

# ALLEN & OVERY

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## THE REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL: THE ALLEN & OVERY FLOWCHART

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From 6 April 2016, most UK companies will be required to keep a register of people with significant control over the company (a PSC register). From 30 June 2016, a company's PSC register must be filed with Companies House (with its annual confirmation statement) and will be publicly accessible.

The only UK companies excepted from this requirement are DTR5 issuers (ie listed issuers which have to comply with chapter 5 of the FCA's Disclosure and Transparency Rules), and UK companies with voting shares traded on an EEA regulated market or on certain markets in Switzerland, the U.S., Japan or Israel. UK subsidiaries of listed companies are not exempt.

An equivalent regime will apply to limited liability partnerships.

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### Allen & Overy's involvement

The legislation is complex, and determining whether an individual or a legal entity is registrable will not always be straightforward. Allen & Overy has itself, and via the Company Law Committees of the Law Society of England and Wales and the City of London Law Society, made representations to the Department for Business, Innovation & Skills to minimise the administrative burden so far as possible.

### What information should the PSC register contain?

The register must contain "required particulars" of:

- each registrable individual with significant control over the company; and
- each registrable relevant legal entity.

For individuals, the required particulars include their date of birth and usual residential address (although the residential address will not be available to the public).

### Determining exactly who goes on a company's PSC register

This note does not seek to explain the whole regime.

The legislative provisions are included in a new Part 21A of the Companies Act 2006 and related regulations and statutory guidance. The Department for Business, Innovation & Skills has also produced detailed non-statutory guidance available [here](#).

Instead, our flowchart (overleaf) focuses on the most important question underpinning the whole regime: "Exactly who (if anyone) should appear on a company's PSC register?" The flowchart distils the complex statutory and regulatory framework, and provides a simple mechanism for a company to determine whether or not a particular individual or legal entity, which it has identified as potentially being a "person with significant control", should appear on its PSC register.

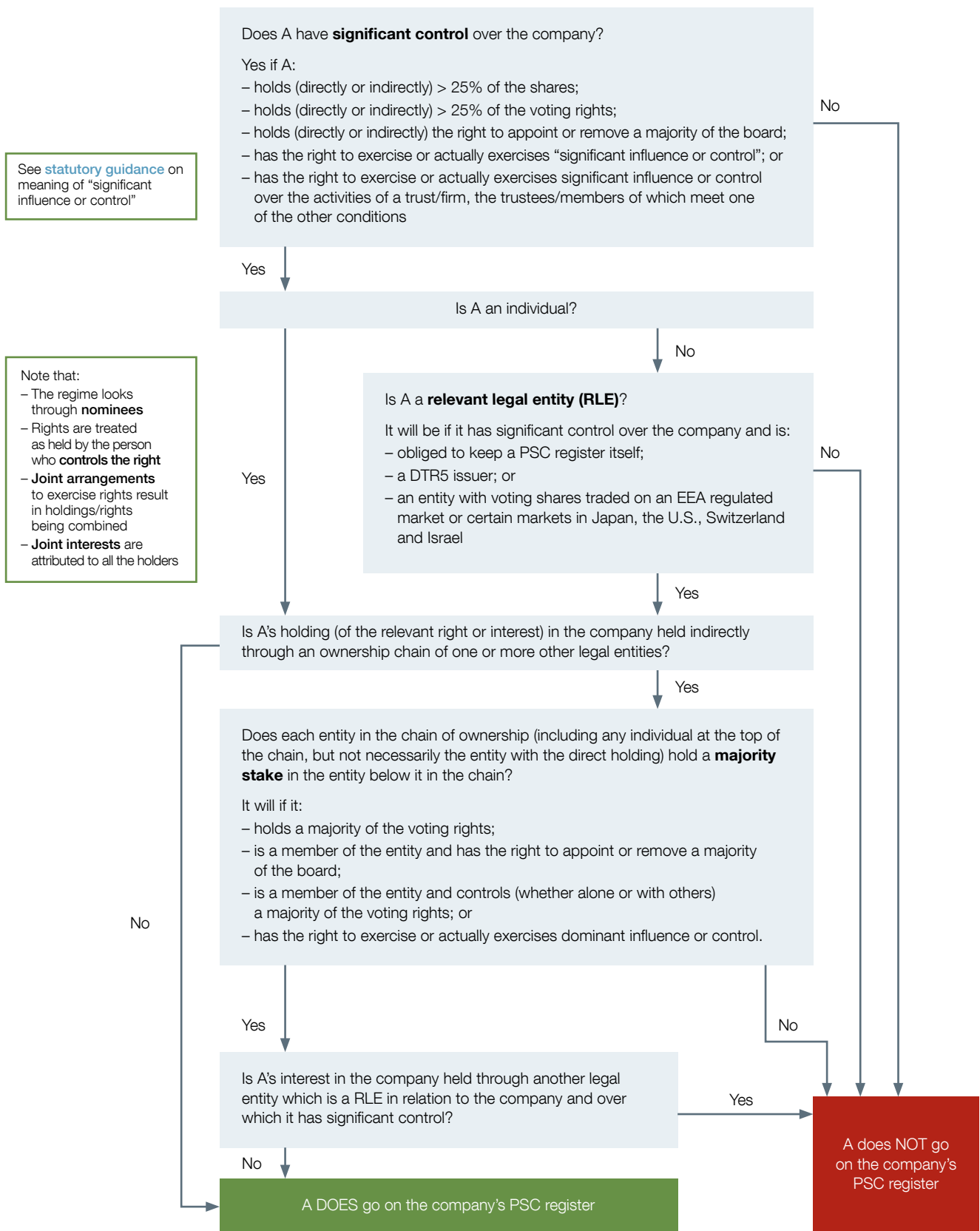
We also include examples of some typical corporate structures to illustrate which people and entities are likely to need to be included in each entity's PSC register.

