

# The PSC Register Requirements: A Practical Guide for Corporates

All UK incorporated companies (that are not exempt) and LLPs will need to keep a register of people with significant control over them (**PSC register**) from 6 April 2016. They will also need to file their PSC information at Companies House when making their confirmation statement (which replaces the annual return) from 30 June 2016 onwards. Non-compliance with the PSC register requirements is a criminal offence.

This briefing explains how to identify the entities in your group structure that will be required to keep a PSC register and the individuals and legal entities that need to be recorded, and what information must be recorded. It also provides practical guidance to help you carry out your “PSC register analysis” for each of the entities in your group structure.

## How to identify companies and LLPs in your group structure that need to keep a PSC register

- All companies formed and registered under the UK Companies Acts (apart from exempt companies) and all LLPs incorporated under the Limited Liability Partnerships Act 2000 need to keep a PSC register.
- A company is **exempt** from keeping a PSC register if the company itself:
  - is an issuer subject to Chapter 5 of the DTRs (**DTR 5 issuer**), which includes a UK company listed on the LSE, AIM, ISDX Main Board or ISDX Growth Market;
  - has voting shares admitted to trading on a regulated market in an EEA State other than the UK; or
  - has voting shares admitted to trading on certain markets in Israel, Japan, Switzerland or the USA (see list in box).
- An exempt company, such as a UK company listed on the LSE or AIM, still needs to consider these new requirements if it has subsidiaries that are UK companies and/or LLPs in its

group structure. It also might need to be recorded as a relevant legal entity on a PSC register.

## How to identify persons with significant control

## (PSCs) and relevant legal entities (RLEs) in relation to a company or LLP

- Only PSCs and RLEs can be registered in a PSC register.

### Exempt companies: list of specified markets in Israel, Japan, Switzerland and the USA

#### Israel

Tel Aviv Stock Exchange

#### Japan

Fukuoka Stock Exchange  
Nagoya Stock Exchange  
Osaka Securities Exchange  
Sapporo Securities Exchange  
Tokyo Stock Exchange

#### Switzerland

BX Berne Exchange  
SIX Swiss Exchange

#### United States of America

BATS Exchange, Inc.  
BATS Y-Exchange, Inc.  
BOX Options Exchange LLC  
C2 Options Exchange, Incorporated

#### United States of America

Chicago Board Options Exchange, Incorporated  
Chicago Stock Exchange, Inc.  
EDGA Exchange, Inc.  
EDGX Exchange, Inc.  
International Securities Exchange, LLC  
ISE Gemini LLC  
Miami International Securities Exchange LLC  
NASDAQ OMX BX, Inc.  
NASDAQ OMX PHLX LLC  
The NASDAQ Stock Market LLC  
National Stock Exchange, Inc.  
New York Stock Exchange LLC  
NYSE Arca, Inc.  
NYSE MKT LLC

## PSCs

### Company conditions

- A PSC of a company is an individual who satisfies one or more of the following conditions in relation to the company:
  - **Condition 1** – holds, directly or indirectly, more than 25% of the shares in the company.
  - **Condition 2** – holds, directly or indirectly, more than 25% of the voting rights in the company.
  - **Condition 3** – holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.
  - **Condition 4** – has the right to exercise, or actually exercises, significant influence or control over the company.
  - **Condition 5** – has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal entity which would itself satisfy any of conditions 1 to 4 in relation to the company if it were an individual.

### LLP conditions

- A PSC of an LLP is an individual who satisfies one or more of the following conditions in relation to the LLP:
  - **Condition 1** – holds, directly or indirectly, the right to share in more than 25% of any surplus assets of the LLP on a winding up.
  - **Condition 2** – holds, directly or indirectly, more than 25% of the rights to vote on those matters which are to be decided upon by a vote of the members of the LLP.
  - **Condition 3** – holds, directly or indirectly, the right to appoint or remove the majority of the persons who are entitled to take part in the management of the LLP.
  - **Condition 4** – has the right to exercise, or actually exercises, significant influence or control over the LLP.
  - **Condition 5** – has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal entity which would itself satisfy any of conditions 1 to 4 in relation to the LLP if it were an individual.

