Forward thinking.
Straight talking.

A guide to the PSC regime

For companies and LLPs

Gateley LEGAL

Introduction

All UK unlisted companies, certain listed companies and LLPs are required to keep a register of the people who have significant influence or control over them, known as the Register of People with Significant Control or PSC Register.

The PSC regime is a key component of the Government's drive to increase transparency about the owners and controllers of UK businesses with the aim of reducing criminal misuse of companies for activities such as tax evasion and money laundering.

Failing to comply with the PSC regime is a criminal offence and could lead to an interest in a company being 'restricted', meaning the owner of that interest is unable to benefit from it or exercise any rights (such as voting rights) relating to it.

Although this guide is primarily written for companies, the regime is broadly similar for LLPs. The Department for Business, Energy & Industrial Strategy has also produced some useful guidance, PSC Register: Guidance for Registered and Unregistered Companies, SEs, LLPs and Eligible Scottish Partnerships (PSC Guidance).

The PSC regime is a key component of the Government's drive to increase transparency about the owners and controllers of UK businesses

Who is subject to the PSC regime?

Must maintain a PSC Register:

- UK private companies limited by shares (including subsidiaries of listed companies and dormant companies)
- UK companies limited by guarantee (including community interest companies)
- UK unlisted public companies
- UK LLPs
- UK companies listed on:
  - AIM
  - NEX Exchange Growth Market (previously the ISDX Growth Market)

Does not have to maintain a PSC Register

- Companies listed on:
  - the Main Market
  - NEX Exchange Main Board (previously the ISDX Main Board)
  - a regulated market in an EEA state (other than the UK)
  - certain specified markets in Israel, Japan, Switzerland and the USA
- Overseas companies operating in the UK
- Partnerships (including Scottish partnerships)*
- Limited partnerships (including Scottish limited partnerships)*

What should you do: the PSC regime in a nutshell

Step 1	Step 2	Step 3	Step 4	Step 5
Identify PSCs	**Obtain** and **confirm** required information	**Record** information in PSC Register	**File** information at Companies House	**File** and **update** information for changes

* Certain Scottish partnerships and all Scottish limited partnerships are required to file PSC information at Companies House even though they do not have to maintain their own PSC Register.

Who is a PSC?

An individual will be a PSC in relation to a company if that individual meets one of the following five conditions:

PSC conditions	
1. Holding more than 25% of the shares	This is based on the nominal value of the shares. For LLPs the condition is met where an individual would be entitled to more than 25% of the LLP's surplus assets on a solvent winding up.
2. Holding more than 25% of the voting rights	Voting rights will be set out in the company's articles. If rights are only available in certain circumstances, they are only taken into account if those circumstances are within the control of the holder.
3. Having the right to appoint/remove a majority of the directors	What matters here is having the right to control the majority of votes at board level on all (or substantially all) matters. For LLPs, the condition refers to a majority of those responsible for the management of the LLP's business as a whole.
4. Otherwise exercising significant influence or control over the company	Statutory guidance explains what this condition means for companies and for LLPs. For instance, the condition would be met if someone had absolute decision (or veto) rights over decisions relating to the operation of the company's business, such as adapting or amending the company's business plan or incurring additional borrowings. Veto rights over certain fundamental matters for the purpose of protecting a minority interest would not normally satisfy this condition. The statutory guidance suggests the condition would be met by a shadow director or a founder shareholder who, although no longer a significant shareholder in a company, continues to make recommendations as to how shareholders should vote and those recommendations are almost always followed. The statutory guidance also contains a list of permitted roles and relationships which would not, on their own, meet this condition. This includes professional advisers, customers, suppliers, lenders, regulators and directors.
5. Having significant influence or control over a trust or firm which itself meets one of the first four conditions	Where a company is controlled by a trust or firm which is not a legal entity (such as a partnership), an individual who controls that trust or firm will be a PSC in relation to the underlying company. The statutory guidance on the meaning of significant influence or control referred to above is also relevant here. That guidance suggests this condition would be met by someone who has the right to direct or influence the activities of a firm or trust, for example by having the right to appoint trustees or partners, the right to direct the distribution of funds or assets, or the right to amend the trust or partnership deed. This could include a settlor or beneficiary actively involved in directing the activities of a trust. Again, there is a list of permitted roles and relationships which would not normally satisfy this condition.