### Further information and advice

For specific advice on how the PSC regime affects your group, please get in touch with your usual Allen & Overy contact.

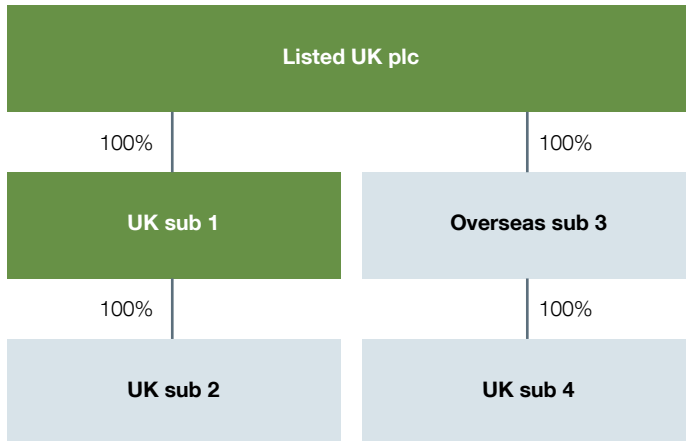
It is also worth noting that other G7 and G20 countries are committed to introducing similar regimes. And, from 2017, the 4th EU Money Laundering Directive will impose overlapping requirements for companies and other legal entities in all EEA states to hold registers on beneficial ownership.