- PSCs are always individuals.

- An individual holds shares or rights **indirectly** if he/she holds the share or right through a chain of legal entities and each legal entity in the chain (other than the last) has a majority stake in the legal entity immediately below it in the chain.

- A **majority stake** is defined as holding or controlling a majority of the voting rights, having the right to appoint or remove a majority of the board of directors or otherwise having the right to exercise, or actually exercising, dominant influence or control (similar to the subsidiary

undertaking test in the Companies Act 2006).

- Examples of direct and indirect interests are illustrated in Diagrams 1 and 2 on page 3.

### RLEs

- The PSC register requirements recognise that a company or LLP may have legal entities with significant influence or control over it.
- Such a legal entity may only be registered in a PSC register if it is a **relevant legal entity (RLE)**.

- The test for an RLE is that the legal entity:

- is a body corporate or firm that is a legal person under the law by which it is governed; AND
- would be a PSC over the company or LLP if it were an individual; AND
- is **subject to its own disclosure requirements**.

- A legal entity is **subject to its own disclosure requirements** if it:

- is required to keep a PSC register itself;
- is a DTR 5 issuer;
- has voting shares admitted to trading on a regulated market in an EEA State other than the UK; or
- has voting shares admitted to trading on certain markets in Israel, Japan, Switzerland or the USA (see list on page 1).

- A legal entity will not meet the definition of RLE if it is not subject to its own disclosure requirements, for example, unlisted overseas companies or unlisted UK legal entities not required to keep a PSC register (e.g. a Scottish limited partnership).

- If a legal entity does not meet the RLE test it cannot be registered on a PSC register. However, you must look through these entities until you find an indirect PSC or RLE or determine that there are no PSCs or RLEs.

## Tips for identifying PSCs and RLEs

- You must consider all the factual circumstances in your analysis.
- The documents that you need to review to determine whether a PSC condition is met by an individual (or would be met by a legal entity if it was an individual) are:
  - companies: the register of members, the articles of association, any shareholders' agreement, any other agreement between shareholders and any rights attaching to shares; and

- LLPs: the LLP agreement and any other agreement between members.
- If an individual or legal entity meets one or more of PSC conditions 1, 2 and 3, you do not need to carry out any analysis as to whether such individual or legal entity meets PSC condition 4.
- If you need to carry out an analysis to determine whether PSC condition 4 or 5 has been met, you need to review the statutory guidance on the meaning of “significant influence or control” over companies or LLPs (as applicable) published by the Department for Business, Innovation & Skills.
- When carrying out a PSC condition 4 analysis, it will be important to review any absolute decision rights or absolute veto rights over decisions related to the running of the business. This analysis will be particularly relevant in the context of joint venture arrangements.
- The absolute decision rights which, according to the guidance, might constitute **significant influence or control** are very broad (and not based on a positive control concept or parent undertaking test) and include, by way of example:
  - establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for directors or employees;
  - the grant of options under a share option or other share based incentive scheme; as well as
  - fundamental decision rights such as adopting or amending the business plan.
- The statutory guidance also sets out minority protection rights that would not on their own constitute rights to exercise significant influence

or control, such as an absolute veto right over:

- changing the company’s constitution; and
- making any additional borrowing from lenders outside previously agreed lending thresholds.

- The statutory guidance also states that where a person is more likely than not to receive more than 25% of the profits of an LLP (including profits allocated automatically or otherwise) this might constitute a right to exercise significant influence or control.

