Persons with significant control: the UK’s corporate transparency regime

Summary
UK companies must take reasonable steps to ascertain and record in a dedicated register details of each individual who exercises control or significant influence over the company – known as persons with significant control, or PSCs. The details include the individual’s name, nationality, date of birth and address.
The definition of control seeks to capture all the ways in which an individual could exert significant influence or control, and includes direct or indirect control of more than 25% of the voting rights in the company.
Some companies will not have any PSCs; others will have several.
Individuals who are PSCs will be required proactively to notify the company concerned and provide their details to it. It will be a criminal offence for an individual not to comply with the new rules.
A company must enter the details of a PSC in its register within 14 days of the details being confirmed or ascertained. Within 14 days of doing so, the company must also provide the details to Companies House. For new companies, details of their PSCs must be provided to Companies House on incorporation. Both the company’s PSC register and the information on file at Companies House will be open to inspection by members of the public. Only in certain limited circumstances can some or all of the details about an individual be kept confidential.
A company can impose civil sanctions for non-compliance, which include “freezing” shares so that they cannot be transferred and any rights attached to them cannot be exercised.
UK companies with shares traded on the UK Main Market (Official List) or another EEA regulated market, or on certain markets in Japan, the USA, Switzerland and Israel, do not have to keep a PSC register. Originally, AIM companies were also exempt but on 26 June 2017 they became subject to the PSC regime and from 24 July 2017 they must keep a PSC register. But apart from an ultimate parent company which qualifies for exemption, every UK company in a group must comply with the new rules. A UK company whose shares are all held by another UK company (its immediate parent) will need to include only the details of its immediate parent in its PSC register.
The PSC regime also applies to companies limited by guarantee, unlimited companies and limited liability partnerships incorporated in the UK, and to Societates Europaeae (SEs) registered in the UK. A similar regime applies to "eligible Scottish partnerships” from 26 June 2017.
UK companies that have not already done so need to set up and maintain a PSC register and, where necessary, send out investigation notices to persons whom they believe to be a PSC or to have information about a PSC.
Individuals who are likely to be PSCs should expect to supply their details to each company in which they are a PSC. Those who may be at risk of violence or intimidation if their details are made public should consider making an application to have their name and other personal information protected from public disclosure.

Which entities need to have a PSC register?

Every UK company must have a PSC register unless it is exempt.

A company is exempt if it has shares listed on the UK Main Market (Official List), on a regulated market in another EEA state or on certain markets in Israel, Japan, Switzerland and the USA that are specified in Schedule 1 to *The Register of People with Significant Control Regulations 2016* (which include the NYSE and NASDAQ). These companies are already required by market rules to disclose their major shareholders via stock market announcements.

Originally, AIM companies were also exempt but on 26 June 2017 they became subject to the PSC regime and from 24 July 2017 they must have a PSC register.

Every UK registered limited liability partnership (LLP) and Societas Europaea (SE) must also have a PSC register and comply with the new regime, subject to certain modifications. (For convenience this note refers simply to companies, but see the box on page 5, "*Limited liability partnerships*", for details of how the PSC regime applies to them. From 26 June 2017 "eligible" Scottish partnerships became subject to rules that are similar to the PSC regime for companies: see the box on page 9, "*Eligible Scottish partnerships*".)

The PSC regime is part of a package of measures designed to increase transparency about who owns UK companies, and hence to discourage individuals from using UK companies to launder money or carry on other criminal activities. Other measures include the recent prohibition of bearer shares and forthcoming changes to restrict the circumstances when a corporate director can be used.

Meaning of a person with significant control

A person with significant control over a company is an **individual** who meets *one or more* of the following specified conditions:

The specified conditions	
Condition 1	**Over 25% of the shares:** The individual holds, *directly* or *indirectly*, more than 25% of the shares in the company (calculated by reference to the nominal value of all shares in issue, including any shares held in treasury). See ***example 1*** in Appendix 1.
Condition 2	**Over 25% of the voting rights:** The individual holds, *directly* or *indirectly*, more than 25% of the voting rights in the company that are exercisable on all or substantially all matters (ignoring votes attaching to shares held in treasury).
Condition 3	**Right to appoint or remove majority of the board:** The individual holds the right, *directly* or *indirectly*, to appoint or remove a majority of the board of directors of the company.
Condition 4	**Significant influence or control over the company:** The individual has the right to exercise, or actually exercises, significant influence or control over the company.
Condition 5	**Significant influence or control via a trust, partnership or other entity:** The trustees of a trust or the members of a partnership or another entity that is not a legal person meet (or would if they were individuals meet) one or more of the other specified conditions in their capacity as such, and the individual has the right to exercise, or actually exercises, significant influence or control over the activities of that trust, partnership or other entity.

Special rules determine when a person is treated as "holding" shares or rights, and what "indirectly" means. In particular, a person is treated as holding shares or rights that are held by his nominee or by another person with whom he has a "joint arrangement" (see the box on page 3, "*Joint arrangements*"). And a person is treated as holding indirectly shares or rights that are held via a corporate entity, or a chain of corporate entities, over which he has majority control (see the box on page 3, "*Holding shares or rights indirectly*").

Governments, government departments, local authorities and certain international organisations are treated as individuals – i.e. they can be PSCs and included in a company's PSC register.

It is not necessary to enter in a PSC register a person who meets condition 4 if they have already been entered by virtue of meeting specified condition 1, 2 or 3.

Joint arrangements

If shares or rights are the subject of a "joint arrangement", each party to the arrangement is taken to be holding the combined shares or rights. A joint arrangement is an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares, or rights, in a pre-determined way. It includes any scheme, agreement or understanding, whether or not legally enforceable, and any convention, custom or practice of any kind, provided that "*there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence, or otherwise)*". The wide definition means that an "understanding" between individuals that one will do the other's bidding, or take actions that mirror the other's, is likely to be caught. The joint arrangements rule is principally designed to prevent an individual circumventing the PSC regime by splitting up a holding of over 25% among family members or associates on the understanding that they will exercise their voting and other rights attached to the shares in a particular way. It could of course be difficult for companies to ascertain whether any such arrangement exists.

See ***examples 1 and 3*** in Appendix 1.

In many instances, it will be clear who a company's PSCs are simply by looking at who holds the shares and voting rights directly or indirectly. But in some cases there may be a person who, although he does not hold over 25% of the shares or voting rights and does not have a right to appoint or remove a majority of the directors (i.e. he does not satisfy specified condition 1, 2 or 3), is nevertheless a PSC because through some other means he exercises, or has the right to exercise, significant influence or control over the company either directly or via a trust or other arrangement (i.e. he satisfies specified condition 4 or 5).

Meaning of significant influence or control

The Government has published statutory guidance on what constitutes significant influence or control for the purpose of the fourth and fifth specified conditions (*Statutory guidance on significant influence or control in the context of companies*). Control means having the right to direct the policies or activities of a company. Significant influence means being able to ensure that a company adopts the policies or activities which the person desires.

The right to exercise significant influence or control could be conferred by provisions in the company's articles of association, a shareholders' agreement or by some other means. A person may hold such a right himself or, if the right is held by another person (whether an individual, a company or another vehicle) under an arrangement in which the right is exercisable only on the instructions or with the consent of the first person, the first person will be treated as holding the right. A person could also satisfy specified condition 4 or 5 if they actually exercise significant influence or control without having any contractual right to do so, and even if there are one or more companies or other vehicles between them and the UK company (or, for the purposes of specified condition 5, between them and the relevant trust or firm).

For circumstances when this could be relevant see the box on page 4, "*Exercising significant influence or control: examples"*.

