



Department for
Business, Energy
& Industrial Strategy

STATUTORY GUIDANCE ON THE MEANING OF “SIGNIFICANT INFLUENCE OR CONTROL” OVER COMPANIES IN THE CONTEXT OF THE REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL

Presented to Parliament pursuant to paragraph 24(3) of Schedule 1A to the Companies Act 2006 as amended by Schedule 3 to the Small Business, Enterprise and Employment Act 2015

Statutory Guidance to lie before both Houses of Parliament for a period of 40 days pursuant to that Act, during which time either House may resolve that the Guidance be not approved.



June 2017



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1. Introduction

What is in this guidance?

- 1.1. The Secretary of State has issued this statutory guidance about the meaning of the term “significant influence or control” for the purposes of Schedule 1A to the Companies Act 2006 (“the Act”).
- 1.2. This guidance is published in under paragraph 24(5) of Schedule 1A to the Act.
- 1.3. Companies which are registered under the Act are, in general, required to maintain a register of people with significant control over the company (“PSC Register”).
- 1.4. A person has significant control over a company if one or more of the specified conditions in Schedule 1A to the Act are satisfied. The first three specified conditions require the holding of more than 25% of the shares or voting rights in the company or the right to appoint or remove the majority of the board of directors.
- 1.5. The fourth and fifth specified conditions require a person to exercise or have the right to exercise “significant influence or control” either over the company itself or over the activities of a trust or a firm which meets any of the other specified conditions in relation to the company.
- 1.6. If a person has significant control over a company by meeting one or more of the first three specified conditions, it is unnecessary to make a further note in its PSC Register, or note it with the registrar, if that person also has significant influence or control by virtue of the fourth condition.
- 1.7. The term “significant influence or control” occurs four times in Schedule 1A (excluding paragraph 24 which requires guidance to be issued on the term).
- 1.8. The first two occurrences are in the fourth and fifth specified conditions and take the following form:

Significant influence or control

5. *The fourth condition is that X has the right to exercise, or actually exercises, **significant influence or control** over company Y.*

Trusts, partnerships etc

6. *The fifth condition is that-*
- a) *The trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to company Y, or would do so if they were individuals, and*
 - b) *X has the right to exercise, or actually exercises, **significant influence or control** over the activities of that trust or firm.*

- 1.9. The third and fourth occurrences are in paragraph 8 of Schedule 1A which determines whether a person holds an interest in a company.

How should this guidance be used?

- 1.10. Paragraph 24(2) of Schedule 1A to the Act states that regard must be had to this guidance in interpreting references to “significant influence or control” in Schedule 1A. Part 3 of Schedule 1A to the Act sets out the rules for the interpretation of that Schedule which should be applied when considering whether a person meets the conditions for being a PSC.
- 1.11. This guidance applies to those companies which are registered under the Act and to which Part 21A applies. As a result this guidance may be relevant to companies limited by guarantee, and unlimited companies as well as companies limited by shares. Part 21A does not, however, apply to certain companies, for example, those which are listed on a UK main or “regulated” market¹. The guidance also applies to unregistered companies to which Part 21A applies.
- 1.12. This guidance may also be relevant to Societates Europaeae (SEs) which are registered in the United Kingdom. The PSC Regime applies to SEs to the extent that it applies to public limited-liability companies registered under the Act, by virtue of Article 9 of Regulation 2157/2001 EC of 8 October 2001.
- 1.13. The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 (S.I. 2016/340) apply the PSC Regime to LLPs. Separate

¹ Section 790B(1) and regulations 3 and 4 of The Register of People with Significant Control Regulations 2016 S.I. 2016/339 (companies/legal entities to which Part 21A of the Act does not apply).

statutory guidance is available on the meaning of the term “significant influence or control” in the context of LLPs.

