

# Disclosure of significant influence or control over UK companies

On 6 April 2016 new regulations will come into force which require unlisted companies incorporated in the UK to maintain a register of persons with significant control (known as a "**PSC Register**"). PSC Registers will be publicly accessible through Companies House and are intended to improve corporate transparency by forcing disclosure of the identity of individuals who are the ultimate controllers of a corporate structure.

## Who must maintain a PSC Register?

All UK-incorporated companies (other than those with a stock exchange listing) and UK limited liability partnerships ("**UK LLPs**"). Overseas entities do not need to maintain a PSC Register. At a future date the legislation is expected to be extended to include Scottish limited partnerships.

## Who or what may be registered on a PSC Register?

Individuals (of any nationality or domicile) and relevant legal entities ("**RLEs**"). RLEs comprise UK incorporated companies, UK LLPs and non-UK companies listed on certain stock markets. Unlisted overseas legal entities are not RLEs and so should not be named on PSC Registers.

## When should an individual or RLE be included on a company's PSC Register?

If he/she/it ("**X**") satisfies one of the following specified conditions:

- X directly or indirectly holds more than 25% of the company's shares or voting rights
- X directly or indirectly holds the right to appoint or remove a majority of the company's board of directors
- X has the right to exercise, or actually exercises, "significant influence or control" over the company
- in the case of trusts or partnerships, if:
  - trustees or members meet any of the other specified conditions in relation to the company (or would do so if they were individuals); and
  - X has the right to exercise, or actually exercise, significant influence or control over the activities of the trust or firm.

Draft statutory guidance considers the meaning of "significant influence or control" and sets out examples of what will, and will not, satisfy the test. Absolute decision rights over certain matters, including adopting or amending the company's business plan, changing the nature of the business, making additional borrowing and appointing/removing the CEO will satisfy the test. Similarly, absolute veto rights over business plans, the appointment of the majority of the board and borrowing beyond agreed limits will meet the test. However, rights held to protect a minority interest (for example, veto rights over changes to a company's constitution) will not. In addition, an individual may exercise significant influence or control even if he/she does not have a right to do so; for example, a person who is not a director but who is regularly consulted on board decisions and whose views influence those decisions.

The legislation seeks to balance a desire to avoid repetition on PSC Registers through different levels of a corporate structure with the requirements of transparency. Accordingly, individuals or RLEs who only exert significant control over a company through their significant control of one or more RLE shareholders of that company should not be included on that company's PSC Register. This results in the following:

- In a structure with a chain of UK-only holding companies, each company (other than the top holding company) will include on its PSC Register only its direct RLE holding company and not the holding companies higher up the structure. Any controlling individuals (or trustees or members) at the top of the structure will only be disclosed on the top holding company's PSC Register.
- However, where an overseas company is included anywhere in the corporate chain, every UK company below the overseas company is required to include in its register details of: (a) its immediate UK holding company; (b) any UK companies in the corporate chain above the overseas company; and (c) the identity of any individual who either meets one of the tests above directly in relation to the company or who has a "**majority stake**" in any of its holding companies (whether or not a UK holding company). "Majority stake" is defined in a similar way to the consolidation tests for a group of companies, including a "dominant influence" test.