Holding shares or rights indirectly

A person holds shares or rights *indirectly* if he has a *majority* stake in a legal entity and that entity either itself holds the shares or rights in question, or is part of a chain of legal entities each of which (other than the last, which holds the shares or rights directly) has a majority stake in the entity immediately below it in the chain.

A person has a *majority stake* in an entity if:

— he holds a majority of voting rights
— he is a member and has the right to appoint and remove a majority of the board
— he is a member and controls alone, pursuant to an agreement with other members, a majority of voting rights; or
— he has the right to exercise, or actually exercises, dominant influence or control.

See ***example 2*** in Appendix 1.

Exercising significant influence or control: examples

- A person who, without reference to or collaboration with anyone else, has the right to make or veto a decision relating to the running of the business of the company – e.g. adopting or amending the business plan. *But veto rights that are designed to protect a person's minority interest in the company – e.g. by preventing the company's articles being amended or further shares being issued without the person's consent – will not usually be treated as conferring significant influence or control.*
- A director who owns important assets used by the company or who has key relationships which are important to the running of the company's business.
- A person who is not a director but who is regularly consulted on board decisions and whose views influence decisions made by the board.
- A person whose recommendations are always or almost always followed by shareholders who hold the majority of the voting rights – such as an influential founder or family head. *But professional advisers, suppliers, customers, directors and employees who simply perform their customary role will not normally be treated as exercising significant influence or control.*

Corporate chains

Although as a general principle the PSC register is intended to record details of the individuals who ultimately control a company, a UK company that is part of a chain of majority-controlled companies will only need to record in its PSC register the next UK holding company up the chain from it (UK Holdco 1). If UK Holdco 1 sits at the top of the corporate chain and keeps a PSC register, it will record in that register the individuals who control it. (If UK Holdco 1 is exempt from having to keep a PSC register, details of its major shareholders will be accessible to the public through stock market announcements.) If UK Holdco 1 is not the top company in the chain but is in turn controlled by another UK holding company (UK Holdco 2), UK Holdco 1 will simply record in its PSC register that it is controlled by UK Holdco 2. This pattern will be repeated up the chain.

To make this work, the rules provide that a company's PSC register must include not only any individual who is a PSC and registrable but also **any relevant legal entity (RLE)** that is registrable. A relevant legal entity means a body corporate or firm that is a legal person under its governing law which:

- would have been a PSC had it been an individual; and
- is either: (i) subject to the PSC regime, so that it must keep its own PSC register; (ii) a body corporate or firm registered in any country that has voting shares admitted to the UK Main Market, a regulated market in another EEA state or certain markets in Israel, Japan, Switzerland and the USA that are considered to have similar shareholder disclosure requirements; or (iii) an eligible Scottish partnership (which as noted above are subject to rules similar to the PSC regime for companies).

Generally speaking, an entity will be a RLE in relation to a UK company only if it is itself a UK company or LLP, an overseas company with shares listed on such a market or an eligible Scottish partnership which, in each case, holds over 25% of the shares or voting rights in the UK company.

An individual or a RLE need not be registered in the PSC register if their only interest in the UK company is held either through one or more RLEs in which they directly have a *majority stake* or through one or more chains of majority-controlled companies in which at least one is a RLE. An "interest" is widely defined and includes holding *any* shares or voting rights, directly or indirectly, or having the right, directly or indirectly, to appoint or remove any director.

A member of the public who wants to identify the ultimate controllers of a UK company that sits at the bottom of a corporate chain consisting entirely of UK companies (Subsidiary) will therefore be able to do so by looking at the PSC register of each company in the chain in turn. He will see from Subsidiary's PSC register that its immediate parent is UK Holdco 1 (a RLE), and from UK Holdco 1's PSC register that its immediate parent is UK Holdco 2 (a RLE), and from UK Holdco 2's PSC register that its controller is P.

But if there is an overseas company in the corporate chain, things are not quite so straightforward. An overseas company will not have its own PSC register. An overseas company that does *not* have shares listed on a specified stock market will not be a RLE: it therefore cannot be included in the PSC register kept by the UK company below it in the chain, and the UK company must investigate **whether anyone has a *majority stake* in its overseas company parent** – i.e. whether anyone satisfies specified condition 1, 2 or 3 in relation to the UK company *indirectly* (see the box on page 3, *Holding shares or rights indirectly*).

If the overseas company *does* have shares listed on a specified stock market, it will be a RLE: it therefore can be included in the PSC register kept by the UK company below it in the chain, and the UK company need not investigate whether anyone has a majority stake in its overseas company parent. In other words, the UK company can stop investigating further only when it reaches a holding company above it in the chain: (i) that is subject to the PSC regime, in which case that holding company's controllers will be recorded in its own PSC register; (ii) that is subject to similar shareholder disclosure requirements under market rules, in which case details of that holding company's major shareholders will be accessible to the public through stock market announcements; (iii) that is an eligible Scottish partnership, in which case details of the partnership's controllers will be available from Companies House; or (iv) in which no person has a majority stake, in which case no person will be treated as holding indirectly the shares or rights in the UK company that are owned by the holding company. If the UK company's investigation leads to one or more individuals, it must of course consider in respect of each individual whether they have a *majority stake* and, if so, whether they are registrable.

***See examples 2, 3 and 4* in Appendix 1**. Further examples can be found in section 2.2 of the Government's (non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships*.

Companies owned by a limited partnership or trust

If one or more of the specified conditions is met by an English limited partnership (which does not have separate legal personality), ordinarily it will be only the general partner, and not the limited partners, that must be entered in the PSC register by virtue of meeting specified conditions 1, 2 or 3. If the general partner is not a RLE, the UK company must investigate whether anyone has a *majority stake* in the general partner, and so on up the corporate chain – i.e. investigate whether anyone meets specified conditions 1, 2 or 3 *indirectly*.

In addition, the investment manager will in many cases satisfy specified condition 5 (exercising significant influence or control over the limited partnership): the investment manager will therefore also need to be entered in the PSC register if it is a RLE or, if not, the UK company must investigate whether anyone else has the right to exercise, or actually exercises, significant influence or control over the activities of the limited partnership through the investment manager.

Appendix 2 gives further details of how the PSC regime affects private equity and other investment funds and their investee companies, and companies with an employee benefit trust.

Specified conditions 4 and 5

Although this section "*Corporate chains"* is primarily concerned with persons who satisfy specified conditions 1, 2 or 3 directly or indirectly, in all cases the UK company should also consider whether there is any person, apart from one who is already entered in the PSC register by virtue of satisfying specified conditions 1, 2 or 3, who satisfies specified condition 4 (exercising significant influence or control over the company); and whether there is any person who satisfies specified condition 5 (exercising significant influence or control over a trust or firm, and hence over the UK company).

Limited liability partnerships

For UK-incorporated LLPs, the specified conditions are similar to those for companies:

Condition 1	Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up.
Condition 2	Directly or indirectly holding more than 25% of the voting rights.
Condition 3	Directly or indirectly holding the right to appoint or remove the majority of those involved in management.
Condition 4	Otherwise having the right to exercise, or actually exercising, significant influence or control.
Condition 5	Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity but would itself satisfy any of the first four conditions if it were an individual.

Annex 4 of the Government's (non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships* gives guidance on determining whether a person meets any of the first three specified conditions in relation to an LLP. The Government's *Statutory guidance on significant influence or control in the context of LLPs* gives guidance on the last two conditions, including examples of persons who are treated as having the right to exercise significant influence or control. The examples are similar to those in the *Statutory guidance on significant influence or control in the context of companies*.