# Does A go on my company's PSC register?



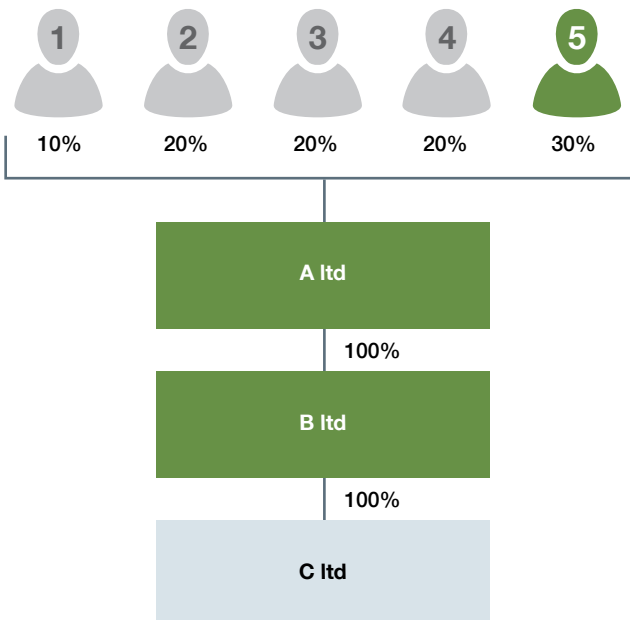
# Some illustrative examples

## Listed plc group



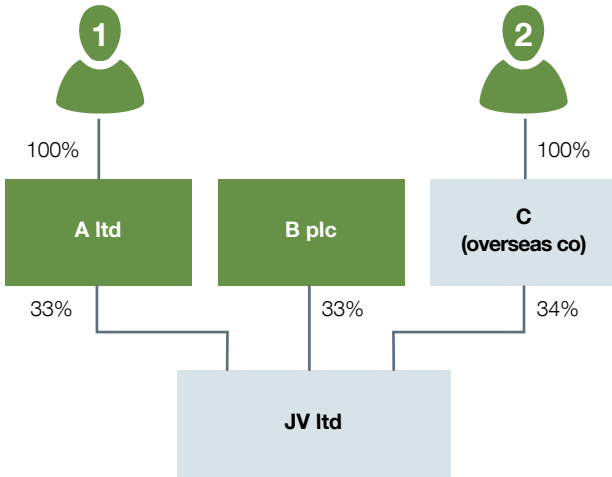
- Listed UK plc (as a DTR5 issuer) does not need to keep a PSC register
- UK sub 1 would include only listed UK plc on its PSC register
- UK sub 2 would include only UK sub 1 on its PSC register
- UK sub 4 would include listed UK plc on its PSC register (overseas sub 3 is not a relevant legal entity and there is no need for UK sub 4 to look above listed UK plc)

## Privately held group



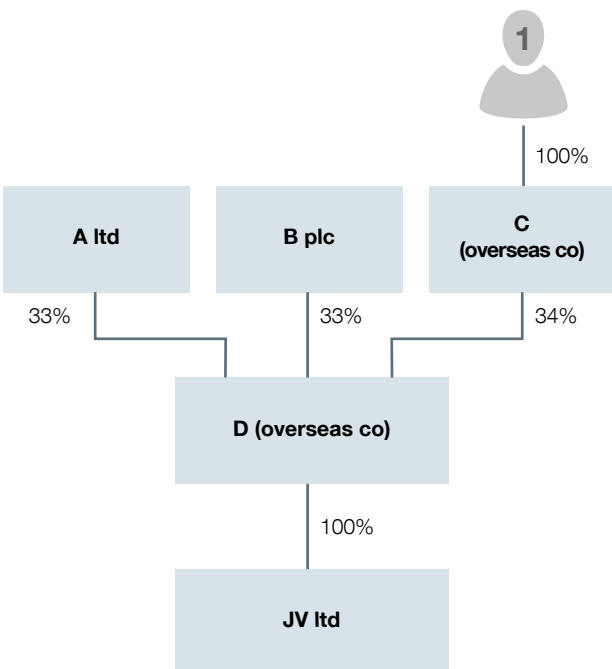
- C ltd would include B ltd on its PSC register
- B ltd would include A ltd on its PSC register
- A ltd would include shareholder 5 on its PSC register
- By virtue of the shareholding arrangements alone, none of shareholders 1, 2, 3 or 4 would be included on A ltd's PSC register. However, it is possible that one or more of them (perhaps together if any joint interests or joint arrangements are involved) may satisfy one of the other conditions for having significant influence or control, in which case they would need to be included

