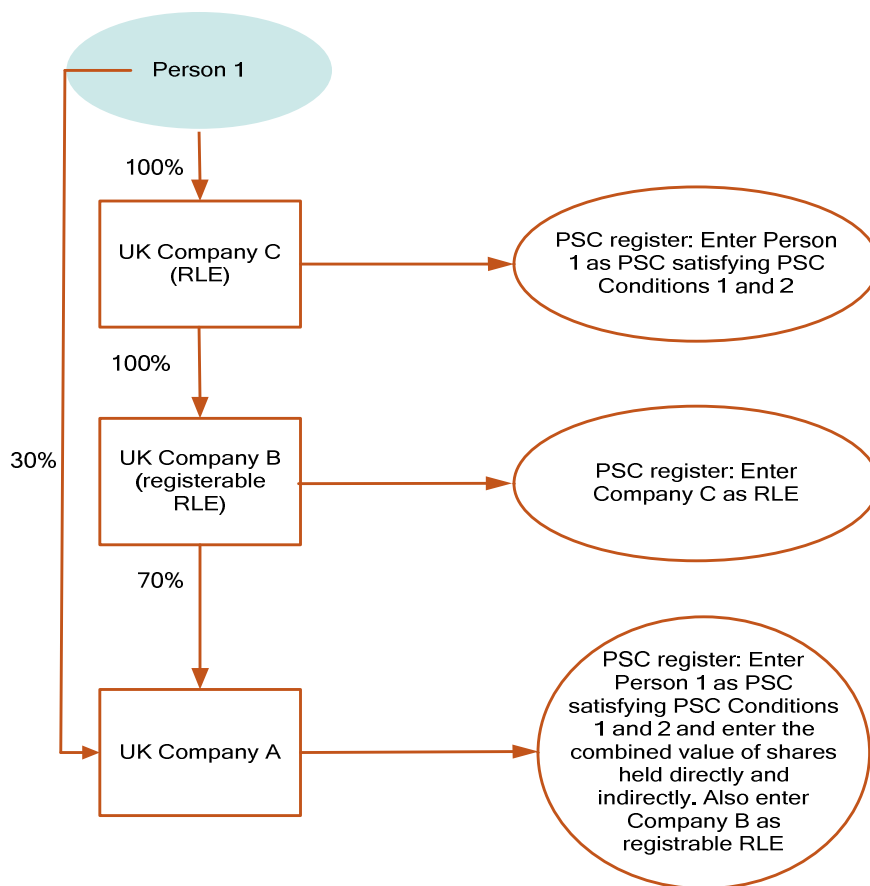
**Figure 4** illustrates that Company C should be entered into Company B's PSC register for the same reasons as set out in figure 3. There is no requirement to enter P1 in Company B's register even though that individual holds shares in Company B indirectly - Company B is 100% owned by Company C (which is an RLE) and, as such, Company B does not need to consider if there are any other individual PSCs or RLEs.

**Figure 5** illustrates that P1 should be entered into Company C's register as its PSC as that individual satisfies one or more of the five PSC Conditions.

<sup>3</sup> See footnote 1 above

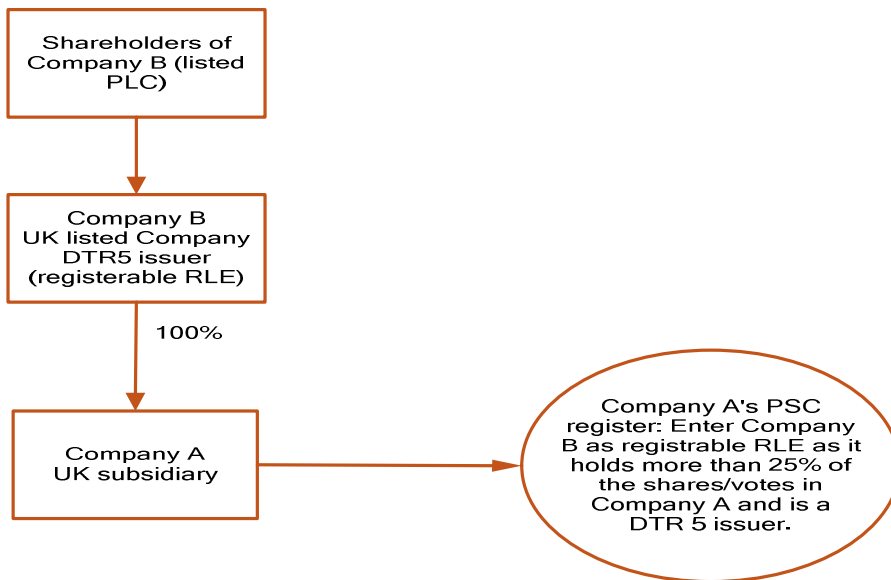


Figure 6 (Adapted from the PSC Guidance and notes expanded upon)