What do companies need to do?

Investigating who the PSCs are

A company must take reasonable steps to identify its PSCs and any RLEs that are registrable. In particular, it **must** send out an investigation notice to anyone whom it knows or has reasonable cause to believe to be registrable, requiring them to state whether they are registrable and to supply or confirm particulars. **It may** also send out investigation notices to others, including solicitors and other professional advisers, who might know the identity of its PSCs. But a company need not send an investigation notice if it has already been informed of a PSC's identity. The recipient of an investigation notice has **one month** to provide the company with the information requested.

If a person or entity with an interest in the company fails to reply to an investigation notice, the company may take steps to restrict the relevant shares, by first issuing a *warning notice* and then, a month later, a *restriction notice*. If a restriction notice is served, the shares may not be transferred and no rights in respect of them may be exercised. Failure to comply with a valid investigation notice will also be a criminal offence. A company must also send out an *investigation notice* within 14 days of its coming to believe that there has been a change in the status or particulars of a PSC, unless the company already has details of the change. Sample notices are set out in Annex 3 of the Government's (non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships*.

For further information about what companies should do, see the box on page 7, "*Taking "reasonable steps" to identify your PSCs*"

Keeping the PSC register

From 6 April 2016 the PSC register should never be empty. If a company has no PSCs, its PSC register should include a statement to that effect. If a company has not (yet) been able to identify its PSCs and get their details confirmed, its PSC register will have to include notes about the status of its investigations.

The PSC register must include the *required particulars* of each person with significant control over the company who is a registrable person. The company must also enter the required particulars of any RLE. The register must also include details of the current status of the company's investigations, and any restrictions that it has imposed. See the box on page 8, "*Information to be included in the PSC register*".

None of the required particulars of an individual can be included in the PSC register until they have all been **confirmed**. For this purpose, particulars are confirmed if they have been provided or confirmed to the company by the person or with the person's knowledge, or if they were included in the statement of initial significant control on formation of the company. The confirmation requirement does not apply to RLEs.

Once all the particulars in relation to an individual have been confirmed or, in relation to a RLE, the company has obtained them, the company has 14 days to enter the details in its PSC register. Within a further 14 days of updating its PSC register, the company must notify Companies House using one of the prescribed forms. (The obligation to notify Companies House was introduced on 26 June 2017 to implement the Fourth Anti-Money Laundering Directive.)

Public right to inspect the register

A company must make its PSC register available for inspection by any person at the company's registered office or inspection location. It must also provide copies on request (at a cost of up to £12 per request). However, a PSC's usual residential address must not be included in the information or copy that is made available to the public.

Companies House

From 30 June 2016 companies had to include with information filed at Companies House the required particulars of each individual or RLE who was registrable in the company's PSC register. This was required when a company was incorporated and annually. From 26 June 2017, such information continues to be required on incorporation, but in its annual confirmation statement a company must now either confirm that it has already notified Companies House of all changes to its PSC register since the date of its previous confirmation statement or it must file details of any such changes with the confirmation statement. Because companies are now required to notify Companies House of any change within 14 days of updating the PSC register (see above), in most cases they will be able simply to give the confirmation.

Taking "reasonable steps" to identify your PSCs

If the company has a simple shareholder governance structure – e.g. there is only one class of ordinary shares, each of which carries one vote in all circumstances, and the directors are confident that there is no shareholders' agreement – the company may well be able to determine simply from its register of members whether any person directly satisfies any of the first three specified conditions – i.e. whether they hold directly over 25% of the shares or voting rights, or whether they have a direct right to appoint or remove a majority of the board. However, even if the company has a simple shareholder governance structure it will need to go on to consider:

— Do voting patterns or other evidence clearly indicate that some shareholders, such as members of a family, are acting together (i.e. is there a *joint arrangement* between them?), or that one shareholder is acting as a nominee for someone else? If so, would their shares and voting rights together amount to more than 25%?

— Could any (other) person satisfy any of the other specified conditions: i.e. is there any person who has the right to exercise, or who actually exercises, significant influence or control over the company (condition 4) or over a trust, partnership or other entity that satisfies one of the other conditions (condition 5)? The person with significant influence or control might not hold any shares at all and so not appear in the company's register of members. Initially, at least, the company should use the information it already holds to identify each person who might have significant influence or control, and then consider whether and when to send an investigation notice to them asking for more information about their relationship with the company, its shareholders and directors.

— Is there any person who could satisfy specified conditions 1, 2 or 3 *indirectly* – i.e. by holding shares, voting rights or the right to appoint or remove a majority of the board through one or more legal entities in which he has a *majority stake* (holding vehicles) – and, if so, is the company required to investigate who controls the holding vehicle? The company will need to consider how best to do this: in particular, whether it should send an investigation notice to the holding vehicle and/or any other person who may have information about who controls the holding vehicle.

Companies with a more complex shareholder governance structure will need to consider in addition:

— Do some shares carry more voting rights than others, either generally or in particular circumstances? If so, a person who holds 25% or less of the total number of shares could nevertheless be a PSC if their shares confer more than 25% of the total number of voting rights.

— Does any shareholder have a right to appoint or remove a majority of the board? Such rights are usually set out in the company's articles of association, but they might also be found in a shareholders' agreement or, occasionally, another type of agreement. Typically, the company is a party to a shareholders' agreement, but if the company has no knowledge of the agreement it will need to consider sending an investigation notice to one or more of the shareholders concerned.

In all cases, directors should do what they believe a reasonable person would do if he or she knew what the directors know, bearing in mind that the purpose of the PSC regime is transparency, and ensure they can justify any decision whether or not to pursue a line or method of investigation or to impose restrictions on shares.

What do PSCs need to do?

A person who has been served with an investigation notice should ensure that they reply to the notice within one month in order to avoid the risk of the company imposing restrictions. Failure to reply is also a criminal offence.

Even if not served with an investigation notice, a person who thinks they should be recorded in a company's PSC register has an obligation to pro-actively notify the company (or, if they are already registered in the PSC register, to notify the company of any changes to their particulars). Failure to supply information is also a criminal offence.

An individual's residential address must not be disclosed to the public, either when the company is making its PSC register available on request or in the information available at Companies House. But if an individual is concerned that they, or a person they live with, will face a serious risk of violence or intimidation if other required particulars are made available to the public, they can make an application for this information to be withheld as well.

Information to be included in the PSC register

For **individuals**, the required particulars are:

- name;
- service address;
- country or state of usual residence;
- nationality;
- date of birth;
- usual residential address (although this will not be accessible by the public); and
- if any of the individual's details are protected from disclosure to the public, that fact.

For **RLEs**, the required particulars are:

- corporate or firm name;
- registered or principal office;
- legal form of the entity and law by which it is governed;
- register of companies in which it is entered; and
- registration number (if applicable).

For both individuals and RLEs, in addition:

- details of the date on which the person became registrable and the nature of their control;
- which one or more of the specified conditions they meet;
- the level of their interest by reference to specified bands – i.e. more than 25% up to 50%; more than 50% up to 75%; or 75% or more; and
- certain other information indicating what the company knows or does not know about its PSCs: for example, that it has reason to believe that there are PSCs but it has not yet been able to identify them and/or get their details confirmed.

To ensure consistency among registers, Annex 2 of the Government's (non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships* includes official wording that must be used for these purposes.

Further information

The PSC regime for companies is set out in Part 21A and Schedule 1A and 1B of the Companies Act 2006, which were inserted by the **Small Business, Enterprise and Employment Act 2015** and amended with effect from 26 June 2017 by the **Information about People with Significant Control (Amendment) Regulations 2017**. Various aspects of the regime have been amplified in other Regulations.