- 1.14. The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694) apply the PSC regime to limited partnerships governed by the law of Scotland and to Qualifying General Partnerships governed by the law of Scotland. Collectively they are known as “eligible Scottish Partnerships”. Separate guidance is available on the meaning of the term “significant influence or control” in Schedule 1 to those regulations relating to eligible Scottish partnerships.
- 1.15. This guidance does not provide an exhaustive statement of what constitutes “significant influence or control”. It provides a number of principles and examples which would be indicative of holding the right to or actually exercising significant influence or control over a company or the activities of a trust or firm which itself meets a specified condition in relation to the company.
- 1.16. Parts 4 and 6 of this guidance also provide a non exhaustive list of the kind of roles and relationships which a person may have with a company, or in relation to the activities of a trust or firm which would not, on their own, result in that person being considered to have “significant influence or control” for the purposes of the PSC register. These are referred to in this guidance as “excepted roles”.
- 1.17. However, it is possible that a person who has an excepted role might still, in the circumstances of a particular case, have the right to exercise, or actually exercise, significant influence or control over a company, trust or firm. This could occur, for example, if the role or relationship contains elements which exceed the role or relationship as it is usually understood or exercised, or if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.
- 1.18. This guidance is relevant when a company, trust or firm or a PSC carries out an assessment as to whether a person meets the fourth or fifth specified condition in relation to the company. When applying this guidance careful consideration should be given to the facts of the particular case which will be important in determining whether significant influence or control exist in any particular case.
- 1.19. This statutory guidance is confined to the meaning of “significant influence or control” within Schedule 1A to the Act. Any consideration of the PSC register and of the roles and responsibilities within a company, trust or firm should be carried out within the context of the broader legal framework and the duties imposed by it.

Further guidance

- 1.20. Other guidance to the PSC framework, which is non-statutory, has been issued and is published on www.gov.uk. The aim of the framework guidance is to explain the requirements of the PSC register. The framework guidance consists of:
- A summary guide for companies;
 - Guidance for companies, for limited liability partnerships and for eligible Scottish partnerships; and
 - Guidance for PSCs.

Significant influence or control - terminology

- 1.21. “Significant influence” and “control” are alternatives.
- 1.22. Where a person that can direct the activities of a company, trust or firm, this would be indicative of “control”.
- 1.23. Where a person can ensure that a company, trust or firm generally adopts the activities which they desire, this would be indicative of “significant influence”.
- 1.24. The “control” and “significant influence” do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the company, trust or firm.

2. Right to exercise significant influence or control over a company

- 2.1. The fourth and fifth specified conditions require a person to have the right to exercise or actually exercise significant influence or control.
- 2.2. In the context of a company, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including the provisions of a company's constitution, the rights attached to the shares or securities which a person holds, a shareholders' agreement, some other agreement or otherwise.
- 2.3. The right to exercise significant influence or control is a right which, if exercised, would give rise to the actual exercise of significant influence or control.
- 2.4. The right to exercise significant influence or control over a company may result in that person being a PSC in relation to the company regardless of whether or not they actually exercise that right.

Examples

- 2.5. Paragraphs 2.6 – 2.9 set out a number of examples of what might constitute a right to exercise significant influence or control, while paragraph 2.10 sets out a number of examples where rights relating to minority protection would not on their own constitute a right to exercise significant influence or control. The examples do not constitute an exhaustive list.
- 2.6. Where a person has absolute decision rights over decisions related to the running of the business of the company, for example relating to:
 - (a) Adopting or amending the company's business plan;
 - (b) Changing the nature of the company's business;
 - (c) Making any additional borrowing from lenders;
 - (d) Appointment or removal of the CEO;
 - (e) Establishing or amending any profit-sharing, bonus or other incentive scheme of any nature for directors or employees; or

- (f) The grant of options under a share option or other share based incentive scheme.

2.7. Where a person has absolute veto rights over decisions related to the running of the business of the company, for example relating to:

- (a) Adopting or amending the company's business plan;
- (b) Making any additional borrowing from lenders (except as a minority protection as described in paragraph 2.8 below).