**Figure 6** above differs from the examples at figures 3, 4 and 5 above in that Company A is not 100% owned by Company B and Person 1 also holds shares directly in Company A. It illustrates that Company B should be entered into Company A's PSC register as it is a registrable RLE as it holds more than 25% of the shares and, as a UK company, is required to maintain its own PSC register. However, in addition to this, as Company A is not 100% owned by Company B, Company A should also consider if there are any other RLEs or individual PSCs. As Person 1 holds 30% of the shares of Company A directly, that individual should also be entered into Company A's PSC register as satisfying PSC Conditions 1 and 2 (further details of the PSC Conditions are set out in [Appendix 1](#)) and the total number of shares held directly and indirectly by Person 1 (i.e. 100%, being 30% directly and 70% indirectly held) should be used to calculate the percentage band that should be recorded in the PSC register (for further details on the bands see '[What 'Relevant Information' on PSCs must be added to the register?](#)'). The final form PSC Guidance has amended the original example above so that Person 1 holds 20% directly and 80% indirectly, so as to further illustrate that direct interests, when cumulative with indirect interests, can meet the PSC conditions. Importantly, in certain circumstances (see '[Obligations on PSCs](#)'), there is an obligation on Person 1 to inform Company A that they must be entered into its PSC register.

Figure 7 (Additional example)



**Figure 7** above illustrates that that Company B should be entered into Company A's PSC register. It is a registrable RLE holding more than 25% of the shares and, whilst it does not need to maintain its own PSC register as it is a DTR 5 issuer, the fact it is a DTR 5 issuer means it falls within the definition of an RLE and is registrable as the first company up the chain of ownership from Company A.

### *What does taking 'reasonable steps' to identify PSCs and RLEs involve?*

Examples of the steps a company should take are included in the PSC Guidance – the most significant are set out at [Appendix 1](#). Whilst the PSC Guidance confirms that companies need not take all of the steps suggested, it does point out that there needs to be a good reason should any not be followed. There will, of course, be circumstances where steps are not applicable. The PSC Guidance also confirms that the list of steps is not definitive nor exhaustive. Consequently, a company should follow any leads, even if not listed in the PSC Guidance, that a reasonable person would follow where it knew what the company knows. Failure to take reasonable steps is a criminal offence.

For companies with simple ownership and control structures, it should be relatively easy to work out who is a registrable PSC or a registrable RLE. However, those with more complex structures will need to consider carefully the steps to take. Broadly, the PSC Guidance states that companies should:

- ▶ consider all documents/information available to identify if it might have a PSC;
- ▶ consider interests held by individuals, legal entities, trusts and firms; and
- ▶ consider if there are any joint arrangements or rights held through a variety of means that might ultimately be controlled by the same person.

We have set out in [Appendix 1](#) what the PSC Guidance suggests companies should consider when identifying whether anyone satisfies each of the PSC Conditions. [Appendix 2](#) contains information drawn from the statutory guidance on the meaning of SIOC.

## Step 2: Obtain and Confirm the information

### *Having identified a PSC, what happens next?*

The PSC Guidance sets out what a company must do once it has determined if it has one or more PSCs. This includes obtaining 'relevant information' (see '[What 'Relevant Information' on PSCs must be added to the register?](#)') and ensuring that information is 'confirmed' before entering it into the PSC register.

The PSC Guidance sets out how information can be 'confirmed' or may be deemed 'confirmed', including when it has been supplied by the PSC themselves; supplied with the PSC's knowledge; where, on request, the PSC has confirmed it is correct; and where the company holds previously confirmed information and has no reason to believe it has changed.

### *Having identified a registrable RLE, what happens next?*

The PSC Guidance sets out what a company must do once it has determined it has one or more registrable RLEs. This includes obtaining information which must be accurate and complete before being entered into the PSC register. Note that this information does

not need to be 'confirmed' in the same way as for PSCs (see ['What is the Relevant Information on Registrable RLEs that must be added to the register?'](#).)

### *What happens where a company does not have the information needed or cannot get it confirmed?*

A company must serve a notice (by email or post) on the individual from whom, or legal entity from which, it is seeking the information. Further details can be found in the PSC Guidance which contains specimen notices.

### *What happens if a company cannot immediately identify its PSCs?: Notices and restrictions on shares*

There are a number of notices that companies may or, in certain circumstances, must give under the PSC Regime. All notices issued under the PSC Regime must be responded to within one month. Examples are included in the final form PSC Guidance. In overview:

- ▶ a company **must** give notice to anyone it knows or has reasonable cause to believe to be a registrable person/PSC or registrable RLE (a '**section 790D notice**') unless it already knows their identity and has the information it needs (and such information has been provided by the registrable person directly or with their knowledge);
- ▶ a company **may** give notice to anyone it knows, or has reasonable cause to believe knows, the identity of a PSC, legal entity, trust or partnership, or knows someone who may have that knowledge (e.g. lawyers, accountants, banks, trust and company service providers); family members; business partners; or known associates (**also known as a 'section 790D notice'**). It is worth remembering that section 790D notices seek **new** information;
- ▶ a company **must** give notice to a PSC or registrable RLE that has been entered into its PSC register if it knows or has reasonable cause to believe a 'relevant change' has occurred (e.g. they are no longer a PSC or RLE or the information about them has changed (a '**section 790E notice**'). Thus, section 790E notices seek confirmation of **changes** to information;
- ▶ a company **may** give a notice (a '**warning notice**') to a person who, or entity which, has not responded to a section 790D or section 790E notice within the required time period of one month where they have an interest in the shares which are the subject of the notice. That warning notice should include a copy of the section 790D or section 790E notice and inform the addressee that the company is proposing to issue them with a '**restrictions notice**' (see below). The warning notice must state the company will consider reasons for the failure to respond and must explain the effect of a subsequent restrictions notice;
- ▶ a company **may** issue a restrictions notice when a section 790D or section 790E notice has not been complied with after one month of the date of the warning notice having been given and the company has not received a valid reason for non-compliance.

Where a company is obliged to give a section 790D or section 790E notice and fails to do so, it, and every officer, will be committing a criminal offence (punishable with a fine or up to 2 years' imprisonment). Anyone breaching a restrictions notice knowing that the interest is subject to restrictions (e.g. by disposing of the shares or voting them) will also commit a criminal offence.

### *Does a company need to impose restrictions on the shares where no response is received?*

Whilst there is no legal requirement to impose restrictions on those failing to comply with a warning notice, companies should consider whether it is appropriate to impose restrictions in an attempt to illicit a response and obtain missing information so as to meet its legal requirement to take all 'reasonable steps'. Such restrictions could include non payment of dividends; disenfranchising voting rights; or preventing the sale or transfer of those shares by rendering any such transactions void. The PSC Guidance goes into more detail on the potential restrictions and their impact and confirms that no rights can be exercised in relation to, nor derived from, any shares where a restriction is in place until the restriction is lifted. Where a company decides not to impose restrictions, it would be good practice to document the reasons for that decision.

Imposing restrictions may not necessarily be the end of taking reasonable steps and the PSC Guidance confirms that if there are other lines of investigation or other reasonable steps a company can take, it must do so until all PSCs and registrable RLEs are identified or there is nothing more the company can reasonably do. There is also a recommendation in the PSC Guidance that companies keep a record of the steps they have taken when undertaking 'reasonable steps'.

Before imposing restrictions, each step of the notices process summarised above must be followed. Whilst in the process of issuing the various notices, a company should continually update its PSC register to record the 'current status' of investigations using the official wording from the PSC Guidance.

Companies also need to carefully consider if relevant interests attaching to the shares can be restricted, as any restrictions must not have an unfair effect on third parties. Indeed, interests which may be the subject of restrictions do **not** have to meet the test of PSC Conditions 1 to 5 to be restricted - companies can restrict the interest of anyone who fails to respond to requests for information, even if their interest would not make them a PSC. However, if the person or entity has given a valid reason for not responding, the company should not issue a restrictions notice. The guidance contains examples of what may, and may not, be valid reasons for a failure to respond to a notice.

### *How does a company impose restrictions?*

Restrictions are imposed by the company sending a restrictions notice informing the individual or legal entity that restrictions are in place as from the date of the notice. A copy of the warning notice sent previously must also be included. The PSC Guidance also details when restrictions must be lifted, how this is done and what happens in these circumstances, e.g. in relation to the paying of dividends.

When restrictions have been applied and still no information is forthcoming and the restrictions in place are impacting on the operation of a company, the company itself may apply to court for an order enabling it to sell the restricted interest.

Given that when restrictions are in place a restricted interest cannot be sold or transferred by the holder and any agreement to do so would be void, due diligence on whether restriction notices have been issued (and, if so, whether they have been lifted) should be undertaken where an acquisition is in contemplation. Due diligence on the existence and accuracy of PSC registers of a target group will also become the norm in mergers and acquisitions, in the same way as it is in relation to the other statutory registers.

## Step 3: Record PSC details in the company's PSC register

### *Is there any official wording to enter into the PSC Register?*

The wording to be included in the PSC register is set out in the PSC Guidance. The first point to note is that a PSC Register must **never** be empty. Even when a company is in the process of taking 'reasonable steps' to ascertain whether or not it has a PSC or RLE, this fact must be recorded. The prescribed wording to be used to reflect the progress a company is making in identifying its PSCs/RLEs and obtaining relevant information from them contemplates various scenarios, including: (i) when PSCs and RLEs have been identified; (ii) when companies have no PSCs or registrable RLEs; (iii) when there are unidentified PSCs; (iv) when there are unconfirmed particulars; (v) when the company is still in the process of taking reasonable steps; and (vi) where notices (e.g. section 790D and 790E notices) have been issued. All entries should be dated.