The Government has published two sets of statutory guidance on *significant influence or control*:

— *Statutory guidance on significant influence or control in the context of companies.*
— *Statutory guidance on significant influence or control in the context of LLPs*.

Other guidance published by the Government includes:

— (Non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships*: this includes guidance on identifying PSCs; information to be included in the PSC register; keeping that information up to date; sending out investigation notices and warning notices and imposing and lifting restrictions on shares; and the procedure for suppressing an individual's required particulars where a person would be at serious risk of violence or intimidation if the required particulars were made available to the public.
— (Non-statutory) *Guidance for PSCs*, focusing on the obligations of those who might be PSCs or RLEs.
— *Guidance for eligible Scottish partnerships on the meaning of "significant influence or control"*.

The latest version of each set of guidance can be found on the BIS **webpage** dedicated to the PSC regime.

Eligible Scottish partnerships

An "eligible Scottish partnership" means (i) a limited partnership registered in Scotland; or (ii) a general partnership constituted under the law of Scotland, during any period in which it is a "qualifying partnership" as defined in regulation 3 of the Partnership (Accounts) Regulations 2008 – i.e. where each member of the partnership is either a limited company, or an unlimited company, or a Scottish partnership each of whose members is a limited company. For such partnerships:

- An application to register a new Scottish limited partnership must contain a statement of initial significant control; and all eligible Scottish partnerships must deliver a confirmation statement on an annual basis to the Registrar.
- Any existing Scottish qualifying partnership must deliver registration information consisting of its name, service address, partners' names and other specified details to the Registrar of Companies within 14 days after 24 July 2017 or, if it is not yet in existence (or if it exists but has not yet become a qualifying partnership), within 14 days of becoming a qualifying partnership. Notification is also required if the partnership ceases to be a Scottish qualifying partnership.
- Unlike companies and LLPs, eligible Scottish partnerships are not required to keep their own PSC register. However, they must take steps to identify their registrable persons and RLEs and notify their details and any changes to the Registrar of Companies on an ongoing basis within 14 days of obtaining the information. Likewise, registrable persons and RLEs must notify the partnership of their status and any updates in the same way as for companies.
- An individual or RLE that meets one or more of the following conditions is a PSC:

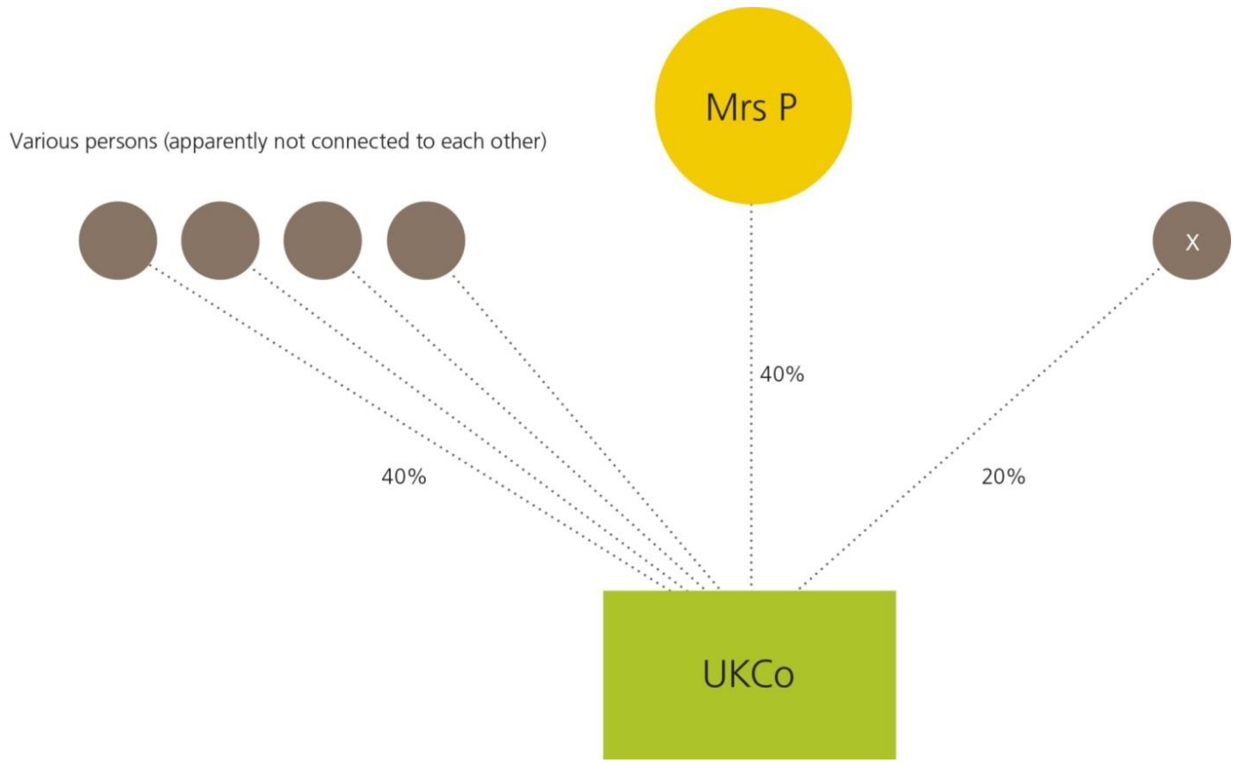
Condition 1	Directly or indirectly holding rights over more than 25 % of the surplus assets on a winding up.
Condition 2	Directly or indirectly holding more than 25% of the voting rights.
Condition 3	Directly or indirectly holding the right to appoint or remove the majority of those involved in management.
Condition 4	Otherwise having the right to exercise, or actually exercising, significant influence or control.
Condition 5	Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity but would itself satisfy any of the first four conditions if it were an individual.

Annex 5 of the Government's (non-statutory) *Guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships* gives guidance on determining whether a person meets any of the first three specified conditions. The Government's *Guidance for eligible Scottish partnerships on the meaning of "significant influence or control"* gives guidance on the last two conditions, including examples of persons who are treated as having the right to exercise significant influence or control. The examples are similar to those in the *Statutory guidance on significant influence or control in the context of companies*.

Appendix 1: Examples

Key	
UKCo	A UK company that is subject to the PSC regime (see page 2, "*Which entities need to have a PSC register*")
Mr(s) P or A	A person who is an individual
%	The percentage of shares and voting rights held (i.e. it is assumed that each share in the company concerned carries one vote in all circumstances)
RLE	Relevant legal entity: see "*Corporate chains*" section on pages 4 and 5

