

## Introduction

From 6 April 2016, most companies and LLPs will be required to keep a "PSC Register" listing "People with Significant Control" ("**PSCs**"), that is individuals or legal entities who, or which, have significant control over the company or LLP.

This is a new, additional duty which applies to UK incorporated companies limited by shares (including dormant companies), companies limited by guarantee (including CICs), *societas europaea* and LLPs. It does not apply to companies which report under Chapter 5 of the Disclosure and Transparency Rules ("**DTR5 companies**"). In other words, Official Listed and AIM traded companies are not affected.

From 30 June 2016, this information will need to be delivered to Companies House, where it will be made publicly available.

An affected company or LLP:

- Must take reasonable steps to find out if there are any individuals or entities who, or which, may qualify as PSCs. An individual or entity will be a PSC if they meet one or more of the five conditions outlined below.
- Should contact these individuals or entities, or others who might know them, to confirm they meet one or more of the conditions and get the relevant information to go on the company's PSC register. PSCs, or anyone who might know about a PSC, must respond to such requests for information.
- Must put the information on the company's or LLP's own PSC register from 6 April 2016.
- Must file the information at Companies House to be made available on the central public register from 30 June 2016.
- Must keep the information up to date.

PSC Condition		What you need to consider
i	Directly or indirectly owns more than 25% of the shares.	You should review your register of shareholders, articles of association and statement of capital to identify whether anyone holds more than 25% of the shares.
ii	Directly or indirectly holds more than 25% of the voting rights.	You should review your register of shareholders and articles of association to identify whether anyone holds more than 25% of the voting rights. You should identify any shareholder agreements which might result in shareholdings of more than 25% and consider whether voting patterns suggest some parties (for example, members of the same family) might be acting together.
iii	Directly or indirectly holds the right to appoint or remove the majority of the board of directors.	You 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.
iv	Otherwise has the right to exercise, or actually exercises, significant influence or control.	You should consider whether anyone else who does not meet one or more of conditions (i) to (iii) has significant influence or control over the way the company/LLP is run, irrespective of any formal role.
v	Holds the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.	You should consider whether anyone who meets the first four conditions is a trust or firm. If so, you then need to consider whether anyone has significant influence or control over the activities of that trust or firm.

## Guidance on the meaning of “Significant Influence or Control”

The Department for Business, Innovation & Skills has published [non-statutory](#) guidance for companies and draft [statutory](#) guidance on the meaning of “significant influence or control”.

### Excepted roles

There are a number of roles and responsibilities which would not ordinarily result in that person being considered to be exercising significant influence or control. This is a non-exhaustive list:

- Where the person provides advice or direction in a professional capacity, for example:
  - A lawyer
  - An accountant
  - A management consultant, including a company mentor
  - An investment manager
  - A tax or financial advisor
- Where the person deals with the company under a third party commercial or financial agreement, for example:
  - A supplier
  - A customer
  - A lender
- Where the person exercises a function under an enactment, for example:
  - A regulator
  - A liquidator or receiver
- Where the person is an employee acting in the course of their employment for their employer, including an employee or director of a third party, which has significant control over the company
- Where the person is a director of a company, including:
  - A managing director
  - A sole director
  - A non-executive or executive director who holds a casting vote
- A person who makes recommendations to shareholders on an issue (or set of issues) on a one-off occasion, which is subject to a shareholder vote
- Rights held by all or a group of employees for the purpose of representing the employees’ interests in an employee-owned company

## PSCs and RLEs

If your company is owned or controlled by a company, that company must go on the PSC register if it is both relevant and registrable.

It is **relevant** if it meets one or more of the conditions (i) to (v) above and:

- It holds its own PSC register; or
- It is a DTR5 company; or
- It has voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel.

A relevant legal entity (RLE) is **registrable** if it is the first RLE in your company’s ownership chain.