## Direct interests v Indirect interests<sup>1</sup>

Diagram 1

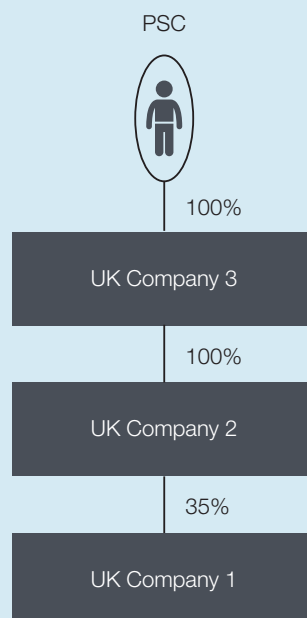


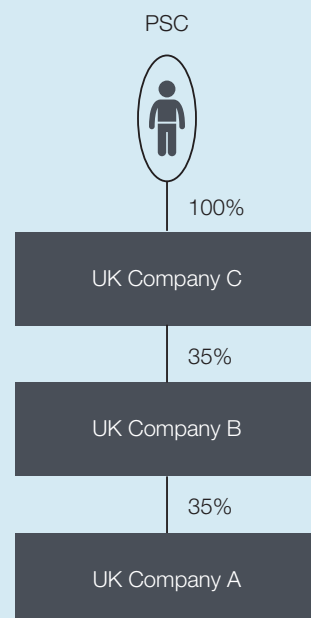
Diagram 1:

- **UK Company 1:** UK Company 2 is a **direct** RLE. UK Company 3 is an **indirect** RLE. The PSC is an **indirect** PSC.
- **UK Company 2:** UK Company 3 is a **direct** RLE. The PSC is an **indirect** PSC.
- **UK Company 3:** The PSC is a **direct** PSC.

Diagram 2:

- **UK Company A:** UK Company B is a **direct** RLE. UK Company C is **NOT** an **indirect** RLE. The PSC is **NOT** an **indirect** PSC.
- **UK Company B:** UK Company C is a **direct** RLE. The PSC is an **indirect** PSC.
- **UK Company C:** The PSC is a **direct** PSC.

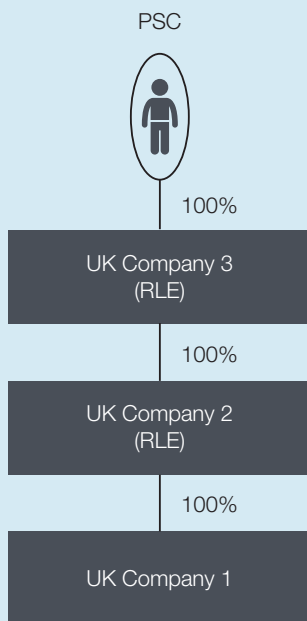
Diagram 2



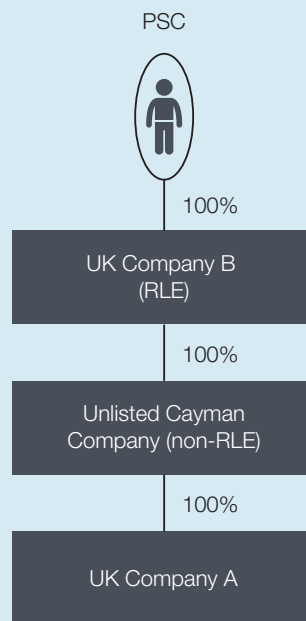
<sup>1</sup> This does not indicate which PSCs and RLEs are registrable or non-registrable.

## Registrable v Non-registrable

**Diagram 1**



**Diagram 2**



**Diagram 1:**

- **UK Company 1 PSC register analysis:** only register UK Company 2 as an RLE in the PSC register of UK Company 1. UK Company 3 is a non-registrable RLE and the PSC is a non-registrable PSC in relation to UK Company 1.
- **UK Company 2 PSC register analysis:** only register UK Company 3 as an RLE in the PSC register of UK Company 2. The PSC is a non-registrable PSC in relation to UK Company 2.
- **UK Company 3 PSC register analysis:** register the PSC in the PSC register of UK Company 3.

**Diagram 2:**

- **UK Company A PSC register analysis:** only register UK Company B as an RLE in the PSC register of UK Company A. The unlisted Cayman Company cannot be an RLE as it is not subject to its own disclosure requirements. The PSC is a non-registrable PSC in relation to UK Company A.
- The unlisted Cayman Company is an overseas entity so is not required to keep a PSC register.
- **UK Company B PSC register analysis:** register the PSC in the PSC register of UK Company B.