Example 1: UK company with several shareholders



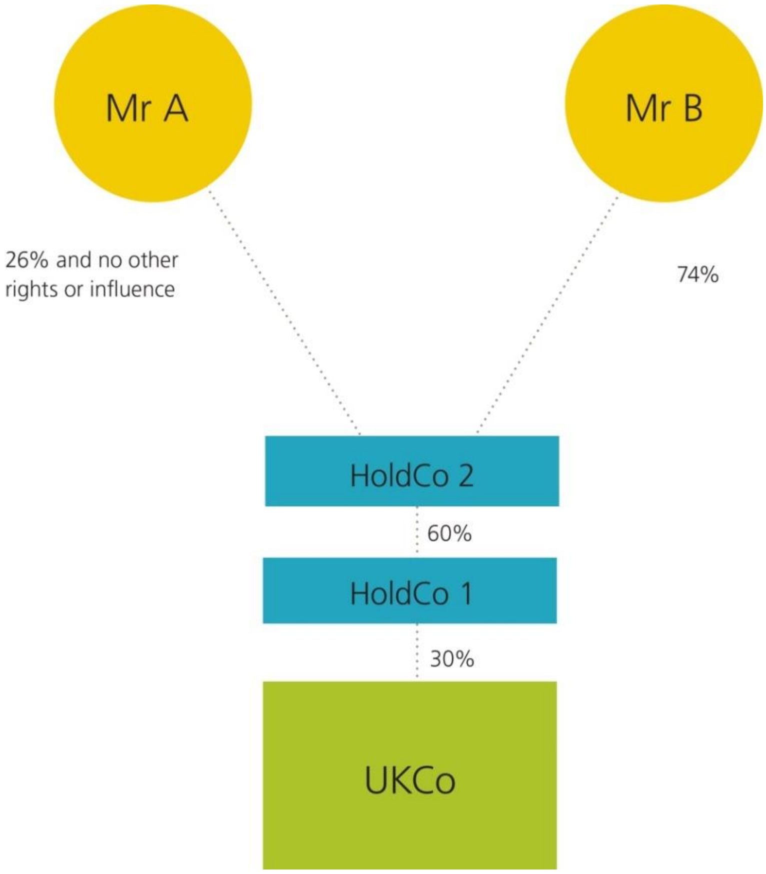
1. UKCo need not send out any investigation notices if it already has the required particulars of each controller.

2. Mrs P is a PSC because she holds over 25% of the shares (and voting rights) in UKCo directly. She is registrable because she does not hold her shares in UKCo via any holding vehicles. (But if Mrs P were to hold all her interest in UKCo via a UK holding company, Mrs P would be a registrable PSC for that holding company but not for UKCo: see "*Corporate chains*" section on pages 4 and 5.)

3. Are there any other PSCs? E.g.

   — Is there a *joint arrangement* between any of the "various persons"?
   — Is there any other person who has the right to exercise, or who actually exercises, *significant influence* or control over UKCo?
   — Is any person acting as nominee for another?
   — Does anyone have the right, directly or indirectly, to appoint or remove a majority of the board of UKCo?

Example 2: When an individual does and does not hold shares or rights *indirectly*



1. Mr B has a *majority stake* in HoldCo 2, which in turn has a *majority stake* in HoldCo 1. HoldCo 1 holds over 25% of the shares in UKCo directly. Mr B therefore holds over 25% of the shares in UKCo *indirectly*, and should be entered in UKCo's PSC register unless he is non-registrable. He will be non-registrable in respect of UKCo if at least one of the HoldCos is a UK company and he holds no interest in UKCo by any other means.

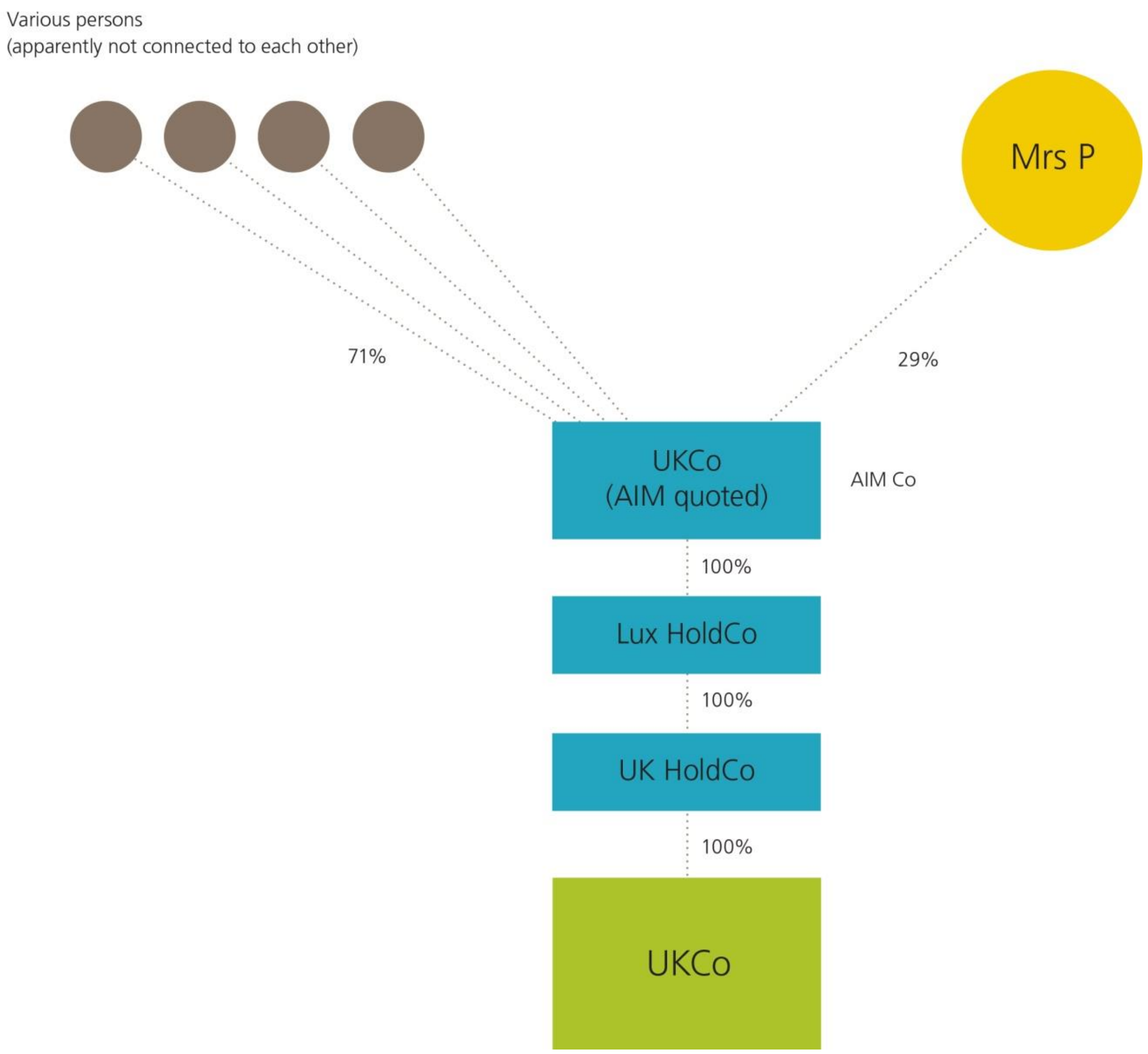
   (In general terms, Mr B has the power to cause both HoldCos to do his bidding, so as a starting point he is treated as *indirectly* holding all the shares in UKCo that the two HoldCos hold.)

2. Mr A does *not* have a *majority stake* in HoldCo 2, so he is not treated as holding indirectly the shares in UKCo held by HoldCo 1.

Example 3: UK company controlled via one or more overseas companies

1. Neither Company X nor Company Y is governed by UK company law, so they are not required to keep a PSC register.
2. UKCo cannot put Company X on its PSC register, even though Company X owns 100% of the shares and voting rights in UKCo, because Company X is an overseas company and not a RLE.
3. Instead, UKCo must investigate who controls Company X. Although Company Y has a *majority stake* (holding 100% of the shares and voting rights) in Company X, Company Y is also not an RLE and therefore cannot be entered on UKCo's PSC register. (In this example, Company X and Company Y are very unlikely to have shares traded on any market. But if, say, Company Y were to have voting shares admitted to an EEA regulated market or certain markets in Israel, Japan, Switzerland or the USA, Company Y would be a RLE.)
4. UKCo must therefore investigate who controls Company Y. Mr B has a *majority stake* (holding more than 50% of the shares and voting rights) in Company Y, so Mr B is a PSC in relation to UKCo. Mr B is not non-registrable in respect of UKCo, since neither of the holding companies (Company X and Company Y) is a RLE, so Mr B must be entered on UKCo's PSC register. (Mr A does not have a *majority stake* in Company Y, so is not a PSC in relation to UKCo unless, for example, he is party to a *joint arrangement* with Mr B, is a nominee for Mr B or he actually exercises significant influence or control over UKCo.)