Further guidance is given on how certain common ownership arrangements are treated under the PSC conditions. For example:

- where shares or rights are held jointly, each joint holder is treated as holding the total number held by all of them;
- where shares or rights are held by a nominee, they are treated as being held by the person for whom the nominee is acting; and
- where shares have been used as security, the lender will be a PSC if it has absolute control of the voting rights attached to those shares without reference to the owner/borrower.

The diagrams in the Annex to this guide help explain who will be a PSC in relation to a company.

What is an RLE?

The five PSC conditions assume that a PSC is an individual. However, a company may be controlled by another legal entity, such as another company or an LLP. A legal entity must be included in a company's PSC Register if it is **relevant** (a 'relevant legal entity' or RLE) and **registrable**.

Relevant:

- Satisfies one of the five PSC conditions AND
- Subject to PSC regime or equivalent disclosure regime (e.g. a company listed on a regulated market in an EEA state (such as the LSE's Main Market) or listed on one of the specified non-UK markets)

Registrable:

- First RLE in the company's chain of ownership

This is designed to avoid the need for multiple disclosures within a corporate group: each company's PSC Register only contains details of its immediate holding company. The PSC Register (or other equivalent disclosure regime) of each successive holding company can be investigated to discover the ultimate controller of the group.

Where an entity in a company's ownership chain is not an RLE (for example, an overseas company which is not subject to the PSC regime) it cannot be entered in the company's PSC Register. Instead, the company must look through that entity and identify who holds a majority stake in it. If the majority stakeholder is an individual PSC or a registrable RLE they will be entered in the company's PSC Register. If not, further investigations up the chain of ownership will have to be made to discover if a PSC or registrable RLE exists or whether in fact the company has no registrable PSCs or RLEs.

The diagrams in the Annex to this guide help explain who will be a registrable RLE in relation to a company.

What should you do to identify PSCs and RLEs?

A company must take reasonable steps to identify its PSCs and registrable RLEs. For simple structures this may be relatively straightforward.

More complex ownership arrangements or group structures will require more careful consideration. Companies should review all available information to help identify possible PSCs and registrable RLEs. This should include the company's articles of association (which should reveal details of voting rights), the latest statement of capital and the company's register of members (which should reveal current shareholdings) and any shareholders' agreement (which could reveal information about who else has significant influence or control over the company). The company should also consider all other available information, including whether voting patterns indicate that certain shareholders may be acting together to control the company or whether there are any other arrangements (legally enforceable or not) which might give someone significant influence or control over the company.

The company should also make informal enquiries of people who it suspects may be a PSC or registrable RLE. If the company is unable to get all the information it requires from its own enquiries it must serve an Information Notice on anyone it knows or suspects to be a PSC or registrable RLE. In addition, the company may serve an Information Notice on anyone it knows (or suspects knows) the identity of a PSC or registrable RLE or the identity of someone who has that knowledge. This could include intermediaries or advisers who act for the company such as solicitors, accountants and banks. An Information Notice aims to confirm whether a person is a PSC or registrable RLE in relation to the company and, if so, to obtain the information about that person which the company will need to include in its PSC Register.

An example Information Notice is set out in Annex 3 of the PSC Guidance.

Take reasonable steps › **Review available information** › **Make informal enquiries** › **Serve formal Information Notice** › **Consider imposing restrictions**

What information is required?

The required information for individual PSCs and registrable RLEs is broadly equivalent to that required for individual or corporate directors:

Information	PSC	RLE
Name	✓	✓
Date when became registrable PSC / RLE	✓	✓
Nature of control over company (see below)	✓	✓
Date of birth	✓	
Residential address (if different to service address)	✓	
Country, state or part of UK where resident	✓	
Nationality	✓	
Registered or principal office		✓
Legal form and governing law		✓
Register in which entity appears (if any)		✓
Registration number (if any)		✓

The nature of control over the company must be recorded by reference to which of the five PSC conditions the PSC/RLE meets, using prescribed wording set out in the PSC Guidance. Shareholding and voting percentages are recorded by reference to pre-set percentage bands (over 25% but less than 50%; over 50% but less than 75%; and 75% or more).