In addition to the above, the register must include the relevant information on the registrable PSCs and RLEs. This is set out in the legislation and the PSC Guidance as is summarised below. Note that where any of the status statements cease to be true, the company must note that fact in its PSC register together with the date on which the statement ceased to be accurate. For example, where the PSC register contains a statement: *'The company has given notice under section s790D of the Act that has not been complied with'*, and the company then receives a late response with all requested information, it must update its register with a new statement (dated) reflecting the position as follows: *'The notice has been complied with after the time specified in the notice'*, together with the PSC's information.

### *What 'Relevant Information' on PSCs must be added to the register?*

Having identified a PSC, a company needs to obtain, confirm and enter the following details of each PSC:

- ▶ Name, date of birth and nationality.
- ▶ Country, state (or part of the UK) where the PSC usually lives.
- ▶ Service address and usual residential address (unless same as service address).
- ▶ The date that the individual became a PSC. Note that for companies incorporated prior to the regime coming into force, the date to be recorded will be 6 April 2016.
- ▶ Any restrictions on disclosing the PSC's information to the public.
- ▶ Which of the five conditions the PSC meets. This will dictate which wording needs to be entered, as set out in Annex 2 of the PSC Guidance. For PSC Conditions [1](#) and [2](#) this means including the band that the PSC's shareholding and voting rights fall within. Percentage holdings are divided into three broad bands and exact percentages need not be stated. Following consultation, it was felt sufficient to be able to identify majority and minority holdings and to show if a shareholder was able to pass a special resolution. For example, in relation to PSC Condition [1](#), one of the following statements must be included:

- ▶ The person holds, directly or indirectly, more than 25% but not more than 50% of the shares in the company; or
- ▶ The person holds, directly or indirectly, more than 50% but not more than 75% of the shares in the company; or
- ▶ The person holds, directly or indirectly, 75% or more of the shares in the company

### *What information on registrable RLEs must be added to the register?*

Having identified a registrable RLE, a company will need to obtain and enter these details in its PSC register:

- ▶ Name of legal entity and registered office or principal office address.
- ▶ Legal form of entity and governing law.
- ▶ If applicable, any register in which the RLE appears and its registration number (e.g. Charity Commission register or, if overseas, central public register of companies in that country).
- ▶ The date it became a registrable RLE in relation to the company. Note that for companies incorporated prior to the regime coming into force, the date to be recorded will be 6 April 2016.
- ▶ Which of five conditions for being an RLE the company meets. Again, the official wording, as set out in the PSC Guidance, must be used.

## Step 4: Provide information to Companies House

Companies should be aware that they need to create their own PSC register from 6 April 2016 and, from that date, it can be inspected by anyone with a 'proper purpose' (see ['Access to a company's PSC Register'](#)). The PSC information will also need to be filed at Companies House as follows:

### *Companies incorporated on or after 30 June 2016*

Companies incorporated on or after 30 June 2016 should provide the required information to Companies House for inclusion in the central public register via a Statement of Initial Significant Control on incorporation. Failure to do so is a criminal offence.

### *Companies already in existence prior to 30 June 2016*

Those companies that currently have an annual return date of 30 June will be expected to comply with the new requirements as from 30 June 2016. Thus, they will need to have conducted their PSC enquiries in a timely manner in order to disclose the information on their new 'check and confirm statement' <sup>4</sup> on 30 June. Those companies with an annual return date falling soon after 30 June will also need to start enquiries in sufficient time to meet the these filing requirements.

Clearly, companies which do not need to "check and confirm" until later on in the year, will have longer to file their PSC information with Companies House but will still need to maintain their own register from 6 April. In addition, existing companies will need to ensure that their internal systems (such as Blueprint) are upgraded.

## Step 5: Updating and monitoring of information

The requirements for updating information differ as between updates to a company's own PSC register and those to the central register maintained at Companies House. Updates to a company's own PSC register need to be made as soon as reasonably possible, whereas updates to the central register can be made annually as part of the 'check and confirm' process. Changes to information on PSCs must be confirmed before being added.

From 30 June 2016, private companies and LLPs can elect to keep their own PSC register at Companies House rather than at their registered office.

Given that a company will need to record changes in its PSC register as a result of an individual or legal entity becoming or ceasing<sup>5</sup> to be a PSC or an RLE respectively, or where there is a change in the percentage shareholding or voting rights that causes that person to move into a different band, companies should be alert to these requirements in the context of undertaking share buybacks or reductions of capital.

<sup>4</sup> Note that the new 'check and confirm regime', replacing annual returns, comes into force on 30 June 2016,

<sup>5</sup> Companies must keep information about its PSCs on its register for ten years from the date that they cease to be a PSC.

## 4. Public and protected information

### *Access to a company's PSC register*

A company's own PSC register needs to be accessible to the public from 6 April 2016, which means keeping it either at the company's registered office or at another location notified to Companies House. Anyone with a 'proper purpose' may have free access to it and there is a maximum £12 fee which can be charged by a company for making copies. There are a number of reasons why someone may approach a company to seek access to its PSC register rather than checking the public register at Companies House, not least for the fact that the company's own register could be more up to date (see above).

