



THE UK PSC REGISTER REQUIREMENTS

This note is designed to assist our clients to understand the key issues the PSC register requirements present for them. This is a complex area and each case will depend on the specific facts.

WHAT IS A PSC REGISTER?

- Most UK incorporated companies and LLPs are required to keep a register of 'people with significant control' (PSCs) over them.
- Those companies are also required to provide and update this information publicly by filing it at Companies House within 14 days of any changes or additions to its PSC register. At least once a year, as part of the company's confirmation statement, the company is required to confirm that the PSC information contained on the public register is accurate and up to date.

All UK incorporated companies and LLPs need to keep a PSC register except where they are exempt.

WHO NEEDS TO KEEP A PSC REGISTER?

- All UK incorporated companies and LLPs need to keep a PSC register except where they are exempt.
- Exempt companies (which are subject to equivalent disclosure requirements through a different means) are those with voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel (see table on page 4).
- From 24 July 2017 companies with shares listed on UK secondary markets (such as the Alternative Investment Market and NEX Exchange), which were previously exempt, are also required to maintain a PSC register and comply with the PSC register requirements.
- Overseas entities do not have to keep PSC registers, but may have similar transparency provisions in their relevant jurisdiction. In particular, the EU has introduced similar measures in the Fourth Anti-Money Laundering Directive which Member States were required to have implemented by 26 June 2017.
- UK subsidiaries of exempt entities are required to keep a PSC register where they are not themselves exempt.

WHAT NEEDS TO GO ON THE PSC REGISTER?

- Companies need to identify if there are any PSCs (who are, by definition, individuals) in relation to them or alternatively, relevant legal entities (RLEs).
- Where the UK company is part of a group of companies, only the first RLE in a particular chain of control, which directly or indirectly meets one of Conditions 1-5, should be recorded on the PSC register.
- If after appropriate consideration and investigation a UK company decides that it has no registrable PSCs or RLEs then it is valid to record this in the PSC register - but the company should still keep a register and update this if circumstances change. The PSC register should never be empty.
- If a company is still determining whether there are any registrable PSCs or RLEs to go on its register, it will need to record this on the register using set wording required by the legislation?

IDENTIFYING PSCS

An individual will be a PSC of a company if he or she satisfies one or more of the following conditions in relation to the company:

- **Condition 1** – holds, directly or indirectly, more than 25% (in nominal value) of the share capital of 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.

TRUSTS

A trustee of a trust will usually be a PSC where that trust has the required shareholding/level of control in a company directly or indirectly.

A beneficiary may be a PSC in addition to the trustee if that beneficiary, as a matter of fact, exercises significant influence or control over the trust (Condition 5).

Where a trustee is merely a nominee, it is only the beneficiary who is a registrable PSC.

IDENTIFYING RLES

RLEs are corporates (whether UK or international) which:

- would be PSCs if they were individuals (i.e. fulfil one or more of Conditions 1 to 5); and
- are subject to their own disclosure requirements either through having to keep a PSC register themselves or by having listed shares on the UK, EEA or certain listed markets - see table on page 3.
- Accordingly, all UK companies with a 25% or more interest in a company will be an RLE in relation to that company, whereas overseas companies will only be RLEs where they have listed shares on the UK, EEA or listed markets.
- LLPs can be RLEs but limited partnerships cannot - companies which are general partners of limited partnerships can be.

COMPLETING THE REGISTER

To identify a registrable PSC or RLE, starting with the UK company whose PSC register you are investigating, identify any person or company with a 25% or more interest in the UK company:

- If this is a UK company, record this as your RLE and more distant ownership of that RLE will not be registrable. Note there could be more than one RLE and each could satisfy more than one Condition.
- If it is an overseas company, is it listed on one of the markets listed on page 3? If yes, it can be registered as an RLE and more distant ownership of that RLE will not be registrable. If not, it is not an RLE and you need to continue up the chain asking whether any other entity has a "majority stake" in that overseas company - this can also include an entity or individual who effectively controls the company even if they do not personally hold a majority of the shares.
- Continue until you reach an individual or RLE with a "majority stake", if any.
- A company may have more than one RLE or PSC and each shareholder satisfying one or more of the Conditions must be noted. If an entity satisfies any of Conditions 1-3, it is not necessary to record that that entity also satisfies Condition 4 or 5.

LIMITED PARTNERSHIPS

Limited partnerships which do not have a separate legal personality (such as a UK limited partnership) cannot be a RLE.

A General Partner (GP) of a limited partnership will usually fulfil one of Conditions 1-5. Therefore, if the GP is an individual or a RLE, it will be registrable.

A principal of a corporate GP which is not itself a RLE (for example, because it is an unlisted overseas entity) may be a PSC if he or she owns or controls a majority of the GP interests or has the right to exercise a dominant influence over the GP.

Limited partners are not usually PSCs.

WHAT DOES “SIGNIFICANT INFLUENCE OR CONTROL” MEAN?