Information about an individual PSC must be confirmed (that is, supplied or confirmed by or with the knowledge of the PSC) before it can be included in the company's PSC Register. If a company does not have confirmed information about a PSC it will need to serve an Information Notice. Information about a registrable RLE does not have to be confirmed before it is put in the register but it must be accurate.

What information must be included in the PSC Register?

Every company and LLP subject to the PSC regime must have a PSC Register. That register can never be empty. It must contain information on the status of the company's investigations into its PSCs and registrable RLEs even if the company has not yet completed taking reasonable steps to identify those PSCs and RLEs or it does not yet have all the required (and confirmed) information.

The PSC Guidance includes prescribed wording that should be included in the PSC Register at each stage of the company's investigations. For example:

- The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or registrable relevant legal entity in relation to the company.
- The company has identified a registrable person in relation to the company but all of the required particulars of that person have not been confirmed.

A company must not include any details of a PSC or registrable RLE in its PSC Register until it has all the required information about that PSC or RLE (and, in the case of an individual PSC, that information is confirmed). Once the company has complete information in relation to a particular PSC or registrable RLE, it should record that in its register and continue its investigations into other possible PSCs or registrable RLEs. Confirmed information must be included in the PSC Register within 14 days.

What if there is a change in a PSC's details?

A PSC's (or registrable RLE's) details may change: the PSC's shareholding may increase, moving it into a higher percentage band; a PSC might move house; or a PSC might sell their interest and therefore stop being a PSC.

If a company knows or suspects that there has been a change in the details recorded in its PSC Register but does not have all the required information to record that change, the company must serve an Information Notice seeking updated information.

In the case of an individual, the information in the PSC Register cannot be updated until it has been confirmed. Again, once the company has confirmed information about the change it must record that in its PSC Register within 14 days.

Who can access a PSC Register?

Anyone can view a PSC Register (for free) or request a copy of it (for £12).

A request to access the register must include the name and address of the person making the request together with the purpose of that request.

Within five working days of receiving a request the company must either allow access to the register as requested or else apply to court for an order that the request was not made for a proper purpose. There is no guidance on what will be a 'proper purpose' but it seems likely this will be interpreted widely given that a publicly accessible register is a key means of achieving the desired transparency around corporate ownership.

When must PSC information be filed at Companies House?

For new companies, the documents filed at Companies House on incorporation will include a new 'statement of initial control' identifying the company's PSCs and registrable RLEs at that time.

Any changes to a company's PSC Register must be notified to Companies House within 14 days of the change being made. There are prescribed forms (PSC01 to 09 for companies, with equivalent forms for LLPs) which should be used to notify the changes. A company cannot use a confirmation statement to notify Companies House of any PSC changes. This must be done separately using the prescribed forms, before the annual statement is filed.

Can a PSC prevent their information from being publicly available?

Although a PSC's residential address must be recorded in the company's own PSC Register and filed at Companies House, that information will never be publicly available.

In addition, the day element of a PSC's date of birth will not be available via Companies House (although it will be available to anyone inspecting the company's own PSC Register). In certain circumstances a PSC can take further steps to protect their personal information. If there is a serious risk of violence or intimidation to the PSC or someone living with them, the PSC's information can be suppressed so it is not publicly available (either via Companies House or via the company's own PSC Register). Alternatively, Companies House can be prevented from sharing the PSC's residential address with credit reference agencies. In either case, however, Companies House will still be able to share information about the PSC with law enforcement agencies.

What should PSCs or RLEs do?

In some circumstances a PSC or RLE is obliged to notify a company of its status.