The PSC Guidance summarises what must be provided in response to a request to access a PSC register as well as the time periods in which a company must respond. The guidance also sets out what a company can do if it suspects a request has not been made for a 'proper purpose'. Broadly, this involves applying to court in the same way a company would in relation to disputed access to its register of members. 'Proper purpose' is intended to be interpreted widely given that the purpose of the PSC Regime is to provide transparency around who controls companies - having accessible PSC registers will assist in achieving this aim.

The PSC information that appears on the publicly available central register (via an annual confirmation statement or statement of initial significant control) will not include a PSC's residential address (unless provided as a service address) nor day of birth.

Whilst the PSC information that appears on a company's own PSC register will include a PSC's residential address and full date of birth, companies should be aware that the residential address must not be provided to anyone requesting access to or copies of the register (unless a residential address has been provided as a service address). All information will be available to law enforcement agencies and residential addresses can be made available to credit reference agencies (subject to the exemption discussed below).

### *Suppressing information*

In exceptional circumstances, a company may: (i) suppress all information on a PSC ('secured information'); and (ii) prevent residential addresses being given to credit reference agencies. For the protection regime to apply, there needs to be a serious risk of violence or intimidation to the PSC as a result of the activities of the company. Companies will still be required to fulfil all other PSC obligations and suppressed information will still be available to law enforcement authorities.

The PSC Guidance sets out the categories of protection available and how such applications for suppression can be made. For further information, see [Annex 1](#) of the PSC Guidance. Applications for each category of protection can be made from April 2016. Note that when a protection application is made by a company or LLP on an individual's behalf, that individual must have consented to them doing so.

## 5. Conclusion

For companies with simple corporate structures, identifying their PSCs and registrable RLEs should be fairly straightforward. For companies with more complex shareholding structures, the process may be significantly more time consuming. In both cases, preparations and investigations should start now given that, on 6 April 2016, PSC registers will be open to inspection and will need to contain at least a confirmatory statement that the company is in the process of taking reasonable steps to identify its registrable persons to the extent that it has not done so already.

# Appendix 1: PSC Conditions

This Appendix 1 contains a summary of some of the "reasonable steps" that the PSC Guidance suggests companies should consider to ascertain whether any of the PSC Conditions are met.

## *PSC Condition 1*

*What companies should consider when identifying whether anyone holds (directly or indirectly) more than 25% of the shares*

In these circumstances, companies should:

- ▶ Review the register of members, articles of association and statement of capital.
- ▶ Include all issued shares in the calculation and exclude those never issued or bought back and cancelled.
- ▶ Use nominal (par) value when calculating percentages.
- ▶ Consider the PSC Guidance carefully where any shares are held by nominees; where there are joint interests; joint arrangements; indirect ownership; security over the shares; interests held through LPs; rights controlled by another; or where rights are exercisable only in limited circumstances. For further information, see [Other issues to consider when looking at whether someone satisfies the PSC Conditions](#).

## *PSC Condition 2*

*What companies should consider when identifying whether anyone holds (directly or indirectly) more than 25% of the voting rights*

In these circumstances, companies should:

- ▶ Review the register of members and articles of association. The PSC Guidance underlines the fact that while it is usual to see one vote per share, companies should check for different classes with different voting rights; voting rights exercisable only in certain circumstances; or securities with no voting rights or weighted voting rights. Voting rights attached to shares that have been bought back and are held as treasury shares should not be included.
- ▶ Identify any shareholder agreements which might result in shareholdings of more than 25% and whether voting patterns suggest some parties (e.g. members of the same family) might be acting together.

## *PSC Condition 3*

*What companies should consider when identifying whether anyone has the right (directly or indirectly) to appoint or remove the majority of the directors*

In these circumstances, companies should:

- ▶ Review any provisions in the articles of association or other covenants or agreements which concern the appointment or removal of directors holding the majority of votes at board level. This should be simple to calculate if each director has only one vote at board meetings.
- ▶ If different directors have different voting rights at board meetings (on all or most matters), or someone has a casting vote, then consideration should be given to whether anyone has right to appoint/remove directors who could carry the majority of board votes on all/substantially all matters.

## *PSC Condition 4*

*What companies should consider when identifying whether anyone has SIOC*

Note that if control is exercised via any of PSC Conditions 1 to 3 above, there is no need to look at PSC Condition 4.

To identify whether anyone has the right to exercise, or actually exercises, SIOC, a company should review the SIOC Guidance which includes a non exhaustive list of what amounts to 'significant influence' or 'control'. As well as giving examples, the SIOC Guidance also lists a number of excepted roles (previously referred to as 'safe harbours') i.e. circumstances that do **not** amount to SIOC. For further details see [Appendix 2](#).



## PSC Condition 5

### *What companies should consider when identifying whether anyone has SIOC over a trust/firm*

PSC Condition 5 will also only apply in limited circumstances. If control is exercised via any of PSC Conditions 1 to 4, there is no need to look at PSC Condition 5.