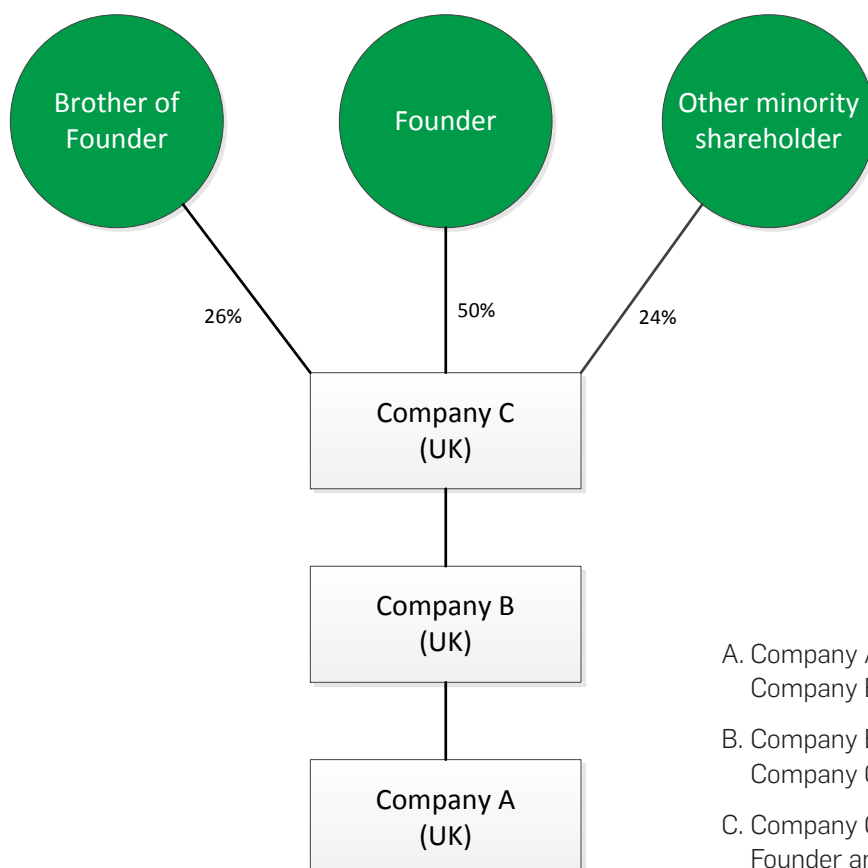
## What details will be included on a PSC Register?

Individuals	RLEs
<ul style="list-style-type: none"> <li>▪ Name</li> <li>▪ Service address and residential address (as with all current Companies' House filings, residential addresses will not be publicly available)</li> <li>▪ Nationality and country or state of residence</li> <li>▪ Date of birth</li> <li>▪ Date on which individual became registrable on the PSC Register in question</li> <li>▪ Nature of control (ie. which of the specified conditions is met, and, if shares or voting rights, whether the individual holds: (i) &gt;25%; (ii) ≥ 50% &lt; 75%; or (iii) ≥ 75%)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Corporate name</li> <li>▪ Principal office</li> <li>▪ Legal form, registration details (if applicable) and governing law</li> <li>▪ Date on which individual became registrable on the PSC Register in question</li> <li>▪ Nature of control (ie. which of the specified conditions is met, and, if shares or voting rights, whether the RLE holds: (i) &gt;25%; (ii) ≥ 50% &lt; 75%; or (iii) ≥ 75%)</li> </ul>