### Reasonable steps to identify a PSC or RLE

You will need to take reasonable steps to identify PSCs and registrable RLEs by writing to them enquiring whether they hold an interest directly or on behalf of someone else and, if so, request contact details.

If you have reason to believe that there is a PSC or registrable RLE but have not been able to identify them you should consider serving notices on anyone you know, or have reasonable cause to believe knows, the identity of the PSC or legal entity or trust or partnership, or could know someone likely to have that knowledge. This could cover intermediaries or advisers known to act for them. Failure on their behalf to respond without a valid reason is an offence. You will need to document all the steps you take.

### Information required to be entered

The PSC register must never be empty. If you are in the process of taking reasonable steps, this fact must be entered on the PSC register and there is standard wording to use.

Once you have identified an individual who is a PSC you need to obtain, confirm and then enter the following details on the PSC register:

- Name
- Date of birth
- Nationality
- Country, state or part of the UK where the PSC usually lives
- Service address
- Usual residential address (if different to the service address)
- The date the individual became a PSC in relation to your company (for existing companies this will be 6 April 2016)
- Which of the five conditions for being a PSC the individual meets, with quantification of the interest where relevant (you must use the official wording)
- Any restrictions on disclosing the PSC’s information that are in place (you must use the official wording)

Once you have identified a registrable RLE you need to obtain (but not confirm) and enter the following details on the PSC register:

- Name of the legal entity
- The address of its registered or principal office
- The legal form of the entity and the law by which it is governed
- If applicable, a register in which it appears (including details of the state) and its registration number
- The date it became a registrable RLE in relation to your company (for existing companies this will be 6 April 2016)
- Which of the five conditions for being a PSC it meets, with quantification of its interest where relevant (you must use the official wording)

If there are no PSCs or registrable RLEs in relation to your company, this fact must be entered on the PSC register.

The information must be kept up to date on the company's PSC register. Failure to do so is a criminal offence.

Where shares or rights are held by a nominee you should treat them as being held by the beneficial holder and, if that person is a PSC, enter them on the PSC register.

In respect of joint holders, if they jointly hold more than 25% of the shares or rights, each of them must separately be entered on the PSC register.

## Imposing restrictions on shares or rights

If you send an information request to a person or legal entity who you believe has significant influence or control over your company (or has knowledge of someone who does) and they fail to respond within one month, you can then send an additional warning notice if they hold a relevant interest in your company. If they do not respond within a further month, you can impose restrictions on their shares or rights. However, before imposing restrictions you must consider joint interests and whether there is any valid reason for not responding. If you choose not to impose restrictions you will need to carefully document your decision. If you do impose restrictions this must be noted on the PSC register.

The effect of imposing restrictions means that:

- The interest cannot be sold or transferred and any agreement to sell or transfer the interest is void
- No rights associated with the interest can be sold or transferred and any agreement to sell such is void
- No rights may be exercised in respect of the interest
- No shares may be issued in respect of the interest or in pursuance of an offer made to the interest-holder
- No payment may be made in respect of the interest, whether in respect of capital or otherwise – except if the company is liquidated

If restrictions have been imposed this should be noted on the PSC register using standard wording. Restricted interests may be sold with court approval and any restrictions must be lifted in specified circumstances.

It should be noted that there are exceptional circumstances when PSC information may be suppressed, i.e in cases of serious risk of violence or intimidation.

## Conclusion

These new requirements may present unwelcome headaches to companies, particularly given the liberal application of criminal sanctions. Whilst in keeping with the drive for trust and transparency, the provisions seem to fly in the face of the government's Cutting the Red Tape initiative.

## Contacts

### Jane Haxby

Partner  
T +44 161 830 5144  
E jane.haxby@squirepb.com

### Andrew Pike

Partner  
T +44 113 284 7562  
E andrew.pike@squirepb.com

### Wendy Wilkes

Legal Assistant  
T +44 121 222 3745  
E wendy.wilkes@squirepb.com