- One of the more nuanced areas that may cause clients concern is the definition of 'significant influence or control' in Conditions 4 and 5.
- The good news is that there are some 'excepted roles' which do not, on their own, amount to significant influence or control, for example, directors acting in a way which is consistent with the ordinary responsibilities of a director.
- The statutory guidance should be consulted for a full analysis.
- Examples given by the statutory guidance of what might constitute a right to exercise significant influence or control include where a person has:
 - (a) absolute decision rights over decisions relating to the running of the business of the company (such as adopting or amending the company's business plan or making additional borrowing from lenders); or
 - (b) absolute veto rights over the appointment of the majority of directors.

SANCTIONS

- Where the PSC regime is not complied with, both the company and its officers (directors and secretary, if any) may be committing an offence with the risk of fines and imprisonment. In England and Wales fines are unlimited and prison sentences can be up to 24 months.
- In certain situations, a company may not have enough information to identify its PSCs or RLEs and, where necessary, companies can send out requests for information. Persons failing to comply with such requests may be committing a criminal offence and are liable to have further steps taken against them if they continue not to comply such as not being able to exercise voting rights or transfer shares in the company.
- Individual PSCs are also under a positive obligation to notify companies of their status.

List of specified markets

IN ISRAEL

- Tel Aviv Stock Exchange

IN JAPAN

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

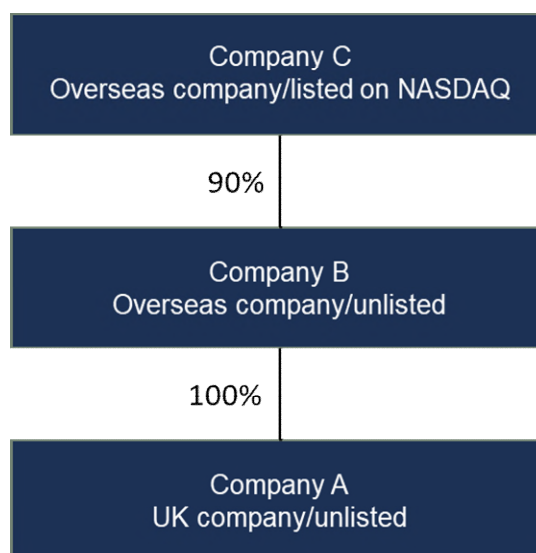
IN SWITZERLAND

- BX Berne Exchange
- SIX Swiss Exchange

IN THE UNITED STATES OF AMERICA

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

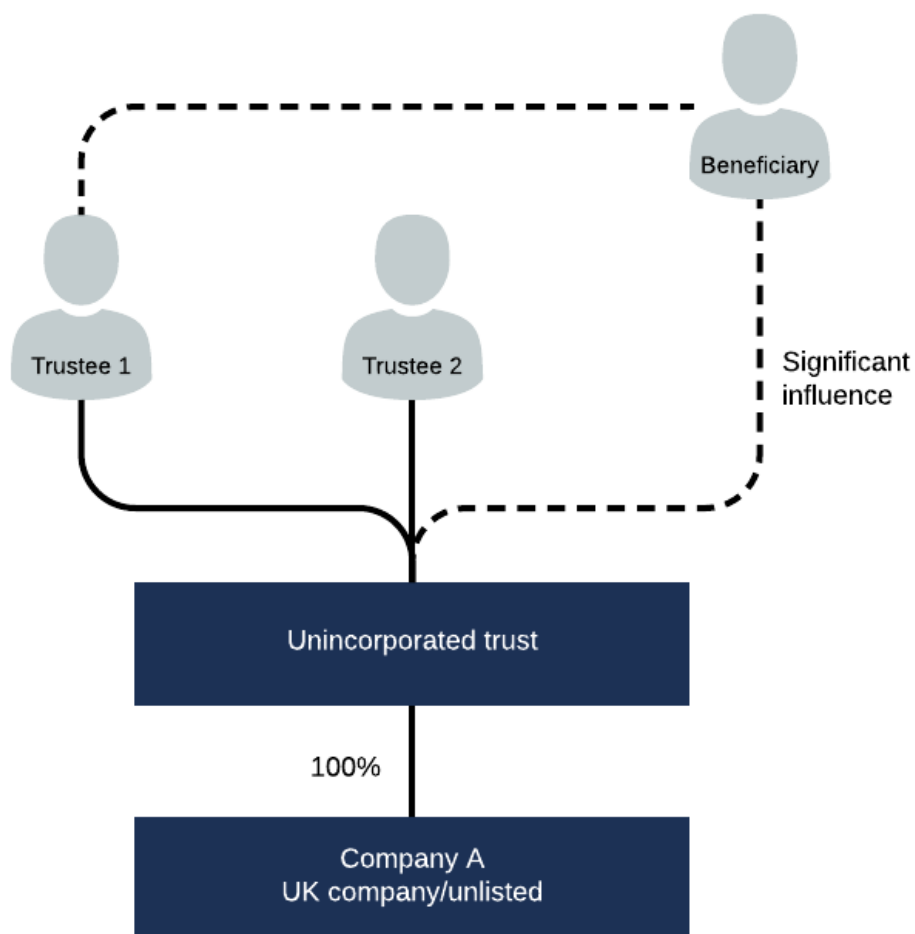
EXAMPLE 1



In **Example 1** the following entries would need to be made in a PSC register:

- (i) Company A is a UK unlisted company and so must maintain a PSC register.
- (ii) Company B is a company incorporated overseas so is not required to keep a PSC register. It is also not a RLE and so is not included in Company A's PSC register.
- (ii) Company C is an overseas company and so is not required to keep a PSC register. As a company listed on NASDAQ, with a majority stake in Company B, it is a RLE and so is included on Company A's PSC register as holding the full interest of Company B (in this case, 100%).

