York Place Guide - The PSC Register

York Place specialising in company services for over 30 years.

Company Formation
Corporate Compliance
Company Searches
Company Restorations
Company Searches
Trademark Services

Find out more on our website
www.yorkplace.com

Or contact us today and talk to an advisor
Mon-Fri 9am-5.50pm
Tel: 0113 224 5450

Email:
yorkplace@yorkplace.co.uk

York Place
Elizabeth House
13-19 Queen Street
Leeds
LS1 2TW
DX 26436 Leeds Park Square

This guide is a summary to assist companies in meeting their obligations but is not a substitute for legal advice.

Introducing the PSC Register

From 6 April 2016, a new era in corporate transparency was introduced. UK-incorporated companies and LLPs are all legally obliged to keep a register of People with Significant Control (PSC), the register must also be kept up to date at Companies house with event driven filing.

The new rules are part of the government's initiative to tackle tax evasion, money laundering and terrorist financing and to increase trust in UK corporate bodies.

The regime applies to:

- **All UK-incorporated companies** (including those limited by guarantee) with 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)
- **Limited Liability Partnerships**
- **Unlimited companies**
- **Unregistered companies**
- **Societas Europaea**
- **Scottish limited partnerships**

Affected entities must:

- keep a register of those with significant control over them (the PSC Register);
- take reasonable steps to identify those who are registrable on the PSC register;
- enter the required information on the PSC Register and keep that information up to date;
- make the PSC Register available for public inspection;
- file information about their PSC Register at Companies House within 14 days of any changes being made.

How can York Place help?

York Place supply's the necessary registers as part of our packages. We also offer service address facilities should you wish to keep a residential address private.

What is a person with significant control?

A PSC in relation to a company is any of the following:

1. an individual who holds, directly or indirectly, more than 25% of the shares in a company;

2. an individual who holds, directly or indirectly, more than 25% of the voting rights in a company;

3. an individual who holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company;

4. an individual who has the right to exercise, or actually exercises, significant influence or control over a company;

5. an individual who 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 satisfy any of the first four tests if it were an individual.

In relation to a LLP, these criteria are modified slightly but amount to much the same thing, for example, the references to share ownership are changed to rights to surplus assets on a winding up.

Who should be entered on the Register?

The PSC Regime aims to make companies disclose those individuals who control them. In a simple example a person owning, say, half the shares in a company would be deemed to be a PSC through a direct interest in the shares. In a more complex setup, a person may have control through a chain of companies and therefore effectively holds shares indirectly. In this scenario it may be a company that is entered on the register rather than the individual, provided it is a Relevant Legal Entity.

What is a Relevant Legal Entity?

A relevant legal entity (or RLE) is one which would satisfy the conditions for being a PSC if it were a person **and** which is required to keep a PSC register or satisfies the disclosure requirements elsewhere, eg a listed company, **and** is the first RLE in the corporate chain.

In effect, this means that UK companies or LLPs and some non-UK listed companies will be relevant but unlisted offshore companies cannot be entered on the Register.

What entries are made on the register?

In many companies it will be easy to determine how to complete the PSC register. Let's look at some common examples:

1. Sole member company, all shares owned by one person.

That person will be entered on the PSC on the grounds that they hold more than 75% of the shares, voting rights and can also appoint a majority of the board.

2. Two member company, owned 50/50

Both shareholders will be entered on the ground that they hold more than 25% but not more than 50% of the shares and voting rights.

3. 4 member company, each owning 25 out of 100 issued shares acting individually

No entries required as no-one controls more than 25%

4. 4 member company, each owning 25 out of 100 issued shares where the two founding members have passed shares to their respective children.

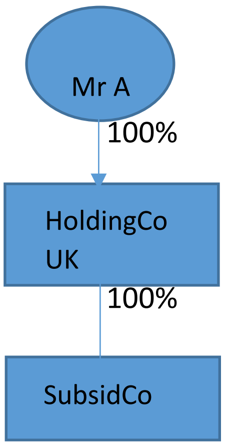
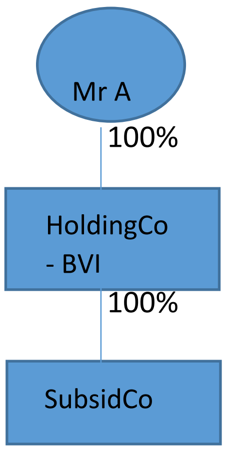
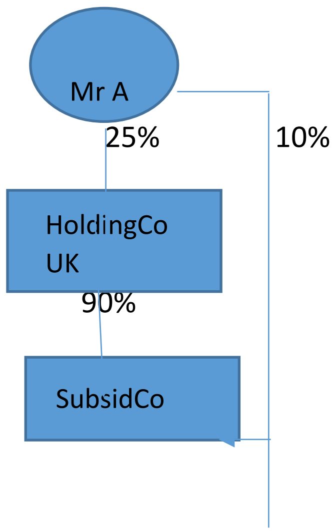
In this case, if the parent effectively controls their child's voting intention, it may be necessary to enter the parents as PSCs on the grounds that they exercise significant control over the company.