## Joint venture



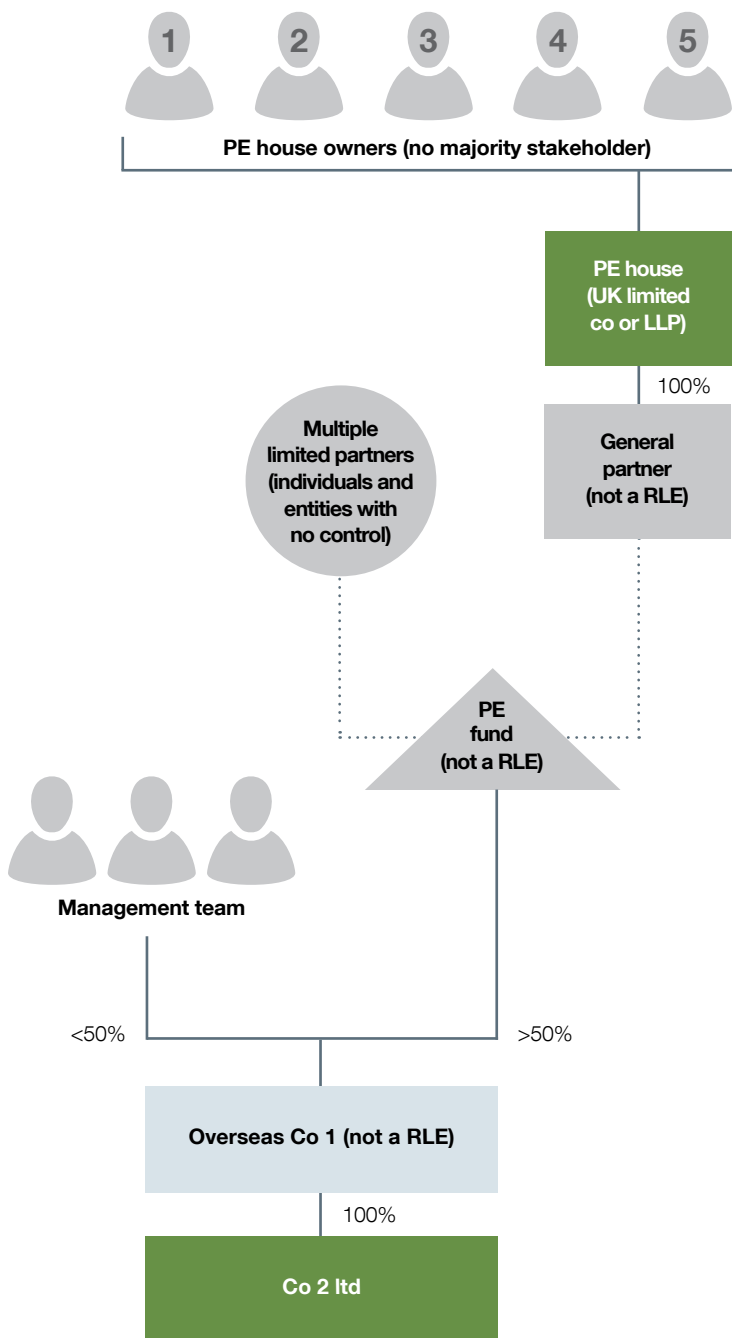
- JV Ltd would include A Ltd, B plc and shareholder 2 on its PSC register
- JV Ltd's PSC register would not include shareholder 1 (as his interest is held through A Ltd, a relevant legal entity over which he has significant control); nor would it include C (as C is not a relevant legal entity)
- A Ltd would include shareholder 1 on its PSC register

## Joint venture held through overseas company



- By virtue of the shareholding arrangements alone, none of D (overseas co), A Ltd, B plc, C (overseas co) or shareholder 1 would be included on JV Ltd's PSC register (as D (overseas co) is not a relevant legal entity and the "majority stake" requirement for indirect holdings is not met)
- However, A Ltd, B plc and/or shareholder 1 would be included on JV Ltd's PSC register if they satisfied another condition for having significant control over JV Ltd (eg if they held the right to appoint or remove a majority of the board of JV Ltd; or if they exercised, or had the right to exercise, significant influence or control over JV Ltd)

## Private equity



- The limited partners will not appear on a PSC register
- If the PE house is a UK limited company, its PSC register will include any owner holding >25% of the shares; >25% of the voting rights; having the right to appoint/remove a majority of the board; or having the right to or actually exercising significant influence or control over the PE house. Whether or not the last of these conditions will be met will need to be analysed in the light of the specific circumstances
- If the PE house were an overseas company it would not keep a PSC register. And, unless any of the PE house owners held a “majority stake” in it, as well as satisfying one of the usual conditions for having significant influence or control over a UK company further down the corporate chain, they would not appear on any PSC register
- If the PE house were an LLP, it would be subject to an equivalent PSC regime (although note that there are some differences in approach between the meanings of “significant influence or control” in the contexts of LLPs and companies)
- Co 2 ltd would include PE house (as a RLE) on its PSC register. In the circumstances depicted, it is unlikely that any PE house owner or member of the management team would appear on its PSC register, but this may be possible, eg if such a person has the right to exercise or actually exercises significant influence or control over Co 2 ltd (note the shareholding condition would not make them registrable in the circumstances depicted)