If a person has been a PSC or registrable RLE for more than one month, their information has not been included in the company's PSC Register during that period and the company has not issued an Information Notice, the PSC or registrable RLE must serve a notice on the company informing it of their status and supplying the information required for the PSC Register.

Similarly, if there has been a change in the registered particulars of a PSC or registrable RLE which has not been recorded in the company's PSC Register within one month and the company has not issued an Information Notice about that change, the PSC or RLE must notify the company and provide the required information.

Failing to provide this information when required is a criminal offence by the relevant PSC or RLE, punishable by up to two years' imprisonment and/or an unlimited fine.

How can a PSC or RLE be forced to comply?

Failing to reply to an Information Notice issued by the company is a criminal offence punishable by up to two years' imprisonment and/or an unlimited fine.

In addition, in order to encourage compliance with the PSC regime, a company can apply restrictions to shares or rights in the company. Whilst this is not mandatory, it is something a company should consider as part of the process of taking 'reasonable steps' to identify its PSCs. If a company chooses not to apply restrictions when it does not receive a response to an Information Notice it will need to be able to justify that decision.

There is a three step process for applying restrictions:

Restrictions can be applied to any shares or rights (such as voting rights or rights to appoint a director) in the company held by the addressee of the notices, even if those interests are not sufficient to make the addressee a PSC in their own right.

Once restrictions are in place, the restricted interest cannot be sold or transferred, no rights (such as voting rights) can be exercised in respect of it and the holder of the rights cannot receive any further shares (for example bonus shares or shares offered under pre-emption rights) or payment (for example a return of capital or dividend payment) in respect of the restricted interest.

If the fact that an interest is restricted is affecting the operation of the company, the company can apply to court for that interest to be sold. The proceeds of that sale would be held by the court for the benefit of the holder of the sold interest who can apply for those proceeds to be paid to them.

What if a company doesn't comply?

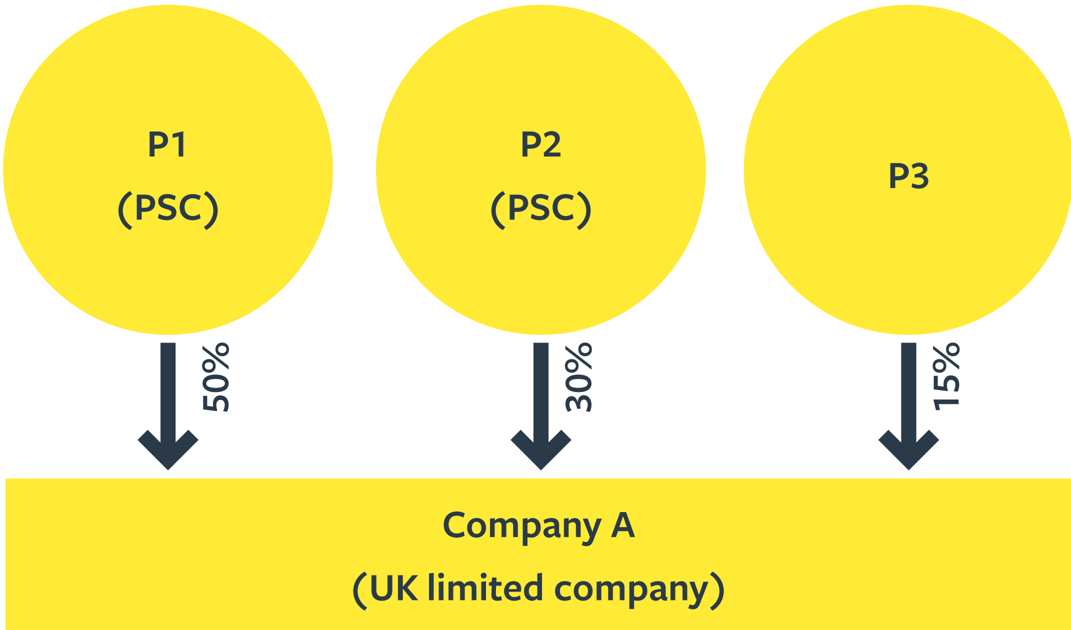
The PSC regime creates a number of offences which will be committed by a company (and each of its officers) that fails to comply with it.