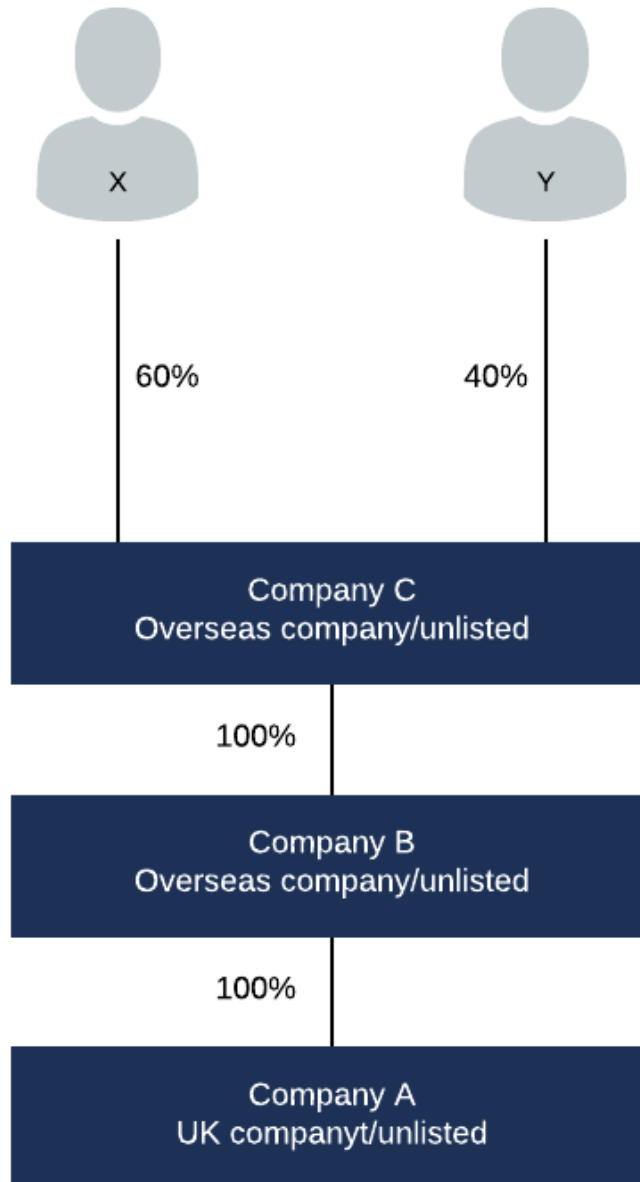
EXAMPLE 2



In **Example 2** the following entries would need to be made in a PSC register:

- Company A is a UK unlisted company and so must maintain a PSC register.
- The individual trustees of the trust would be registered as PSCs satisfying Conditions 1-3. Both trustees would be registered as holding the full 100%, as their interest is held jointly.
- The beneficiary, who exercises significant influence in this instance, would also be registered as a PSC satisfying Condition 5.

EXAMPLE 3



In **Example 3** the following entries would need to be made in a PSC register:

- Company A is a UK unlisted company and so must maintain a PSC register.
- Company B is a company incorporated overseas so is not required to keep a PSC register. It is also not a RLE and so is not included in Company A's PSC register.
- Company C is also a company incorporated overseas so is not required to keep a PSC register. It has a majority stake in Company B, but is also not a RLE and so is not included in Company A's PSC register.
- Individual X has a majority stake in Company C, which in turn has a majority stake in Company B, which fulfils conditions 1, 2 and 3 in respect of Company A. Therefore X's details are included in Company A's PSC register as holding the full interest of Company B (in this case, 100%).
- Individual Y does not have a majority stake in Company C and so is not included in Company A's PSC register.

FURTHER INFORMATION

- PSC register summary guidance:
[Summary guide for companies](#)
- PSC guidance for companies, LLPs and SEs:
[Register of PSCs - guidance for companies, SEs, LLPs and eligible Scottish partnerships](#)
- Guidance for people with significant control:
[Guidance for people with significant control](#)
- Regulations – 2016 No.339:
[Register of People with Significant Control Regulations 2016](#)
- Regulations – 2017 No. 693:
[The Information about People with Significant Control \(Amendment\) Regulations 2017](#)
- Statutory guidance on meaning of “significant influence or control”:
[Statutory guidance on meaning of significant influence or control](#)



KEY CONTACT

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