Example 4: UK company that is an indirect wholly-owned subsidiary of an AIM company



1. Which companies and persons need to be recorded in each PSC register?

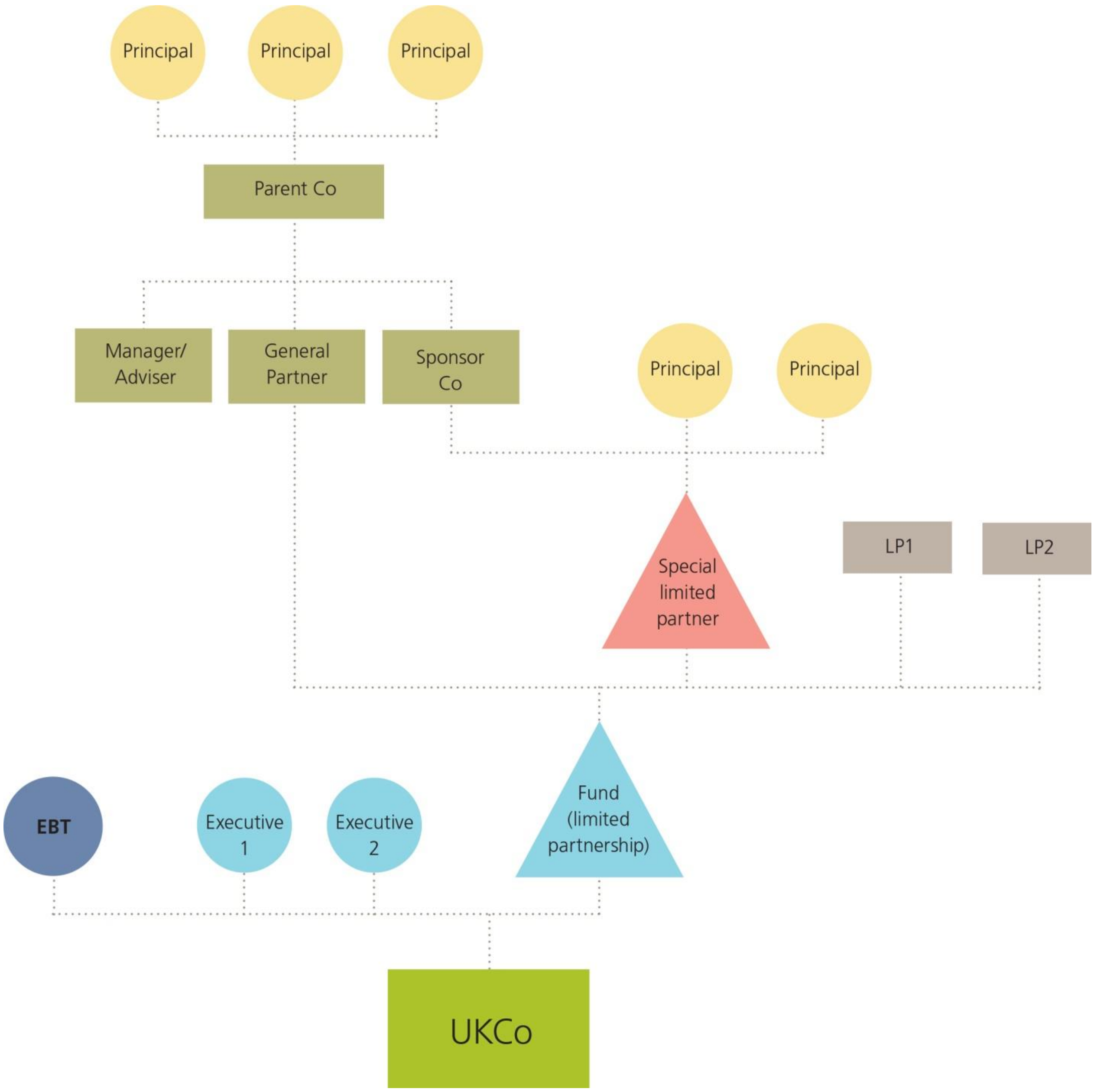
— UKCo: the PSC register of UKCo should include UK HoldCo, which holds a controlling interest in UKCo *directly* and is a RLE. UKCo is not required to investigate who controls UK HoldCo, nor does UKCo need to investigate and record who the controllers of LuxHoldCo or AIMCo are.

— UK HoldCo: the PSC register of UK HoldCo cannot include Lux HoldCo because it is not a RLE; but AIMCo has a majority stake in LuxHoldCo and is a RLE so AIMCo should be included. (If the topmost company were not a RLE, UK HoldCo would need to investigate whether there is any person who has a *majority stake* in the topmost company – i.e. whether any person holds over 25% of the shares in UK HoldCo *indirectly*.)

— AIM Co: From 26 June 2017 AIM companies must comply with the PSC regime. AIMCo must include in its PSC register Mrs P, who holds over 25% of AIMCo's shares directly and is registrable. AIMCo should also take reasonable steps to find out whether it has any other PSCs – e.g. whether there is a *joint arrangement* between some of the "various persons" who between them own more than 25% of AIMCo's shares. (In addition and quite separately, under DTR 5 AIMCo's major shareholders (i.e. those with 3% or more of the voting rights, including Mrs P) must be disclosed to the public via announcements to the London Stock Exchange.)

Appendix 2: Investment funds and their investee companies

Key	
UKCo	A UK company that is subject to the PSC regime (see page 2, "*Which entities need to have a PSC register*")
%	The percentage of shares and voting rights held (i.e. it is assumed that each share in the company concerned carries one vote in all circumstances)
RLE	Relevant legal entity: see "*Corporate chains*" section on pages 4 and 5



General

1. Paragraphs 1 to 21 below assume that UKCo is directly owned partly by a management team (executives) and partly by a fund. Typically the fund will own a majority of the shares and voting rights. UKCo must ascertain whether any individual or RLE meets one or more of the specified conditions 1, 2 or 3 directly or indirectly, and whether anyone satisfies specified condition 4 or 5. However, if the fund and the executives own shares in a foreign holding company that in turn owns 100% of the shares in UKCo the analysis will be different: see paragraphs 22 to 27 below.

2. Although the fund "camp" will usually meet **condition 1** and **condition 2** (holding directly over 25% of the shares and voting rights), and may well also meet **condition 3** (right to appoint or remove a majority of the board), and the executives "camp" will sometimes meet **condition 1 and condition 2**, this does not necessarily mean that any individual or legal entity in either camp must be entered in the PSC register of UKCo. There are three issues that particularly need to be considered:

   — Is any single individual or legal entity in either camp a registrable individual or registrable RLE in relation to UKCo by virtue of meeting any of **conditions 1 to 3** either directly or indirectly (i.e. via a company in which he has a *majority stake*)?
   — Is there a *joint arrangement* between any two or more members of a "camp", or between members of the different "camps"? If so, each party to the arrangement is treated as holding the shares or rights held by all of them in aggregate.
   — Whether or not an individual or RLE meets any of the first three "hard-edged" conditions, is there anyone else who meets **condition 4 or 5**?