Amongst other things, each of the following is a criminal offence which could lead to a prison sentence and/or a fine:

- failing to take 'reasonable steps' to identify PSCs and RLEs;
- failing to issue an Information Notice to someone the company knows or suspects is a PSC or RLE;
- failing to keep a PSC Register
- failing to keep PSC or RLE information up to date;
- failing (without a court order) to allow inspection or copying of the PSC Register following a request to do so being made;
- issuing shares in breach of a Restrictions Notice.

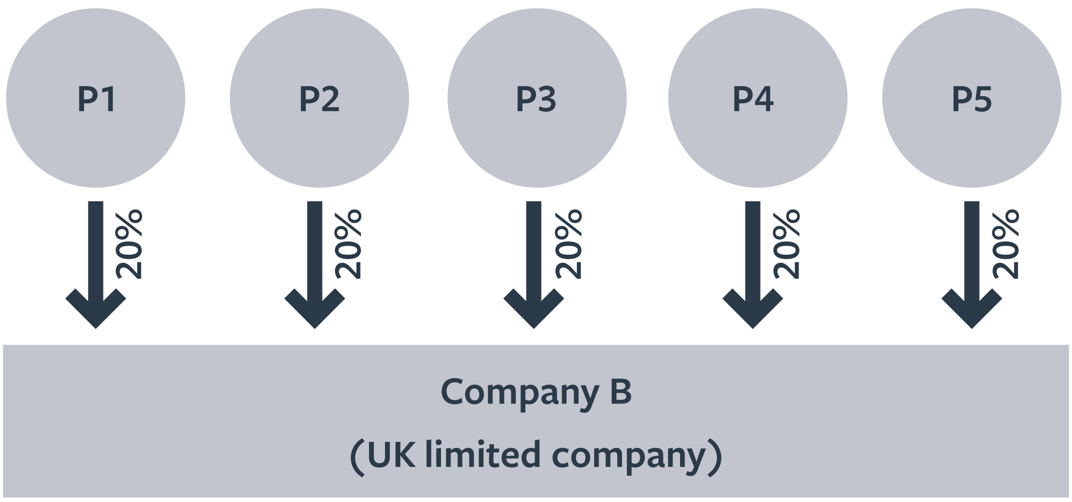
