

The end of the annual return, PSC Register – what is it and what changes will be made?

Corporate & Commercial

On 21 March 2016, the Register of People with Significant Control Regulations 2016 (PSC) were published. This means that from 6 April 2016, all UK companies (other than those subject to financial services requirements and certain listed companies) and LLPs will be required to keep a 'Persons with Significant Control' register ("Register"). The Register will identify and make public the ultimate beneficial owners and controllers of a company. From 30 June 2016, the Register will be open for public inspection and searchable at Companies House on a central database.

The changes are a consequence of the Small Business Enterprise and Employment Act 2015 (the "Act"). The aim of the Act is to create greater transparency in the ownership of companies.

The Government has published the following guidance to assist companies in complying with their obligations:

<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

Who is a 'person with significant control'?

A person with significant control of a company is someone who:

1. owns more than 25% of the company's shares
2. holds more than 25% of the company's voting rights
3. can appoint or remove the majority of the board of directors
4. exercises or has the right to exercise significant influence or control over the company, or
5. exercises or has the right to exercise significant influence or control over the activities of a trust (of which the person is a trustee) or firm (of which the person is a member) and the trust or firm has significant control (under one of the four conditions above) over the company.

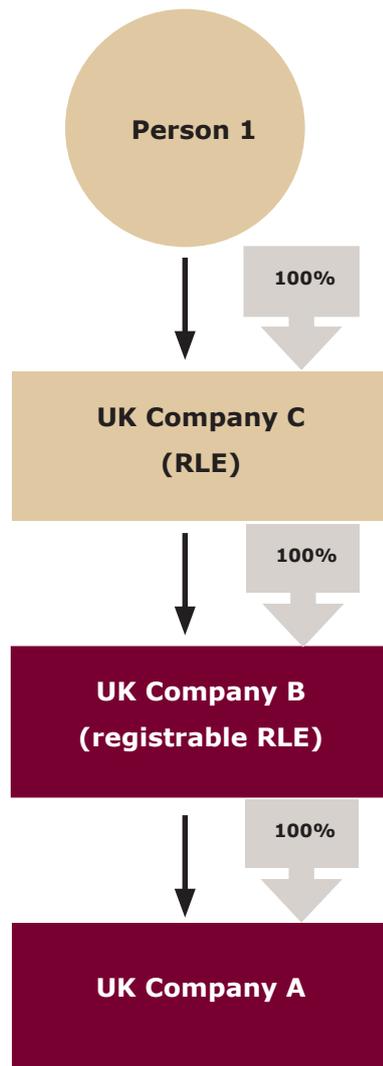
Relevant Legal Entity

A PSC is by definition an individual, and not a legal entity (such as a company or a Limited Liability Partnership (LLP)). If your company is owned or controlled by a legal entity, that legal entity's details must be put on the PSC register if it is both **relevant and registrable** in relation to your company.

1. A legal entity is **relevant** in relation to your company if it meets any one or more of the conditions 1 to 5 above and:
 - it keeps its own PSC register
 - it is subject to Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency rules (DTRs), 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.
2. A relevant legal entity (RLE) is **registrable** in relation to your company if it is the first relevant legal entity in your company's ownership chain.

Example of how this works in practice

The non-statutory guidance includes examples including the one copied below to help identify where a PSC or RLE is registrable.



Company A is owned by Company B (100%) and Company B is owned by Company C (100%). Both are RLEs in relation to Company A. However, to avoid duplication of information, Company A need only note Company B in its Register, not Company C.

Definitions

The following phrases are defined in the guidance:

'Control' means the power to direct policies and activities of a company, and

'Significant influence' means the ability to ensure the company adopts policies or activities.

This power or ability may be derived directly or indirectly, by virtue of rights created in a company's articles of association or shareholders' agreement. Any person holding such a right should be included on the Register **even if** they do not exercise it.

The obligations also apply to dormant companies.