   A person will satisfy **condition 4** if he has the right to exercise, or actually exercises, significant influence or control over UKCo: see "*Meaning of significant influence or control*" on pages 3 and 4.

   A person will satisfy **condition 5** if he has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that satisfies two criteria: (i) it is not a legal entity; and (ii) the trustees or partners of that trust or firm collectively meet any of **conditions 1 to 4** (or would do if they were collectively treated as an individual) – i.e. broadly speaking the person exercises significant influence or control over UKCo *through a trust or firm*.

   Condition 5 is primarily designed to catch individuals who exercise control over a UK company but do so by putting their shares or rights in the UK company into a domestic or offshore trust or other type of non-corporate vehicle that they control. However, condition 5 can also catch arrangements where shares or rights are held by a fund, depending on the legal form and structure of the fund concerned. In particular, where a fund holds over 25% of the shares or voting rights in UKCo, and the fund is an English limited partnership (which does not have separate legal personality), the fund will be a firm that satisfies both criterion (i) and criterion (ii) in condition 5. As the *Statutory guidance on significant influence or control in the context of companies* says that condition 5 does not catch persons who are actually members of the firm, or trustees of the trust, the question is whether any person who is not a partner has the right to exercise, or actually exercises, significant influence or control over the activities of the limited partnership. If so, that person will satisfy condition 5 and must be entered in the PSC register of UKCo if they are either a registrable individual or a registrable RLE.

Registrable or non-registrable?

3. If UKCo identifies an individual or RLE who satisfies one or more of the conditions, and who therefore must prima facie be entered in the UKCo's PSC register, UKCo must consider whether the individual or RLE is in fact non-registrable: see "*Corporate chains*" on pages 4 and 5. For convenience, however, this Appendix assumes that in each case the individual or RLE is not non-registrable.

Executives

4. Typically a significant proportion of the shares (and voting rights) in UKCo will be held directly by members of the management team (executives). If unusually any single executive holds over 25% of the shares or voting rights in UKCo, he or she will be a registrable individual in relation to UKCo. If any two or more executives between them hold over 25% of the shares or voting rights in UKCo, and there is a *joint arrangement* between them, each of them will be treated as a registrable individual in relation to UKCo. For example, if Executive 1 holds 15% of the voting rights, and Executive 2 holds another 15%, neither of them alone meets condition 2; but if they agree that they will always exercise their voting rights in the same way as each other, there will be a *joint arrangement* between them and each will be treated as holding 30% of the voting rights; each will therefore satisfy **condition 2** and should be entered in the PSC register of UKCo. Usually, however, there will be no such agreement.

5. Even if none of the executives meets condition 1, 2 or 3, UKCo should consider whether any of them could meet **condition 4 or 5:** for example, by owning directly or through a family trust important assets that are used by the company. If in doubt, UKCo should send out an appropriate investigation notice to the relevant executive(s) and/or any other

person who might know the identity of a registrable individual or RLE.

Employee Benefit Trust

6. If over 25% of the shares or voting rights in UKCo are held by an EBT, since the EBT is not a legal entity it cannot be entered in the PSC register of UKCo. However, assuming that the trustees hold the shares or voting rights jointly (or, if not, that there is a *joint arrangement* between them), so that each trustee is taken to hold all the shares or rights that are held by the trustees in aggregate, each trustee who is an individual, and any corporate trustee that is a RLE, must be entered in UKCo's PSC register as satisfying **condition 1** and/or **condition 2** directly. It would be sensible to note next to each such entry in the PSC register that they hold the shares or rights in their capacity as trustee of the EBT.

7. Typically, the trustee will be a Guernsey or Jersey company, which will not be a RLE and therefore cannot be entered in UKCo's PSC register. UKCo must therefore investigate whether any person has *a majority stake* in the corporate trustee (i.e. whether anyone satisfies **condition 1 or 2** *indirectly*), continuing its investigation up the corporate chain in the manner described in "*Corporate chains*" on pages 4 and 5.

8. UKCo should also ascertain whether any person *apart from the trustee(s)* has the right to exercise, or actually exercises, significant influence or control over the activities of the EBT. If so, that person will satisfy **condition 5** and must be entered in the PSC register of UKCo if they are either a registrable individual or a registrable RLE. Occasionally another company in the group might exercise significant influence or control over the activities of the EBT, but in most cases no person will do so.

Fund

9. If the fund holds over 25% of the shares or voting rights in UKCo, or the articles of association and/or investment agreement give the fund the right to appoint or remove a majority of the board of UKCo, UKCo will need to consider which persons – whether the fund itself or any of its members – meet **condition 1, 2 or 3**. If the fund is not a legal entity, UKCo will also need to consider whether any person meets **condition 5** – i.e. whether any person, apart from a partner in the fund, has the right to exercise, or actually exercises, significant influence or control over the activities of the fund. As noted above, in all cases UKCo should also consider whether there is any person, apart from one who is already entered in its PSC register by virtue of satisfying conditions 1, 2 or 3, who satisfies **condition 4**.

English limited partnership (or non-UK limited partnership with similar characteristics)

10. If the fund is an **English limited partnership**, it is not a legal entity and therefore cannot be entered in UKCo's PSC register. Depending on how the limited partnership holds the legal title to its assets, the shares or rights in UKCo might be treated as held by each of the partners jointly, in which case each partner would be taken to hold all the shares and rights that are held by the partners in aggregate. Prima facie this would require UKCo to enter in its PSC register each partner in the fund – both the general partner and each limited partner – that is an individual or a RLE. However, entering the details of every such limited partner could be burdensome and would not really reveal who controls UKCo. Special rules in paragraph 25 of Schedule 1A of the Companies Act 2006 therefore allow UKCo *not* to include limited partners provided that the only reason they meet **condition 1, 2 or** 3 is because they are a limited partner. (But a limited partner will be registrable if it satisfies **condition 4**: see below.) The same principles apply to a foreign limited partnership that is not a legal entity and which has a similar structure and legal characteristics to an English limited partnership – i.e. if it has a general partner with unlimited liability and one or more limited partners whose liability is limited so long as they are not involved in managing the partnership.

11. The general partner of the fund will satisfy **conditions 1 and 2**, and possibly **condition 3**, and should therefore be entered in the PSC register of UKCo if it is a RLE – i.e. if it is a UK company or UK LLP (or, less likely, an eligible Scottish partnership or an overseas company with shares admitted to one of the specified markets). So if the general partner is a UK company or UK LLP, UKCo should enter in its PSC register the specified particulars of the general partner, noting that it holds the shares or rights in its capacity as general partner of the fund, and need not investigate any further. The general partner will itself maintain its own PSC register, and must investigate whether there is any individual or RLE that is registrable in relation to the general partner. (If the general partner is a UK LLP, see the box on page 5 which sets out the specified conditions that a person must meet to be a PSC of a UK LLP.)

12. If the general partner of the fund is not a RLE (e.g. because it is an unlisted foreign company), UKCo must investigate whether any person has a *majority stake* in the general partner – i.e. whether there is any person who is treated as satisfying **conditions 1, 2 or 3** *indirectly*. For example, if the general partner is a BVI company, UKCo must investigate whether any person has a *majority stake* in the BVI company: if a *majority stake* is held by the fund manager or another company, that fund manager or company can be entered in UKCo's PSC register if it is a RLE or, if not, UKCo must continue investigating up the corporate chain

in the manner described in “*Corporate chains*” on pages 4 and 5.