A company should consider whether anyone who meets PSC Conditions 1 to 4 is a trust or firm. If they are, it should also consider the individuals or legal entities who control the activities of the trust/firm and review the range of factors set out in the SIOC Guidance to determine whether they have SIOC over the firm/trust.

If an individual has SIOC over the activities of a trust/firm (which would mean it constitutes a PSC of the company if it were an individual), then the company should enter that person in its PSC register. If a registrable RLE controls a trust/firm, then the company should enter the RLE into its PSC register. If the legal entity is not an RLE (see [figure 8](#)), then the company will need to explore further up the chain of ownership.

Trustees of a trust should be entered into a PSC register where the assets of the trust include ownership/control of the company that would meet any of PSC Conditions 1 to 4. If someone other than trustees, e.g. a settlor or beneficiary, has the right to exercise SIOC over a trust/firm, then one should add them as satisfying PSC Condition 5. For further details see pages 7 and 8 of the SIOC Guidance, [click here](#).

### *Other issues to consider when looking at whether someone satisfies the PSC Conditions*

Companies should consider whether shares are held by nominees; are held jointly; are subject to any joint arrangements; have security granted over them; are held by an individual indirectly; are held through a limited partnership; have rights controlled by another; have rights exercisable only in limited circumstances; or are owned by corporations sole, national or local governments or international organisations.

The PSC Guidance includes further details on each of these circumstances, including the following:

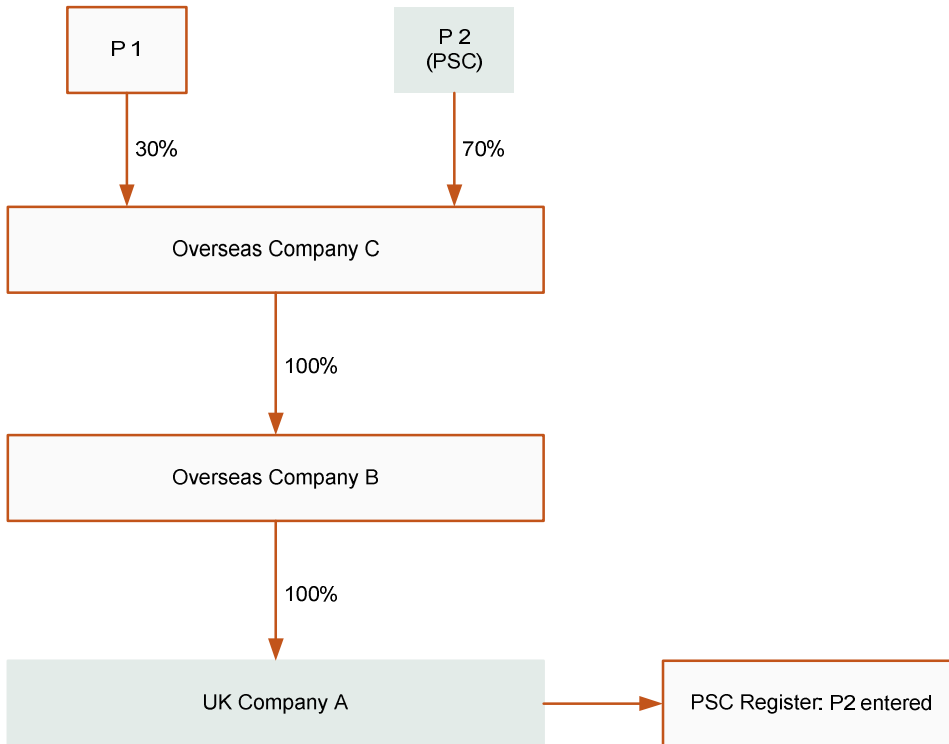
- ▶ **Nominees:** these should be treated as if shares/rights are held by the person for whom the nominee is acting. If that person is a PSC, then the company should enter them into the register. If the nominee is acting for a legal entity, then the company should treat that legal entity as it would when checking if the RLE is registrable.
- ▶ **Joint interests:** these should be treated as if each joint holder holds the total number of shares held by all of them: e.g. A and B hold 30% of the shares jointly - each of A and B must be **separately** entered on the PSC register.
- ▶ **Joint arrangements:** each person with such an arrangement is deemed to hold the total number of shares held by them: e.g. two or more people arrange to exercise all or substantially all of their rights arising from their shares jointly in a way which is pre-determined – where the arrangement covers more than 25% of the shares, each party to the arrangement must be added **separately** to the PSC register.
- ▶ **Rights attached to shares held by way of security:** these should be treated as being held by the **owner** where, apart from the right to exercise the rights for the purpose of preserving or realising the value of the security, the owner has retained control over the rights or the lender is obliged to exercise the rights in the owner's interest.
- ▶ **Interests held through a limited partnership without separate legal personality:** it is the general partners who should be entered in the PSC register as a limited partner will not ordinarily meet the PSC Conditions 1 to 4 by virtue of being a limited partner.
- ▶ **Indirect ownership<sup>6</sup>:** where a legal entity holds the shares or rights and someone has a majority stake in that legal entity, that person need not be entered into the PSC Register unless the entity in which they hold their majority stake is **not** an RLE. Reference to a majority stake here is important and a company should look at the ownership and control of that legal entity to identify individuals or RLEs who have a majority stake: e.g. hold majority of votes; exercise or have the right to exercise dominant influence; have a right to appoint/remove a majority of board. It may be necessary to keep looking up the chain until you reach an individual or RLE with a majority stake and then register them or, if there PSC/RLE exists, state that fact in the PSC register. [Figure 8](#) illustrates how indirect ownership is dealt with:

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<sup>6</sup> Note that the [Companies Act 2006 \(Amendment of Part 21A\) Regulations 2016](#) (which is to come into force on 6 April 2016) has been published to correct an error in the legislation which, as currently drafted, would mean that if there is a legal entity in the chain that is **not** an RLE (e.g. it is an overseas company which does not maintain a PSC register) and there are a number of RLEs higher up the chain, the company is required to register all of those RLEs in its PSC register. As this was **not** the government's intention, this secondary legislation will amend the provisions to allow the company to record only the first RLE so as to avoid duplication of entries. As the PSC Guidance was drafted to reflect the government's intention, no changes to the Guidance have been required.



Figure 8 - Example of indirect ownership where none of the legal entities are RLEs (Extracted from the PSC Guidance)



Company A cannot put Company B on its PSC register even though it owns 100% because it is an Overseas Company – it is not an RLE as it is not required to keep a PSC register. Company A must look instead at the ownership and control of Company B. Although Company C has a majority stake in Company B, again it is not an RLE as it is an overseas company and so cannot be entered in the PSC register. Company A must therefore look at ownership and control of Company C. P1 (holding 30%) does not have a majority stake in Company C and so is disregarded. P2 has a majority stake (holding 70%) in Company C so is a PSC in relation to Company A and should be entered into Company A's PSC register.

Figure 9 (additional example illustrating indirect ownership)

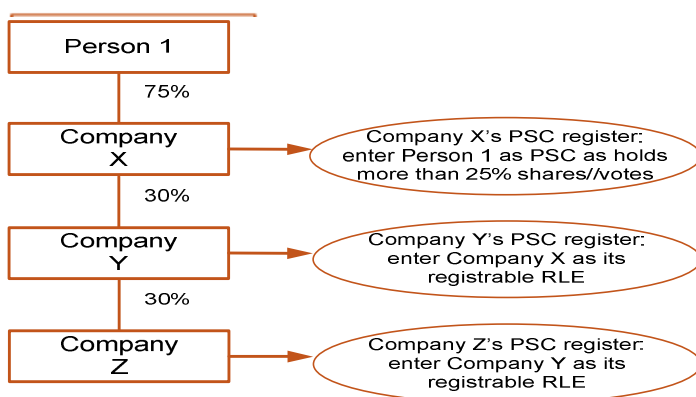


Figure 9 illustrates that Company X should enter Person 1 in its PSC register. Whilst Person 1 is also a PSC of Company Y (i.e. by holding shares indirectly via a majority interest in Company X), Person 1 is not 'registrable' as Company X is Company Y's registrable RLE and therefore it is only Company X that should be recorded in Company Y's PSC register. Company Z should record Company Y in its PSC register as its RLE. Person 1 is not a PSC of Company Z because Company X does not hold a majority interest in Company Y (i.e. the chain has been broken at this point (assuming no dominant influence)). Person 1 does not have a registrable indirect holding in Company Z.

However, if Company X held a majority interest in Company Y (e.g. 70%), then Person 1 would be a PSC of Company Z but, even so, would not be registrable in Company Z's PSC register as Company Y is Company Z's registrable RLE. Someone looking at Company Z's PSC register would need to work through the shareholdings and percentages/nature of holdings to work out who is or is not a PSC given that, as these two scenarios illustrate, Company Z's register would look the same in both instances.

An individual will not be entered into the PSC register of a company where the legal entity in which they hold their indirect interest is a registrable RLE (as seen above). However, where that legal entity is **not** an RLE (e.g. Company B and Company C in [figure 8](#) above) then the individual will need to be entered into that company's PSC register e.g. as for P2 in Company A's register in [figure 8](#). Examples of legal entities which will **not** be an RLE are:

- ▶ a UK legal entity which is **not** a company, an LLP nor an SE (e.g. Scottish limited partnership); and
- ▶ a non-UK incorporated company, or other legal entity that does not meet one or more of the five PSC Conditions **and** either does **not** hold its own PSC register; is **not** a DTR 5 issuer; **or** does **not** have voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or on specified markets in Switzerland, USA, Japan and Israel.

