

Statutory guidance on the meaning of “significant influence or control” in the context of Limited Liability Partnerships (LLPs)

1. Introduction

What is this guidance?

- 1.1. Limited Liability Partnerships (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”) under the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016, which apply Part 21A of the Companies Act 2006 (the “Companies Act”) to LLPs.
- 1.2. 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 holding the right to more than 25% of the assets on a winding up, holding more than 25% of the voting rights, and holding the right to appoint or remove the majority of management.
- 1.3. 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.
- 1.4. If a person has significant control over an LLP by meeting one or more of the first three specified conditions, you do not need to consider whether they have significant influence or control by virtue of the fourth condition.
- 1.5. The Secretary of State has issued this statutory guidance on the meaning of the term “significant influence or control” for the purposes of Schedule 1A of the Companies Act, as applied to LLPs.
- 1.6. This guidance is issued with effect from [xx] 2016 and published under paragraph 23 of Schedule 1A.
- 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 has an interest in a company.

How should this guidance be used?

- 1.10. Regard must be had to this guidance in interpreting references to “significant influence or control” in Schedule 1A.
- 1.11. Separate statutory guidance has been issued 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, and of holding the right to or actually exercising significant influence or control over the activities of a trust or firm which itself meets a specified condition in relation to the LLP.
- 1.13. Chapters 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, in general, 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 “safe harbours”.
- 1.14. However, it is possible that a person, who has a role or relationship of the kind described in chapters 4 and 6, might still, in the circumstances of a particular case, be a person with significant influence or control over the LLP, or over the activities

of a 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 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 are very important in determining whether significant influence or control exist in any particular case.
- 1.16. This guidance is confined to the meaning of “significant influence or control” within Schedule 1A of the Act. Any consideration of the PSC register and of roles and responsibilities should be carried out within the context of the broader legal framework and the duties imposed by it.
- 1.17. This guidance is statutory and is to be used to aid interpretation of the term ‘significant influence or control’ in Schedule 1A.
- 1.18. Other guidance, which is non-statutory, has been issued by the Secretary of State and is published on the BIS website. The aim of the non-statutory guidance is to explain the requirements of the PSC register. These are:
 - The summary guide for companies;
 - Guidance for companies; and
 - Guidance for PSCs.

Significant influence or control

- 1.19. “Significant influence” and “control” are alternatives.
- 1.20. If a person has “control” of an LLP or of the activities of a trust or firm they have the power to direct its policies and activities.
- 1.21. “Significant influence” enables the person exercising the significant influence to ensure that the LLP or trust adopts those policies or activities which are desired by the holder of the significant influence.
- 1.22. The “control” or “significant influence” need not be directed towards the financial and operating policies of the LLP or trust and do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the company or trust.

2. Right to exercise significant influence or control

- 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.
- 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.
- 2.5. The right may be exercised directly or indirectly.
- 2.6. Paragraphs 2.7 – 2.10 set out a number of examples of what might constitute a right to exercise significant influence or control. The examples do not constitute an exhaustive list.
- 2.7. Where a person is likely to receive more than 25% of the profits of an LLP, including profits allocated automatically or otherwise.
- 2.8. Where a person has absolute decision rights or veto rights over decisions related to the running of the business of the LLP for example:
 - a) Adopting or amending the LLP's business plan;
 - b) Changing the nature of the LLP's business;
 - c) Making any additional borrowing from lenders; or
 - d) Establishing or amending any financial incentive scheme.
- 2.9. However, if a person holds veto rights for the purposes of protecting minority interests 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:
 - a) Changing the LLP agreement ;
 - b) Diluting rights;
 - c) Making any additional borrowing from lenders, outside previously agreed lending thresholds; or
 - d) Winding up the company.

- 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.
- 2.11. A person would not have “significant influence or control” where the absolute decision rights or veto derive solely from being a prospective vendor or purchaser in relation to the LLP, for a temporary period of time.
- 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 else.

3. Actually exercises significant influence or control

- 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 aspects of the relationship 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** 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.
- 3.3. A person would exercise “significant influence or control” if they are involved in the direction of the LLP through its management structures. For example:
 - A person, who is not necessarily a member of management, but who, 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.
- 3.4. A person whose 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:
 - Where an LLP’s founder no longer has a formal interest but makes recommendations to members on how to vote and their recommendations are generally followed.

4. Fourth condition: Safe harbours

- 4.1. The following is a list of roles and relationships which would not, in the normal course, result in that person being considered to be exercising significant influence or control for the purposes of the fourth condition.
- 4.2. A person who has a role or relationship of the kind listed below 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 exercised; or
 - b) if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.
- 4.3. Where the person provides advice or direction in a professional capacity, for example:
 - a) a lawyer;
 - b) an accountant;
 - c) a management consultant, including a company mentor; or
 - d) a financial advisor.
- 4.4. Where the person is engaged in a third party commercial or financial agreement, for example:
 - a) A supplier;
 - b) A customer; or
 - c) A lender.
- 4.5. Where the person exercises a function under an enactment, for example:
 - a) A regulator; or
 - b) A liquidator or receiver appointed under the Insolvency Act 1986.
- 4.6. Where the person is an employee acting in the course of their employment, including an employee or director or equivalent of a third party, which is treated as a person with significant control over the LLP.
- 4.7. Where the person is a designated member of an LLP.
- 4.8. A person who makes recommendations to members on a single one-off issue, which is subject to a vote.

5. Trusts and firms

- 5.1. The fifth specified condition in Part 1 of Schedule 1A is relevant where an LLP is controlled by a trust or firm.
- *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 has significant control over an LLP and a person 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

- 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 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 , for example:
- a) An absolute power to appoint or remove any of the trustees, except through application to the courts;
 - b) a right to direct the distribution of funds or assets;
 - c) a right to direct investment decisions of the trust;
 - d) a power to amend the trust deed; or
 - e) a power to revoke the trust.

Actually exercises influence or control

- 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) They are the trustee of the trust; or
 - b) The person has issued instructions as to the activities of the trust (whether binding or not) to the trustee(s) or to any other person who is exercising significant influence or control over the trust; this may be a settlor or beneficiary who is actively involved in directing the activities of the trust.

- 5.7. In the case of a firm, such as a limited partnership formed under the Limited Partnership Act (LPA) 1907, anyone who controls the management or activities of the limited partnership would be considered a person with significant control. In most cases this would be the general partner of the limited partnership (as defined by the LPA 1907).

6. Fifth condition: Safe harbours

- 6.1. The following is a list of roles and relationships which would not, in the normal course, result in that person being considered to be exercising significant influence or control for the purposes of the fifth condition.
- 6.2. A person who has a role or relationship of the kind listed below 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 exercised?; or
 - b) if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.
- 6.3. Where the person provides advice or direction in a professional capacity, for example:
- a) a lawyer;
 - b) an accountant;
 - c) a management consultant; or
 - d) a financial advisor.
- 6.4. Where the person is engaged in a third party commercial or financial agreement, for example:
- a) A supplier;
 - b) A customer; or
 - c) A lender.
- 6.5. Where the person exercises a function under an enactment, for example:
- a) A regulator.
- 6.6. Where the person is an employee acting in the course of their employment, including an employee or director of a third party, which is treated as a person with significant control over the trust.