## How to determine whether a PSC or RLE is registrable or non-registrable in relation to a company or LLP required to keep a PSC register

- A PSC or RLE is non-registrable in relation to a company or LLP if the PSC or RLE only holds the interest in the company or LLP through one or more legal entities over each of which he/she/it has significant control and:
  - the legal entity through which the interest is held is an RLE in relation to the company or LLP; or
  - at least one of the legal entities in the chain is an RLE in relation to the company or LLP.<sup>2</sup>
- Please see Diagrams 1 and 2 illustrating how this works.

## What needs to be recorded on the PSC register for a registrable PSC or RLE?

- The PSC details to be registered are name, date of birth, nationality, country or state (or part of the UK) where the PSC is usually resident, service address, usual residential address, date on which the PSC became a registrable PSC, nature of the control over the company or LLP and details of any restrictions on using or disclosing the PSC's information.
- The RLE details to be registered are name, address of its registered or principal office, legal form and governing law, register of companies in which it is entered and registration number, date on which the RLE became a registrable RLE and nature of the control over the company or LLP.

<sup>2</sup> The provisions of the Companies Act 2006 that set out how to determine whether a PSC or RLE is registrable or non-registrable were recently changed by The Companies Act 2006 (Amendment of Part 21A) Regulations 2016.

## Tips for what to record on a PSC register

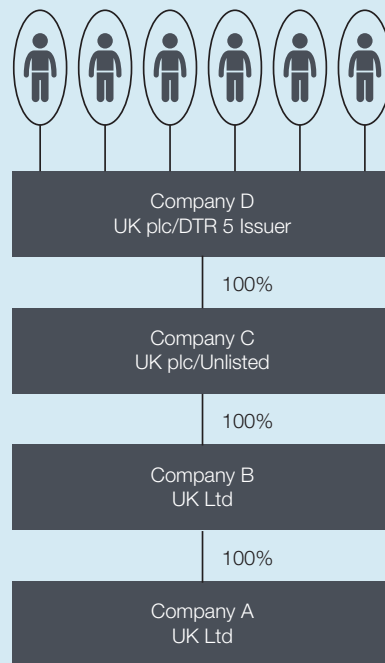
- The PSC register must never be empty. If you are not in a position to enter details in a PSC register, including because investigations are still ongoing to determine PSCs or RLEs or PSC information has not yet been confirmed, the relevant fact must be entered in the PSC register.<sup>3</sup>
- If there are no PSCs or RLEs the register must record this.
- The Regulations are also prescriptive as to the wording that needs to be recorded in relation to the nature of the control.
- Where PSC conditions 1 and 2 apply (i.e. holding more than 25% of shares or voting rights of the company or holding more than 25% of any surplus assets of the LLP on a winding up or voting rights of the LLP) there are three options to choose from: (i) more than 25% but not more than 50%; (ii) more than 50% but less than 75%; and (iii) 75% or more.
- The date on which an individual or legal entity became a PSC or RLE in relation to a company or LLP already incorporated when the provisions come into effect is 6 April 2016.

## What does this mean for your group structure?

- Corporate groups with UK entities in their structures should be working through their structures to identify which entities are required to keep a PSC register, then carry out an analysis to identify registrable PSCs and RLEs for each such entity and obtain the relevant information to complete the registers.

## Examples

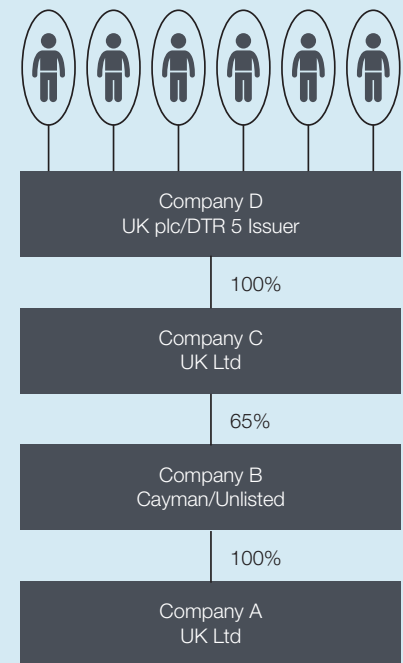
Diagram A



### Diagram A PSC register analysis:

- **Company A PSC register analysis:** only register Company B as an RLE in the PSC register of Company A.
- **Company B PSC register analysis:** only register Company C as an RLE in the PSC register of Company B.
- **Company C PSC register analysis:** only register Company D as an RLE in the PSC register of Company C.
- Company D is a DTR 5 issuer so is not required to keep a PSC register.