13. **Condition 5:** UKCo should then consider whether any person, apart from a partner, has the right to exercise, or actually exercises, significant influence or control over the activities of the limited partnership. If the general partner has engaged an authorised AIFM or other **investment manager** to manage the fund, the investment manager may have the right to exercise, or actually exercise, significant influence or control over the activities of the limited partnership. This is particularly likely if the general partner delegates substantially all decision-making to the investment manager.

    Arguably an investment manager should not be treated as exercising significant influence or control over the activities of the fund. This is because paragraph 6.2 of the *Statutory guidance on significant influence or control in the context of companies* sets out examples of persons who are not treated as meeting **condition 5** (known as “excepted roles”). These include a person “who provides advice or direction in a professional capacity, for example as a lawyer, accountant… or investment manager”, provided that the role or relationship does not “differ in material respects or contain significantly different features from how the role or relationship is generally understood”. On this basis, an investment manager of a fund may perform an excepted role and therefore not be treated as meeting **condition 5**. But if the investment manager does not perform an “excepted role” then, if it is a RLE, UKCo must enter the investment manager in its PSC register; if the investment manager is not a RLE, UKCo must investigate whether any person apart from the investment manager has the right to exercise, or actually exercises, significant influence or control over the fund through the investment manager.

14. **Condition 4**: UKCo should also investigate, principally by asking the general partner, whether any of the limited partners in the fund has significant influence or control over UKCo: for example, by having a sufficiently large interest in the fund to give it effective control over amendments to the investment policy and/or the appointment or removal of the general partner.

Scottish limited partnerships

15. If the fund is a Scottish limited partnership (SLP) it is (since 26 June 2017) a RLE and can be entered in the PSC register of UKCo. UKCo need not investigate who controls the SLP; but the SLP is subject to similar obligations to identify its PSCs and notify their details to Companies House (see the box on page 9, “*Eligible Scottish partnerships*”).

Other investment entities

16. If the fund is another form of investment vehicle that is a legal entity but which is not a RLE (such as a Guernsey limited partnership that has elected to have separate legal personality), it cannot be entered in the PSC register of UKCo. UKCo should investigate whether any person has a *majority stake* in the vehicle, continuing its investigation up the corporate chain in the manner described in “*Corporate chains*” on pages 4 and 5. In most circumstances the general partner is likely to have a *majority stake* by virtue of, at least, having the right to exercise, or actually exercising, dominant influence or control over the vehicle, so the general partner will satisfy **conditions 1 and 2**, and possibly **condition 3**, indirectly.

17. **Condition 5:** If the fund is a UK LLP, a SLP or another form of vehicle that is a legal entity, condition 5 is not relevant, so UKCo need not go on to investigate whether any person exercises significant influence or control over the activities of the fund.

18. **Condition 4:** Often **the investment manager** to the fund will satisfy condition 4 and should therefore be registered unless it performs an “excepted role” (see paragraph 13 above). In addition, as with an English limited partnership UKCo should also investigate, principally by asking the general partner, whether any of the limited partners in the fund has significant influence or control over UKCo: for example, by having a sufficiently large interest in the fund to give it effective control over amendments to the investment policy and/or the appointment or removal of the general partner.

Nominee arrangements

19. If the shares in UKCo are held by a nominee company on behalf of the fund, the shares will be treated as held by the fund and not by the nominee.

Joint arrangements

20. UKCo should go on to consider whether there could be a *joint arrangement* between the fund/general partner and any other person who holds shares or rights in UKCo. For example, if a carry vehicle or parallel partnership holds shares in UKCo alongside the fund, UKCo should investigate whether there is a joint arrangement between the fund, acting through its general partner, and the carry vehicle or parallel partnership. If so, the carry vehicle or parallel partnership, as well as the fund, will be treated as holding all the shares and rights that they hold in aggregate between them.

Voting rights delegated to someone else

21. If the general partner has given someone else the power to exercise voting rights attached to the fund's shares in UKCo (e.g. where the investor has given such power to one or more individuals in order to avoid having a majority of the voting rights in UKCo), and the arrangement has a degree of stability to it, that third party and not the general partner will be treated as holding those voting rights. The delegate may therefore satisfy **condition 2** and, possibly, **condition 3**.

Fund and executives own shares in a foreign holding company that in turn owns 100% of the shares in UKCo

Conditions 1 to 3

22. Private equity funds often hold their stake in a UK investee company through an unlisted foreign holding company such as a Guernsey company (FHoldCo). In other words, all the shares and voting rights in UKCo are held by FHoldCo, and it is shares and voting rights in FHoldCo that the fund, the executives and any EBT hold in their respective proportions. Where this structure is used FHoldCo, but no-one else, will satisfy **conditions 1 to 3** directly. But FHoldCo cannot be entered in the PSC register of UKCo because it is not a RLE. Instead, UKCo must investigate whether anyone has a *majority stake* in FHoldCo – i.e. whether anyone satisfies **condition 1, 2 or 3** in relation to UKCo indirectly (see the box on page 3*, Holding shares or rights indirectly*).

23. As described in that box, a person will have a majority stake in FHoldCo if they satisfy any of the following four tests:

    — They hold a majority of voting rights in FHoldCo.
    — They are a member of FHoldCo and have the right to appoint and remove a majority of the board of FHoldCo.
    — They are a member of FHoldCo and control alone, pursuant to an agreement with other members, a majority of the voting rights in FHoldCo.
    — They have the right to exercise, or actually exercise, dominant influence or control over FHoldCo.

24. Usually none of the executives will satisfy any of these tests, and nor will any EBT. However, in many cases the fund will do so, in which case the fund will satisfy **conditions 1 and 2**, **and possibly condition 3**, *indirectly*. If the fund is an English limited partnership, or a non-UK limited partnership that is not a legal entity and which has a similar structure and legal characteristics to an English limited partnership, the analysis in paragraphs 10 to 12 of this Appendix applies: in short, where the general partner is a UK company or UK LLP, UKCo should enter in its PSC register the specified particulars of the general partner. If the fund is a Scottish limited partnership (SLP), it is a RLE and can be entered in UKCo's PSC register. If the fund is another form of investment vehicle that is a legal entity but which is not a RLE, the analysis in paragraph 15 of this Appendix applies: the investment vehicle cannot be entered in the PSC register of UKCo and instead UKCo should investigate whether any person has a *majority stake* in the vehicle, continuing its investigation up the corporate chain in the manner described in "*Corporate chains*" on pages 4 and 5.

Condition 5

25. If the fund is an English limited partnership, or a non-UK limited partnership that is not a legal entity and which has a similar structure and legal characteristics to an English limited partnership, and it has a *majority stake* in FHoldCo (i.e. it satisfies conditions 1 and 2, and probably 3, indirectly), a person will satisfy **condition 5** if they have the right to exercise, or actually exercise, significant influence or control over the fund. As discussed in paragraph 13 of this Appendix, the **investment manager** to the fund will often do so. Unless the investment manager performs an "excepted role", it should either be entered in UKCo's PSC register if it is a RLE or, if it is not a RLE, UKCo must investigate whether any person has the right to exercise, or actually exercises, significant influence or control over the fund through the investment manager.

Condition 4

26. In addition, UKCo must investigate whether there is any person, apart from one who is already registered because they satisfy conditions 1, 2 or 3 directly or indirectly, who satisfies **condition 4** (exercising significant influence or control over UKCo).

Other points

27. The points in paragraphs 19 (*nominee arrangements*), 20 (*joint arrangements)* and 21 (*Voting rights delegated to someone else*) should also be considered.

July 2017