2.8. However, if a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting minority interests in the company then this is unlikely, on its own, to constitute "significant influence or control" over the company. When used for the purposes of protecting minority interests these veto rights could include (or relate to) the following:

- (a) Changing the company's constitution;
- (b) Dilution of shares or rights, including establishing a share option or other share based incentive scheme;
- (c) Making any additional borrowing from lenders, outside previously agreed lending thresholds;
- (d) Fundamental changes to the nature of the company's business; or
- (e) Winding up the company.

2.9. Where a person holds absolute veto rights over the appointment of the majority of directors, meaning those directors who hold a majority of the voting rights at meetings of the board on all or substantially all matters.

2.10. A person would not have "significant influence or control" where the absolute decision rights or veto derive solely from being a prospective purchaser in relation to the company, on a temporary basis, for example pending clearance by the Competition and Markets Authority.

- 2.11. In this guidance the term ‘absolute’ is used in relation to decision rights or a veto to mean that a person has the ability to make or veto a decision without reference to or collaboration with anyone else².

² Schedule 1A paragraph 12 (Joint arrangements) continues to apply in these circumstances.

3. Actually exercises significant influence or control over a company

- 3.1. Paragraphs 3.2 and 3.3 provide a list of situations which would be indicative of a person actually exercising significant influence or control.
- 3.2. All relationships that a person has with the company or other individuals who have responsibility for managing the company, should be taken into account, to identify whether the cumulative effect of those relationships places the person in a position where they actually exercise significant influence or control. For example:

A director who also owns important assets or has key relationships that are important to the running of the business (e.g. intellectual property rights), and uses this additional power to influence the outcome of decisions related to the running of the business of the company.

- 3.3. A person would exercise “significant influence or control” if:

- (a) They are significantly involved in the management and direction of the company, for example:

A person, who is not a member of the board of directors, but regularly or consistently directs or influences a significant section of the board, or is regularly consulted on board decisions and whose views influence decisions made by the board.

This would include a person who falls within the definition of “shadow director” set out in section 251 of the Act, but the situation is not confined to shadow directors.

- (b) Their recommendations are always or almost always followed by shareholders who hold the majority of the voting rights in the company, when they are deciding how to vote. For example:

A company founder who no longer has a significant shareholding in the company they started, but makes recommendations to the other shareholders on how to vote and those recommendations are always or almost always followed.

4. Fourth condition: excepted roles with respect to companies

- 4.1. The following is a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising significant influence or control for the purposes of the fourth condition.
- 4.2. Where the person provides advice or direction in a professional capacity, for example, as:
 - (a) A Lawyer;
 - (b) An Accountant;
 - (c) A Management consultant;
 - (d) An Investment manager;
 - (e) A Tax advisor; or
 - (f) A Financial advisor.
- 4.3. Where the person deals with the company under a third party commercial or financial agreement, for example, as:
 - (a) A Supplier;
 - (b) A Customer; or
 - (c) A Lender.
- 4.4. Where the person exercises a function under an enactment, for example, as:
 - (a) A Regulator; or
 - (b) A Liquidator or receiver.
- 4.5. Where the person is an employee acting in the course of their employment and nominee for their employer, including an employee, director or CEO of a third party (such as a corporate director company), which has significant influence or control over the company.

- 4.6. Where the person is a director of a company, including, as:
- (a) A Managing director;
 - (b) A Sole director; or
 - (c) A Non-executive or executive director who holds a casting vote.
- 4.7. A person who makes recommendations to shareholders on an issue, or set of issues, on a one-off occasion, which is subject to a shareholder vote.
- 4.8. Rights held by all or a group of employees, for the purpose of representing the employees interests in an employee-owned company.
- 4.9. Any person or entity in relation to any association, professional standards organisation or network of companies or firms which promulgates common rules, policies or standards to be adopted by the members of the network, but does not otherwise have control of members of the network.
- 4.10. A person who has a role or relationship of the kind listed above with the company may, however, be a person with significant influence over the company either:
- (a) If the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or
 - (b) If the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.