Diagram B

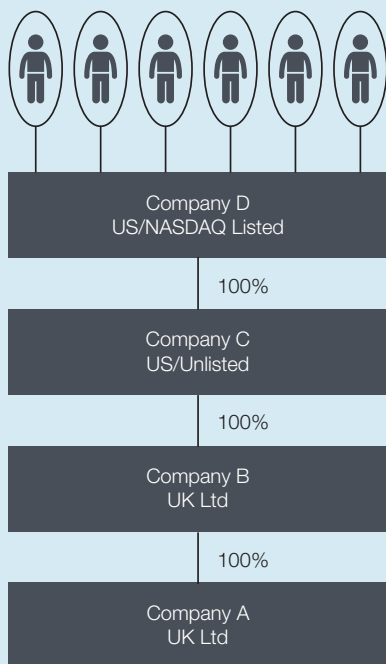


### Diagram B PSC register analysis:

- **Company A PSC register analysis:** only register Company C as an RLE in the PSC register of Company A.
- Company B is a Cayman company so is not required to keep a PSC register.
- **Company C PSC register analysis:** only register Company D as an RLE in the PSC register of Company C.
- Company D is a DTR 5 issuer so is not required to keep a PSC register.

<sup>3</sup> The draft Register of People with Significant Control Regulations 2016 and the draft Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 (**Regulations**) set out the wording that needs to be recorded in the PSC register for the relevant factual position.

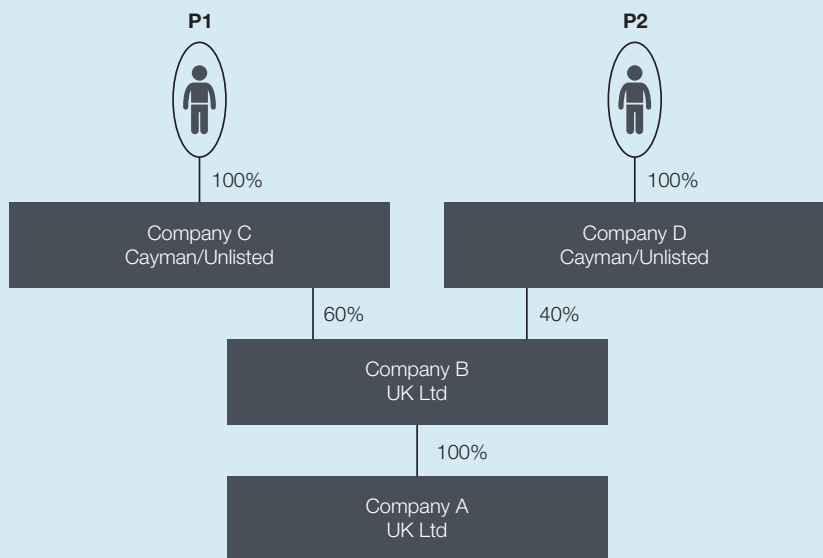
**Diagram C**



**Diagram C PSC register analysis:**

- **Company A PSC register analysis:** only register Company B as an RLE in the PSC register of Company A.
- **Company B PSC register analysis:** only register Company D as an RLE in the PSC register of Company B.
- Companies C and D are US companies so are not required to keep a PSC register.

**Diagram D**



**Diagram D PSC register analysis:**

- **Company A PSC register analysis:** only register Company B as an RLE in the PSC register of Company A.
- **Company B PSC register analysis:** register both P1 and P2 as PSCs in the PSC register of Company B.
- Companies C and D are Cayman companies so are not required to keep a PSC register.

**Further advice**

- If you need any further information or would like help carrying out your PSC register analysis, please contact your Clifford Chance relationship partner.

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