The above examples assume that all shares have equal voting rights and that all shares are registered in the name of the beneficial owner.

More complex scenarios

It becomes more complicated in a group situation. Take an example where SubsidCo is 100% owned by HoldingCo which in turn is 100% owned by Mr A. Although Mr A is effectively exercising significant control over SubsidCo he need not necessarily appear on the PSC register

- **Figure 1.** If HoldingCo is a "relevant legal entity" or RLE, then HoldingCo is entered on the register.
- **Figure 2.** If HoldingCo was, let's say, a BVI registered company, then it's Mr A who appears on the register. –
- **Figure 3.** If Mr A owns shares both directly in subsidCo and indirectly through Holdingco. In this case both Mr A the UK HoldingCo. would have to be on the register.

Figure 1. PSC Register of SubsidCo shows HoldingCo as owning more than 75% of the shares	**Figure 2. - PSC Register of HoldingCo shows Mr A as owning more than 75% of the shares.**	**Figure 3 PSC Register of SubsidCo shows both HoldingCo and Mr A.**
		

What does significant influence or control actually mean?

The Government guidance includes these key factors:

Control can arise where a person can direct the activities of a company

Influence can be when a company generally adopts the activities required by a person. An example of this might be a founding shareholder who no longer has a large shareholding but recommends to other shareholders how they should vote.

The right to exercise significant control or influence can arise from Articles of Association, rights attached to shares, shareholders' agreements or other agreements

The right to a veto may constitute a right to *exercise influence or control*

Shadow directors are likely to have significant influence or control

Specifically excepted are professional advisers, eg lawyers and accountants, and company directors. However, if for example, a director owned important assets or controlled key relationships and used this to influence decisions then that director would not be able to rely on the exception.

What information must go on the PSC Register?

The information which the PSC Register must include, and which must be updated as necessary, breaks down into three broad categories:

1. Information about the registrable PSC or registrable RLE (name, address etc.);

2. Which of the five PSC tests that person meets. This includes quantifying their shareholding or voting rights, if relevant, by reference to three broad bands (over 25% up to 50%, over 50% but less than 75% and 75% or over);

3. Status of the company's investigations and whether it has served any notices.

If a company identifies that it has no registrable PSCs or RLEs, it must still keep a PSC Register and include a statement to that effect.

How must a company make its PSC Register available to the public?

The PSC Register is one of the company's statutory registers. The company must keep it at its registered office (or alternative inspection location). Anyone with a proper purpose may have access to the PSC Register without charge or have a copy of it for which companies may charge £12. Companies should not disclose the residential address of PSCs. It will also be one of the registers that companies may elect to be held by Companies House.

The information must be filed at Companies House within 14 days of it having been confirmed. and will be publicly available except the day of the date of birth and residential address information which will be subject to the same protections as for company directors.

Additionally, if a registrable PSC considers that they or someone they live with would be at serious risk of violence or intimidation because of their wider PSC information being publicly available, they can apply to have it protected from disclosure. This effectively means that the residential address can be withheld from credit reference agencies as well as the general public in much the same way as any director currently can. In addition to that, it is possible to apply to have all information suppressed although it would still be available to law enforcement agencies.

Can I keep the Register at Companies House?

Private companies can choose to keep certain information on the public register, instead of holding their own statutory registers. This will apply to registers of members, directors, secretaries, directors' residential addresses as well as the PSC register.

What does a company actually have to do?

Every company must take reasonable steps to find out whether it has any registrable PSCs or RLEs and, if it does, to identify them. The legislation sets out detailed procedures for this. It also imposes certain proactive notification duties on registrable PSCs and registrable RLEs.

For many companies, the process will be fairly straightforward as the PSC register will largely reflect information already held in the Register of Members and Register of Directors. Officers of companies in a group setup need to consider some extra steps eg:

a) review register of members, articles or any other agreements they are aware of

b) make informal enquiries about those they think may be a PSC or RLE

c) review voting patterns

d) prepare the necessary letters/notices, eg information requests.

What are the penalties for failure to disclose?

Company officers who fail to take all reasonable steps to disclose their PSCs are liable to be fined or imprisoned or both. If an investigated person fails to respond to the company's request for information, the company is allowed to effectively 'freeze' the relevant shares by stopping proposed transfers and dividends in relation to those shares.