

Statutory guidance to the meaning of “significant influence or control” over Limited Liability Partnerships (LLPs) in the context of the register of People with Significant Control (PSCs)

1. Introduction

What is 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”) as [will be] applied to Limited Liability Partnerships (LLPs) by the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016.
- 1.2. The guidance [is issued with effect from xx 2016] and published under paragraph 23(5) of Schedule 1A to the Act as [will be] applied to LLPs.
- 1.3. LLPs incorporated under the Limited Liability Partnerships Act 2000 are required to maintain a register of people with significant control over the LLP (“PSC Register”).
- 1.4. A person has significant control over an LLP if one or more of the specified conditions are satisfied. The first three specified conditions concern the rights to more than 25% of the assets on a winding up, holding more than 25% of the voting rights, and the right to appoint or remove the majority of management.
- 1.5. The fourth and fifth specified conditions require a person to have “significant influence or control” either over the LLP itself or over the activities of a trust or a firm which meets any of the other specified conditions in relation to the LLP.
- 1.6. If a person has significant control over an LLP 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 three times in Schedule 1A.
- 1.8. The first two occurrences are in the fourth and fifth specified conditions and take the following form:

5. *The fourth condition is that X has the right to exercise, or actually exercises, **significant influence or control** over LLP Y.*
6. *The fifth condition is that-*
- a) *The trustees of a trust or the member 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 LLP 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 occurrence is 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 23(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 an individual meets the conditions for being a PSC.
- 1.11. Separate statutory guidance is available on the meaning of the term “significant influence or control” in the context of companies.
- 1.12. 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 an LLP or the activities of a trust or firm which itself meets a specified condition in relation to the LLP.
- 1.13. 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 an LLP 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.”

- 1.14. 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 the LLP, 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.
- 1.15. This guidance is relevant when an LLP, 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 LLP. When applying this guidance careful consideration should be given to the facts of the particular case which will be very important in determining whether significant influence or control exist in any particular case.
- 1.16. 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 roles and responsibilities within an LLP, trust or firm should be carried out within the context of the broader legal framework and the duties imposed by it.

Further guidance

- 1.17. 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 and LLPs; and
 - Guidance for PSCs.

Significant influence or control – terminology

- 1.18. “Significant influence” and “control” are alternatives.
- 1.19. Where a person can direct the activities of an LLP, trust or firm, this would be indicative of “control.”
- 1.20. Where a person can ensure that an LLP, trust or firm generally adopts the activities which they desire, this would be indicative of “significant influence.”
- 1.21. 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 LLP, trust or firm.

2. Right to exercise significant influence or control over an LLP

- 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 an LLP, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including through the LLP agreement or some other agreement, through rights attached to a financial interest, or otherwise. The person exercising significant influence or control might or might not be a member of the LLP.
- 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 an LLP may result in that person being a PSC in relation to the LLP regardless of whether or not they actually exercise that right.

Examples

- 2.5. Paragraphs 2.6, 2.7, 2.8 and 2.10 set out a number of examples of what might constitute a right to exercise significant influence or control, while paragraph 2.9 and sets out a number of examples where rights relating to protection of a member's own or a minority interest 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 is likely (more likely than not) to receive more than 25% of the profits of an LLP, including profits allocated automatically or otherwise.
- 2.7. Where a person has absolute decision rights over decisions related to the running of the business of the LLP, for example relating to:
 - a) Amending the LLP agreement;
 - b) Adopting or amending the LLP's business plan;
 - c) Changing the nature of the LLP's business;
 - d) Making any additional borrowing from lenders; or
 - e) Establishing or amending any financial incentive scheme.

- 2.8. Where a person holds absolute veto rights over decisions related to the running of the business of the LLP, for example relating to:
- a) Amending the LLP agreement;
 - b) Adopting or amending the LLP's business plan; or
 - c) Making any additional borrowing from lenders (except as a minority protection as described in paragraph 2.9 below).
- 2.9. However, if a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting their own or a minority interest then this is unlikely, on its own, to constitute "significant influence or control" over the LLP. When used for the purposes of protecting minority interests these veto rights could include (or relate to) the following:
- a) Changing the LLP agreement ;
 - b) Diluting rights including through the admission of new members;
 - c) Diluting profit share or other financial interests including through the addition of new members;
 - d) Requiring additional capital contributions;
 - e) Making any additional borrowing from lenders, outside previously agreed lending thresholds; or
 - f) Winding up the LLP.
- 2.10. Where a person holds veto rights over the appointment of the majority of the persons entitled to take part in management of the LLP, meaning those persons who hold a majority of the voting rights at meetings of the management body of the LLP (whether those persons are or are not members of the LLP).
- 2.11. A person would not have "significant influence or control" where the absolute decision rights or veto derive solely from being a prospective purchaser or merger partner or demerger partner in relation to the LLP (whether its business or assets), on a temporary basis, for example pending clearance by the Competition and Markets Authority.
- 2.12. 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 else¹.

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

3. Actually exercises significant influence or control over an LLP

3.1. The following is 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 LLP or other individuals who have responsibility for managing the LLP should be taken into account, to identify whether the cumulative effect of those relationships places the individual in a position where they actually exercise significant influence or control. For example:

A member, who also owns important assets and 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 LLP.

Examples

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

a) They are involved in the management and direction of the LLP, for example:

A person, who is not a member of a management body, but regularly or consistently directs or influences a significant section of management, or is regularly consulted on management decisions and whose views influence decisions made by those involved in management.

This would include a person who falls within the definition of “shadow member” set out in regulation 2 of the Limited Liability Partnerships Regulations 2001, but the situation is not confined to shadow members.

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

An LLP’s founder who no longer has a formal interest in the LLP they started, but makes recommendations to members on how to vote and those recommendations are always or almost always followed.

4. Fourth condition: excepted roles with respect to LLPs

- 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;
 - f) A Financial advisor.
- 4.3. Where the person deals with the LLP 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:
 - 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 member company), which has significant influence or control over the LLP.
- 4.6. Where the person is a designated member of an LLP.
- 4.7. A person who makes recommendations to members on an issue, or set of issues, on a one off occasion, which is subject to a vote of the members.
- 4.8. 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.

- 4.9. A person who has a role or relationship of the kind listed above with the LLP may, however, be a person with significant influence over the LLP 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 member 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 LLP. This individual would not be excluded from 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 an LLP.
- *The fifth condition is that-*
 - a) *The trustees of a trust or the member 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 LLP 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 an LLP 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 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 LLP if that trust or firm would meet the conditions for being a PSC of the LLP 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:
- c) Right to appoint or remove any of the trustees, partners or members, except through application to the courts, or as a result of breach of fiduciary duty by the trustees;
 - d) Right to direct the distribution of funds or assets;
 - e) Right to direct investment decisions of the trust or firm;
 - f) Right to amend the trust or partnership deed; or
 - g) Right to revoke the trust or terminate the partnership

Actually exercises 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 (LPA) 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 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 is engaged in 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; or
 - 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.