Example:

Extra-ordinary functions of a person could result in them being considered to have significant influence or control:

- A director who also owns important assets or has key relationships that are important to the running of the business (e.g. intellectual property rights), and uses this additional power to influence the outcome of decisions related to the running of the business of the company. This individual would not be able to rely on the excepted role of director to avoid being considered to exercise significant influence or control.

5. Trusts and firms

- 5.1. The fifth specified condition in Part 1 of Schedule 1A to the Act is relevant where a trust or firm, meets any of the other specified conditions in relation to the company.

Trusts, partnerships etc

5. *The fifth condition is that-*
- a) *The trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to company Y, or would do so if they were individuals, and*
 - b) *X has the right to exercise, or actually exercises, **significant influence or control** over the activities of that trust or firm.*

- 5.2. This condition is relevant where a trust or firm meets one of the specified conditions for being a PSC of a company and a person (other than the trustees or members of the firm) has the right to exercise or actually exercises significant influence or control over the activities of the trust or firm.

Right to exercise significant influence or control – trust or firm

- 5.3. The right to exercise significant influence or control is a right which, if exercised, would give rise to the actual exercise of significant influence or control.
- 5.4. The right to exercise significant influence or control over the activities of a trust or firm may result in that person being a PSC in relation to the company if that trust or firm would meet the conditions for being a PSC of the company if they were an individual. This would be the case regardless of whether or not they actually exercise that right.
- 5.5. A person has the right to exercise “significant influence or control” over a trust or firm if that person has the right to direct or influence the running of the activities of the trust or firm, for example:
- (a) Right to appoint or remove any of the trustees or partners, except through application to the courts, or as a result of a breach of fiduciary duty by the trustees;

- (b) Right to direct the distribution of funds or assets;
- (c) Right to direct investment decisions of the trust or firm;
- (d) Right to amend the trust or partnership deed; or
- (e) Right to revoke the trust or terminate the partnership.

Actually exercises significant influence or control – trust or firm

- 5.6. A person is likely to exercise significant influence or control over a trust or firm if they are regularly involved in the running of the trust or firm, for example a person who issues instructions, which are generally followed, as to the activities of the trust or firm to the trustee(s) or members of the firm.

This may be a settlor or beneficiary who is actively involved in directing the activities of the trust.

- 5.7. A limited partnership, registered under the Limited Partnership Act 1907, is an example of a firm. A person who controls the management or activities of a limited partnership would be considered a person with significant influence or control over the firm. In most cases this would be the general partner.

6. Fifth condition: excepted roles – trust or firm

- 6.1. The following is a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising significant influence or control for the purposes of the fifth specified condition.
- 6.2. Where the person provides advice or direction in a professional capacity, for example, as:
 - (a) A Lawyer;
 - (b) An Accountant;
 - (c) A Management consultant;
 - (d) An Investment manager;
 - (e) A Tax advisor; or
 - (f) A Financial advisor.
- 6.3. Where the person deals with the trust or firm under a third party commercial or financial agreement, for example, as:
 - (a) A Supplier;
 - (b) A Customer; or
 - (c) A Lender.
- 6.4. Where the person exercises a function under an enactment, for example, as:
 - (a) A Regulator,
 - (b) A Liquidator or receiver.
- 6.5. Where the person is an employee acting in the course of their employment, including an employee or director of a third party, which has significant influence or control over the trust or firm.

- 6.6. Rights held by all or a group of employees, for the purpose of representing the employees interests in an employee-owned company or firm.
- 6.7. A person who has a role or relationship of the kind listed above in relation to the trust or firm may, however, be a person with significant influence over the trust or firm either:
 - (a) If the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or
 - (b) If the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.



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