Annex: Examples of PSCs and RLEs

Example A



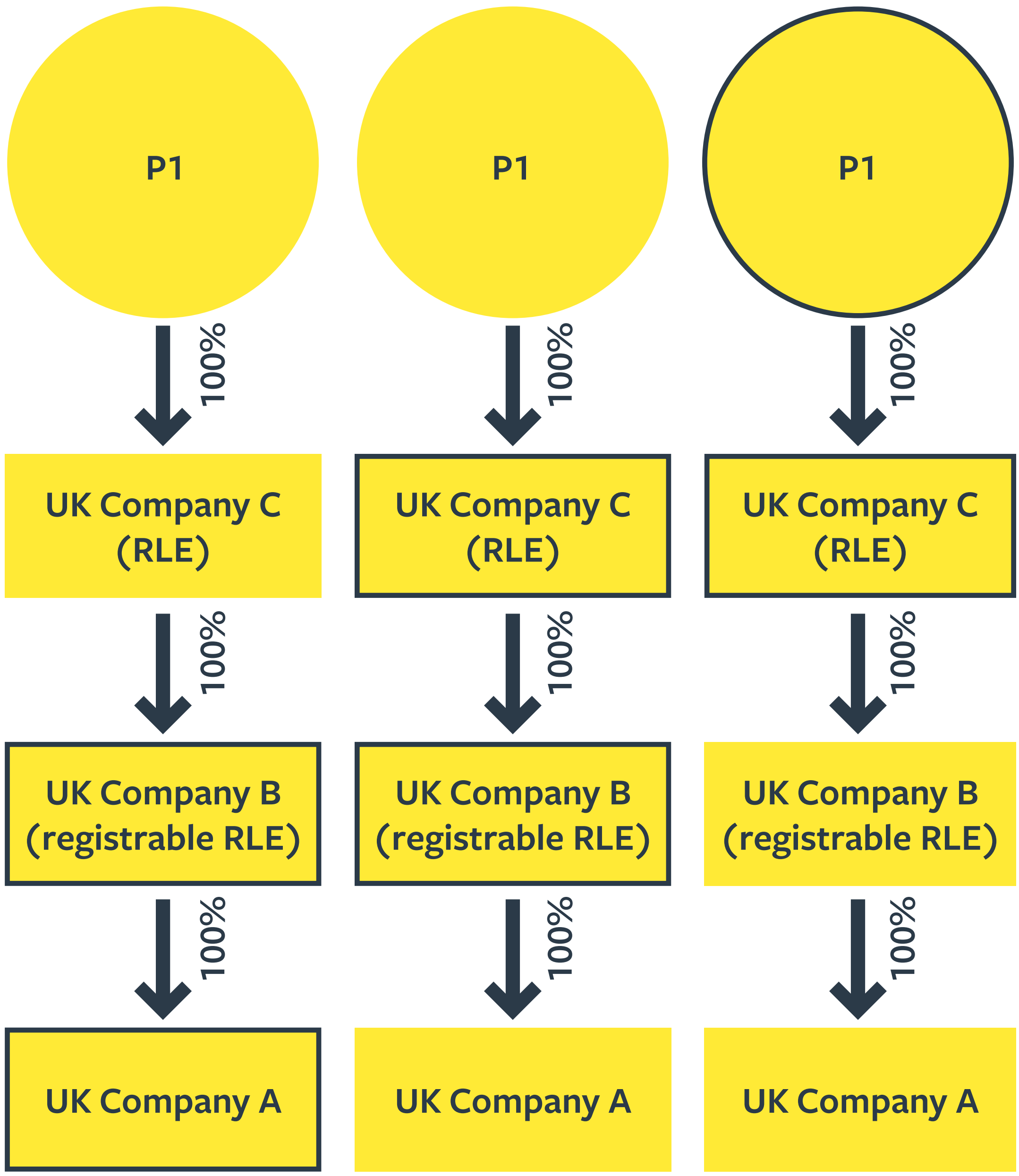
- Person 1 and Person 2 are both PSCs of Company A as they each hold more than 25% of the shares and, assuming one vote per share, more than 25% of the voting rights
- Person 3 is not a PSC, assuming there are no other arrangements which give Person 3 significant influence or control over Company A
- Company A's PSC Register should contain details of Person 1 and Person 2, noting that they each satisfy condition 1 and 2

Example B (taken from the PSC Guidance)



