

# PSC Regime – Scottish Share Security

Since 6 April 2016 the persons with significant control register regime ("**PSC Register Regime**") has been effective in the UK. Most of its consequences are now settling in the market, but there has been some uncertainty about the consequences for security trustees holding fixed security over shares in a Scottish company. It is now becoming clear that they may need to be recorded on the company's PSC register – and may have an obligation to notify the relevant companies.

We have written a number of briefings on this subject, including [a practical guide for corporates](#) and [an analysis of the consequences for banking transactions](#). In those, we explain the basics of the PSC Register Regime and the effect on finance transactions. Where security is taken over shares of a UK company, there is a risk that the security trustee will be a relevant legal entity (or "RLE") that is registrable where it meets at least one of the conditions for having significant control.<sup>1</sup>

By way of reminder, the conditions for having significant control are that an individual or legal entity, in relation to a company subject to the PSC Register Regime (the "PSC Company") meets one or more of the following conditions:

1. Holds, directly or indirectly, more than 25% of the shares in the PSC Company.
2. Holds, directly or indirectly, more than 25% of the voting rights in the PSC Company.
3. Holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the PSC Company.
4. Has the right to exercise, or actually exercises, significant influence or control over the PSC Company.
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 PSC Company if it were an individual.

## Application to security trustees

The conditions of most concern to security trustees taking security over shares will be conditions 1 and 2. Happily, condition 1 does not tend to be relevant in England because English security is normally taken by way of equitable charge that does not involve the transfer of legal title to the

## Key issues

- Trustees holding security over the shares of Scottish companies may need to appear on the company's PSC register
- Where they should appear on the PSC register, trustees have an obligation to notify companies
- The required particulars are not onerous, but the regime carries strict sanctions for failure to notify when required

shares. In respect of condition 2, security trustees can generally rely on an exemption that applies where, apart from exercising them to preserve the value of the security or to realise it, rights attached to shares held by way of security may only be exercised on the chargor's instructions or in the chargor's interests. This exemption is only helpful in respect of condition 2 because it applies only where rights attached to shares are held, as opposed to where the shares themselves are held by the security trustee. As we note in our [banking briefing](#), where the security trustee

<sup>1</sup> Before being required to provide information or be listed on the PSC register of a company, a legal entity must be a "registrable legal entity". This means it must not only meet one of the conditions for significant control but also be subject to its own disclosure requirements (as to which, please consult our previous briefings) and be registrable (usually, if it is the first relevant legal entity in the PSC Company's ownership chain).

becomes the registered holder of the shares (e.g. where a legal mortgage is taken or equitable charge enforced), it may then need to be entered onto the PSC register of the relevant PSC Company because then the security trustee would meet condition 1 (as well as condition 2) and no equivalent exemption is available in respect of condition 1.

In the case of Scottish companies, lenders will typically take fixed security over their shares. This requires legal title to the shares in the Scottish company to be transferred to the beneficiary of the security (i.e. the security trustee) and for the beneficiary to be recorded in the Scottish company's register of members. There has been a debate running for several months among Scottish firms as to whether this means security trustees holding security over more than 25% of the shares of Scottish PSC Companies will need to be recorded in the PSC registers of those companies (provided they are registrable RLEs in relation to that Scottish PSC Company – see footnote 1). A consensus now appears to have emerged that security trustees holding fixed security over more than 25% of the shares of a Scottish PSC Company will fulfil condition 1. As the exemption relied on in respect of English security only applies to rights and there is no equivalent exemption available for holders of legal title to shares, the security trustees would be registrable under condition 1 (again, provided they are registrable RLEs in relation to that Scottish PSC Company).<sup>2</sup>

<sup>2</sup> Schedule 1A to the Companies Act 2006 (the "Act") does include an exemption in relation to condition 1 and holding shares as nominee, but security

## Implications of being a registrable RLE

The implications of this for security trustees are twofold:

1. They will need to be registered on the PSC registers of Scottish PSC Companies where they hold fixed security over 25% or more of that company's shares.
2. They will be under an obligation to notify Scottish PSC Companies in relation to which they are registrable RLEs.

The PSC Register Regime imposes an obligation on PSC Companies to take reasonable steps to identify persons who should appear on their PSC registers. As a result, most Scottish PSC Companies would – under normal circumstances – be likely to have contacted affected security trustees already. In the normal course, security trustees would respond to these requests for information and the compliance issue would be dealt with.

However we are aware that, because of the uncertainty surrounding this point, a number of Scottish PSC Companies have not contacted security trustees who may need to appear on PSC registers. Unfortunately for security trustees, the PSC Register Regime also imposes an obligation on registrable RLEs to supply information<sup>3</sup> to the relevant PSC Company and to update it<sup>4</sup> as

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trustees would not generally be considered nominees, so this may not be a viable exemption for security trustees to rely on.

<sup>3</sup> Section 790G of the Act.

<sup>4</sup> Section 790H of the Act.

required. The information to be supplied (the so-called "required particulars") is relatively straightforward and includes the name, registered or principal office, nature of control and date on which the person became a registrable RLE.<sup>5</sup>

This obligation only applies to registrable RLEs where they "know or ought reasonably to know" that they are registrable RLEs in relation to a PSC Company and the notification must be made, broadly, within two months of the date they knew or ought reasonably to have known. Failure to provide information in a timely manner is a criminal offence.<sup>6</sup>

## Next steps

Up until recently, security trustees might reasonably have argued that the uncertainty in Scotland about the availability of an exemption made it such that they should not reasonably have known that they were registrable RLEs in relation to relevant Scottish PSC Companies (i.e. Scottish PSC Companies in respect of which they hold security over more than 25% of shares). But it seems unlikely that security trustees will be able to escape this obligation by pleading that they were not aware of the Scottish companies in relation to which they had security over the requisite number of shares. However, now that the uncertainty regarding condition 1 has largely been resolved, security trustees would be well advised to take an inventory of the Scottish companies in relation to which they hold share security and provide the required particulars to the relevant Scottish PSC Companies as soon as practicable.

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<sup>5</sup> Section 790K of the Act.

<sup>6</sup> Section 14 of Schedule 1B to the Act

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