## How will this apply to your structures?

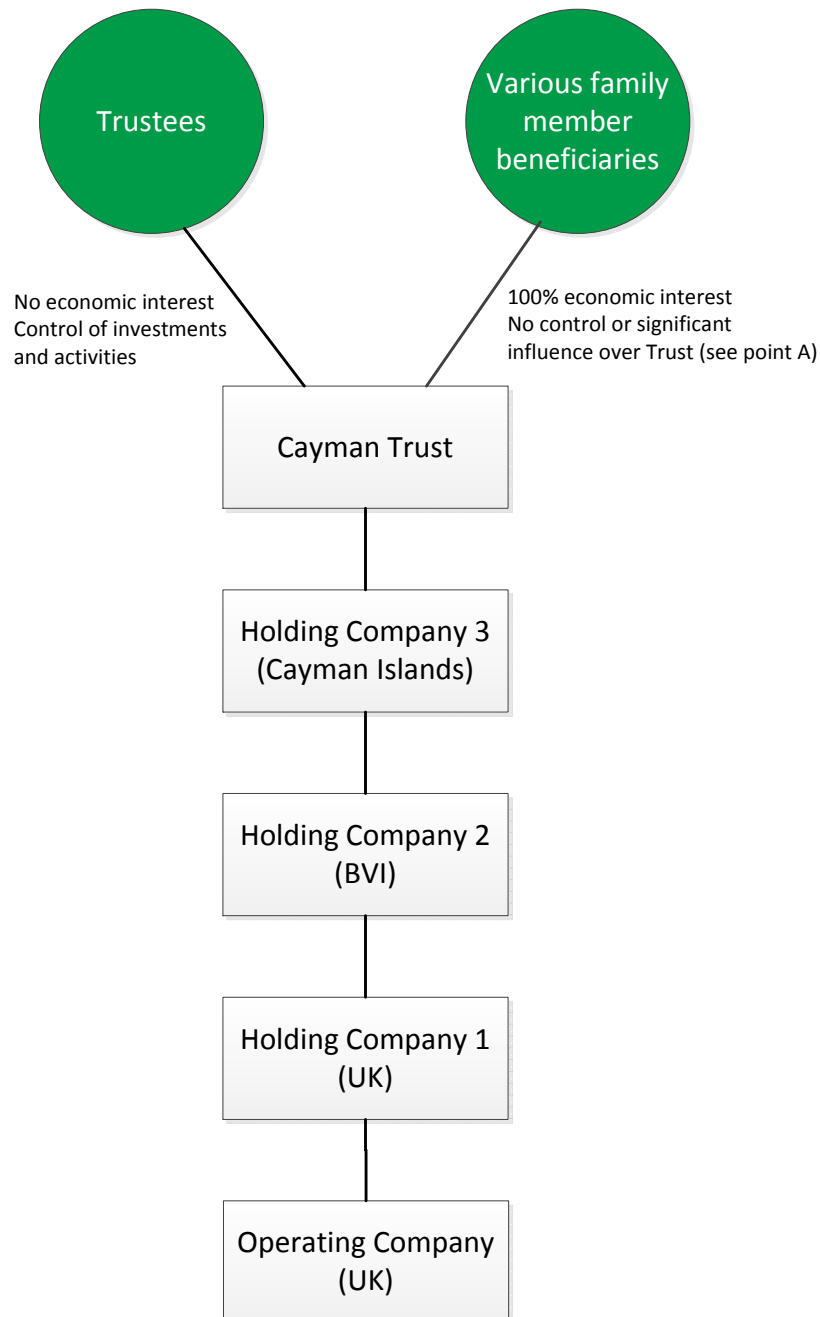
Below are some examples of how the new requirements are likely to apply to corporate structures.