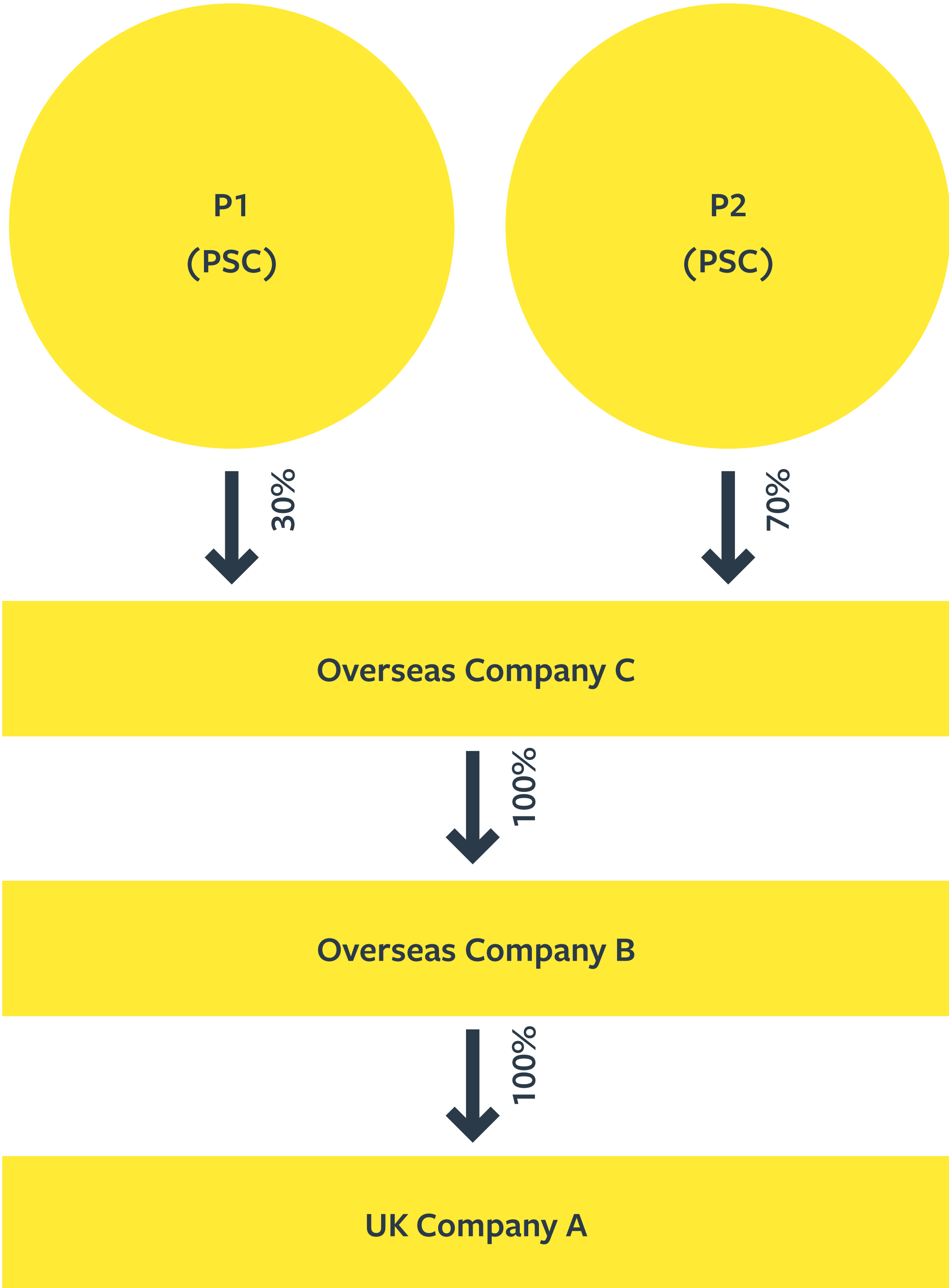
- Company B does not have any PSCs
- None of Persons 1 to 5 satisfy any of the PSC conditions (assuming there are no other arrangements which otherwise give any of them significant influence or control over Company B)
- Company B's PSC Register should state that it has no PSCs

Example C (taken from the PSC Guidance)



- Company B is an RLE in relation to Company A as it satisfies one of the PSC conditions (holding over 25% of the shares) and, as a UK company, is subject to the PSC regime
- Company B is the first RLE in Company A's chain of ownership and therefore Company B is included in Company A's PSC Register
- Neither Company C nor Person 1 appear in Company A's PSC Register
- Company C is included in the PSC Register of Company B. It is the first RLE in Company B's chain of ownership
- Person 1 appears as a PSC only in Company C's PSC Register

Example D (taken from the PSC Guidance)



- Although Company B meets one of the PSC conditions in relation to Company A (holding more than 25% of Company A's shares) it is not an RLE as it is an overseas company and does not have a PSC Register
- Company B cannot be included in Company A's PSC Register
- It is necessary to look through Company B to see who holds a majority stake in Company B
- Company C holds a majority stake in Company B but Company C is also not an RLE (it is an overseas company and does not have a PSC Register)
- It is necessary to look through Company C to see who holds a majority stake in Company C
- Person 2 holds a majority stake in Company C (Person 1 does not hold a majority stake)
- Person 2 should be entered in Company A's PSC Register

gateleylegal.com

GL-GUIDEPSC-0919-0001