## Appendix 2: Significant influence or control

### *Significant influence or control ('SIOC') conditions*

In relation to the SIOC Conditions (i.e. PSC Conditions [4](#) and [5](#)), the government has confirmed that these only need to be considered where PSC Conditions [1](#) – [3](#) have **not** been satisfied. When determining whether someone has SIOC, it does not matter whether the person actually exercises SIOC – of sole relevance is the fact that they have the right to do so. Understanding the provisions of the company's articles of association and the rights attaching to its shares, together with reviewing shareholder or other agreements, will play an important part of this analysis.

'**Control**' is defined as having the power to direct the company's, firm's or trust's activities. The SIOC Guidance does not make it clear if this means 'all' policies and activities. '**Significant influence**' focuses on the ability of a person to ensure a company, trust or firm adopts the activities they want it to.

The SIOC Guidance also confirms that influence or control does not need to be directed towards financial and operating policies nor be exercised with a view to gaining any economic benefit.

### *Examples of what may or may not constitute a right to exercise SIOC*

In relation to companies, having **absolute decision rights** ('absolute' here means where a person can make the decision without reference to, or in collaboration with, anyone else) over decisions related to the running of a business are all indicative of SIOC. For example:

- ▶ adopting or amending a business plan;
- ▶ changing the nature of a company's business;
- ▶ taking any additional borrowing from lenders;
- ▶ appointing or removing the CEO;
- ▶ establishing or amending any profit sharing, bonus or incentive plans for directors or employees; or
- ▶ granting options under a share option or other share incentive based scheme.

Also, having **absolute veto rights** over decisions related to the running of a business are also all indicative of SIOC. For example:

- ▶ adopting or amending a business plan;
- ▶ taking any additional borrowing from lenders (except as minority protection as described below).

The SIOC Guidance flags that if a person has absolute veto rights in place in relation to certain fundamental matters so as to protect their minority interest in the company, that, on its own, is unlikely to be SIOC. Thus, vetoes in place to protect minority holdings from amendments to the articles, dilution of their shares, the incurring of borrowing over and above agreed lending thresholds, fundamental changes to the nature of the business, or winding up the company may not, of themselves, result in the holder having SIOC.

By contrast, having absolute veto rights over the appointment of the majority of directors who hold a majority of the voting rights at board meetings is likely to be seen as having SIOC.

The SIOC Guidance states that SIOC is not likely to exist where absolute decision rights or vetoes derive solely from being a prospective buyer or seller of a company for a short period of time e.g. pending a competition clearance.

In relation to a trust or firm, a person has the right to exercise SIOC if they have the right to direct or influence the trust's activities, where they have absolute power to appoint or remove trustees (except through application to the courts), a right to direct the distribution of funds or assets or investment decisions, and power to amend the trust deed or revoke the trust. Trustees of the trust are likely to have SIOC as will beneficiaries or settlers who are actively involved in directing the activities of the trust.

### *Examples of what may or may not constitute actually exercising SIOC*

When looking at these situations, all of the relationships that a person has with a company or any individuals who manage a company should be considered. The question to ask is: does that person actually exercise SIOC when looking at the cumulative effect of these relationships and interactions? For example:

- ▶ A director who owns key assets/has key relationships pertinent to the running of the business and uses it to influence decision making is likely to be exercising SIOC.
- ▶ Where a person influences a significant section of the board but is not themselves a director, or a person who is regularly consulted on board decisions and then their views influence those decisions, both are likely to be exercising SIOC. This would include, but is not limited to, a person who is a shadow director.
- ▶ A person whose recommendations are always/almost always followed by the majority of shareholders is likely to be exercising SIOC - e.g. a company founder who no longer has a significant holding but makes recommendations to other shareholders on how to vote and those recommendations are usually followed.

### *Excepted roles from SIOC*

Again, whilst not an exhaustive list, the SIOC Guidance sets out some roles and relationships which would not, in the normal course, result in that person being considered as holding SIOC. Note there is an important caveat here such that if the role or relationship contains elements that exceed the role or relationship as normally understood or exercised (e.g. if the relationship differed materially from the usual course), or if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control, then the excepted roles (previously called 'safe harbours') may not apply and the person may still be considered a PSC. Some of the examples where the excepted roles would apply, as stated in the SIOC Guidance are:

- ▶ Lawyers, accountants, management consultants, investment managers, tax advisers, or financial advisers, i.e. those providing professional advice or direction.
- ▶ Suppliers, customers or lenders, i.e. where the person is engaged in a third party commercial or financial arrangement.
- ▶ A regulator, liquidator or receiver, i.e. someone exercising a function under an enactment.
- ▶ An employee acting in course of employment, including an employee and directors of a third party which is treated as a person with SIOC.
- ▶ Directors, including managing directors, sole directors, non-executive or executive directors with casting votes.
- ▶ Person making recommendations to shareholders on single, one-off issues which are subject to a vote of all shareholders.
- ▶ Rights held by all or a group of employees, for the purpose of representing the employees interests in an employee-owned company.

The statutory guidance on the conditions for significant influence or control of an LLP also set out examples and excepted roles. To access that guidance, [click here](#).

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