Examples of significant influence or control

BIS has provided non-exhaustive examples, including the following:

Where a person can determine or has a right of veto over decisions related to the running of the business of the company, for example:

- adopting or amending the company's business plan
- changing the nature of the company's business
- making any additional borrowing from lenders, or
- establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors or employees.

Safe harbours

Certain roles and relationships which a person may have with a company can fall outside the definition of "significant influence or control" for the purposes of the Register. These are referred to in the guidance as "safe harbours".

The following examples have been provided:

1. When a person provides advice or direction in a professional capacity:
 - a lawyer
 - an accountant
 - a management consultant including a company mentor, or
 - a financial advisor.
2. Where a person is engaged with a third party in a commercial or financial arrangement, for example:
 - a supplier
 - a customer, or
 - a lender.
3. Where a person is also a director of a company, including:
 - a managing director
 - a sole director, or
 - a non-executive or executive director who holds a casting vote.

However, it is important to note, that while the guidance provides examples of safe harbours, care must be taken to consider what actually happens in practice. A person who is exempt under the safe harbour category could still be a PSC if the following apply:

1. the role or relationship differs in any material respect or contains significantly different features from how the role or relationship is generally understood, or
2. if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.

What information needs to be disclosed on the Register?

1. the PSC's name
2. service address
3. nationality
4. country or state of usual residency
5. date of birth
6. residential address
7. the date on which the PSC obtained control, and
8. the nature of his/her control over the company.

Private companies may opt to have the PSC information held solely at Companies House and not maintain a separate Register as well. However, as the register at Companies House is not available until 30 June 2016, all companies will be required to have their own Register between 6 April and 30 June 2016.

Almost all of the above information about the PSC, will be available on the central public register at Companies House. The only information that will not be is:

- the PSC's usual residential address (unless a residential address has been provided as a service address), and
- the day of the PSC's date of birth.

What does this mean for your business?

Companies should already be in the process of taking reasonable steps to identify their PSCs so as to have a register in place by 6 April 2016. The Register forms part of the company's books.

Companies should be taking the following steps:

1. taking reasonable steps to find out if there are people who have significant control over the company
2. contacting these people to confirm whether they meet one or more of the five conditions and, if they do, obtaining the relevant information to go on the Register
3. inserting the information on the Register
4. filing the information at Companies House to be made available on the central public register, and
5. keeping the information up-to-date.

Companies must ask each PSC to confirm the information the Company has, before entering it on the Register. Information can be treated as confirmed if:

- the PSC supplied the information
- the information was provided to the company with the knowledge of the PSC
- the PSC confirmed the information was correct, or
- the company holds previously confirmed information and has no reason to believe it has changed.

The Register cannot be left blank. If the company has no PSCs or cannot identify its PSCs, that fact should be made clear. The following statements are examples (taken from the non statutory guidance) of what could be inserted on the Register:

1. Where the company has no PSCs or registrable RLEs:

"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."

2. Where the company cannot identify the PSC:

"The company knows or has reasonable cause to believe that there is a registrable person in relation to the company but it has not identified the registrable person."

3. When the company is taking reasonable steps to locate the information:

"The company 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."

Where any of the above statements are no longer applicable, you must enter that on the Register along with the date on which the statement ceased to be true.

From **30 June 2016**, every company will need to supply Companies House with the information on the Register along with the company's confirmation statement. This will replace the annual return. Unlike the annual return, there will be no set date each year on which the confirmation statement needs to be made. It

can be made at any time, although no more than 12 months must elapse between confirmation statements and once a confirmation statement has been made a new 12 month period starts to run.

Annual returns

If your annual return is due for filing between 6 April and 30 June 2016, you should file it as normal.

As a director or secretary of a company, it is really important that you familiarise yourself with these changes as failure to have an up-to-date Register will be a criminal offence.

Please note that the information contained in this fact sheet does not constitute legal advice. This fact sheet is not intended to be a full summary of the law and advice should be sought on individual situations. All statements of law are applicable to the laws of England and Wales only.