### Example 1 - privately-held structure



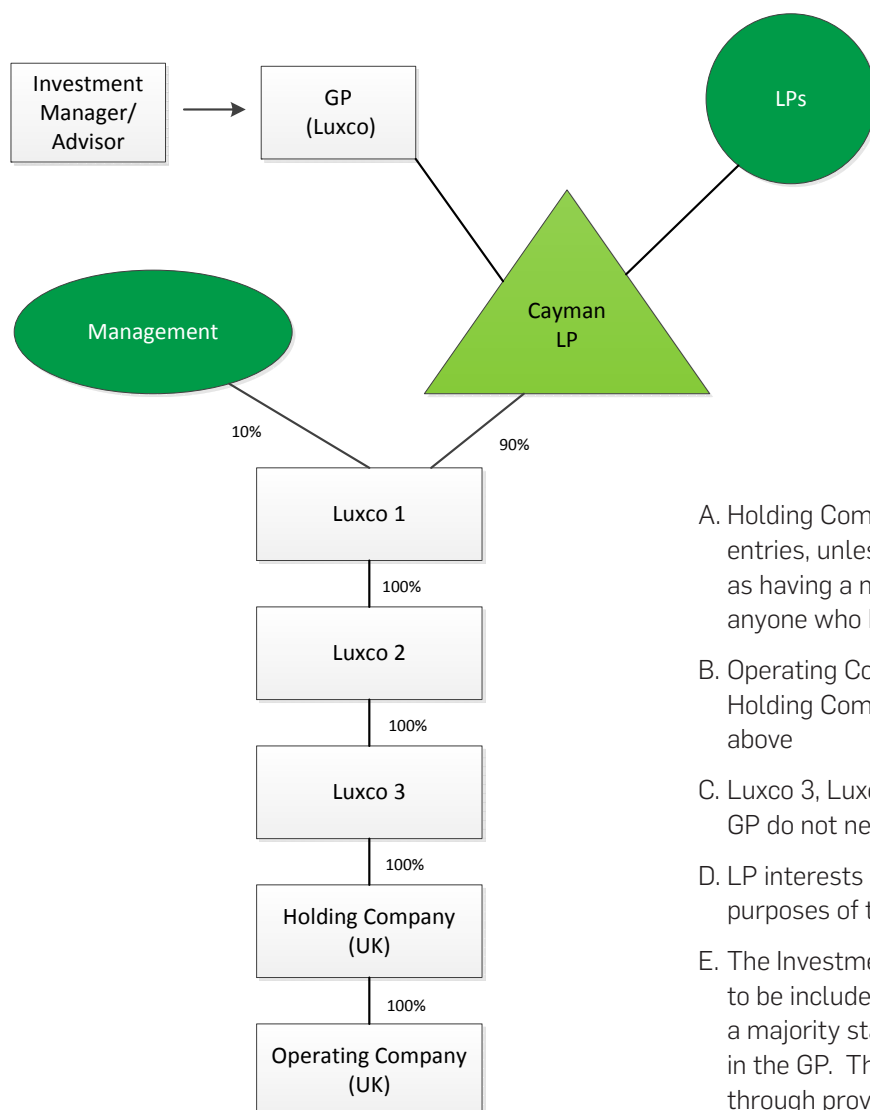
- A. Company A's PSC Register will include Company B only
- B. Company B's PSC Register will include Company C only
- C. Company C's PSC Register will include the Founder and Founder's brother

## Example 2 - family trust structures



- A. Holding Company 1's PSC Register must include each of the Trustees. If another person exercises, or has the right to exercise, significant influence or control in relation to the Cayman Trust then they will also need to be included in the PSC Register. This includes any person with the right to appoint/remove the trustee(s), to direct distributions or investment decisions or to amend the trust deed
- B. Operating Company's PSC Register must include Holding Company 1, the Trustees and any other person described in point A above
- C. Trust beneficiaries who hold economic interests but do not have significant influence or control over the Trust will generally not need to be included on PSC Registers
- D. Holding Company 2, Holding Company 3 and the Cayman Trust do not need to maintain PSC Registers

## Example 3 - private equity structures



- A. Holding Company's PSC Register will have no entries, unless any individual can be identified as having a majority stake in the GP (including anyone who has "dominant influence" over the GP)
- B. Operating Company's PSC Register will include Holding Company and any individual referred to above
- C. Luxco 3, Luxco 2, Luxco 1, the Cayman LP and the GP do not need to maintain PSC Registers
- D. LP interests are generally ignored for the purposes of the 'significant control' tests
- E. The Investment Manager / Advisor will not need to be included on any PSC Register unless it has a majority stake (including dominant influence) in the GP. This will not generally be the case through provision of investment advice alone

## How must companies comply with the new requirements?

- By 6 April 2015, entities which are subject to the new requirements must establish a PSC Register alongside their existing statutory registers at their registered office address.
- Details of the PSC Register must be disclosed on the entity's Annual Confirmation Statement (the Companies House filing which will replace the current form of Annual Return Statement) the first time that return falls due from June 2016 onwards.
- From 6 April 2015, PSC Register details will be part of the information required in order to incorporate a new UK company.
- From June, private companies will be able to elect for their PSC Registers to be maintained by Companies House only, rather than maintaining them with their existing statutory registers.

Please contact one of your usual Weil contacts if you would like to discuss further.