

Statutory Guidance on the meaning of “significant influence or control” in the context of companies

1. Introduction

What is this guidance?

- 1.1. Companies which are registered under the Companies Act 2006 (“the Act”) are, in general, required to maintain a register of people with significant control over the company (“PSC Register”) under Part 21A of the Act.
- 1.2. A person has significant control over a company if one of the specified conditions are satisfied. The first three specified conditions require the holding of more than 25% of the company’s shares or voting rights in the company or the right to appoint or remove the majority of the board of directors.
- 1.3. The fourth and fifth specified conditions require a person to have “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.
- 1.4. 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 to the Act.
- 1.5. This guidance is issued with effect from the 6 April 2016 and published under paragraph 24(5) of Schedule 1A.
- 1.6. The term “significant influence or control” occurs three times in Schedule 1A.
- 1.7. 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 company 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 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.*

- 1.8. 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?

- 1.9. Regard must be had to this guidance in interpreting references to “significant influence or control” in Schedule 1A to the Act (paragraph 24(2) of Schedule 1A).
- 1.10. 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 as well as companies limited by shares. Part 21A does not, however, apply to certain companies, for example, those which are DTR5 issuers.
- 1.11. This guidance may also be relevant to Societas Europaea (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.
- 1.12. Separate statutory guidance has been issued on the meaning of the term “significant influence or control” in the context of Limited Liability Partnerships.
- 1.13. 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.
- 1.14. Chapters 4 and 6 of this guidance also provides a non exhaustive list of the kind of roles and relationships which a person may have with a company or with a trust 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”.
- 1.15. 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 over the company or trust. 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.

- 1.16. This guidance is relevant when a company 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 are very important in determining whether significant influence or control exist in any particular case.
- 1.17. 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 the roles and responsibilities within a company or a trust should be carried out within the context of the broader legal framework and the duties imposed by it.
- 1.18. This guidance is statutory and is to be used to aid interpretation of the term ‘significant influence or control’ in Schedule 1A to the Act.
- 1.19. 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

- 1.20. “Significant influence” and “control” are alternatives.
- 1.21. If a person has “control” of a company or of the activities of a trust or firm they have the power to direct its policies and activities.
- 1.22. “Significant influence” enables the person exercising the significant influence to ensure that the company or trust adopts those policies or activities which are desired by the holder of the significant influence.
- 1.23. The “control” or “significant influence” need not be directed towards the financial and operating policies of the company 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 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.
- 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 has absolute decision rights or veto rights over decisions related to the running of the business of the company, for example:
- 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; or
 - d) Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors or employees.
- 2.8. However, if a person holds absolute veto rights 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:
- a) Changing the company's constitution;
 - b) Dilution of shares or rights;
 - c) Making any additional borrowing from lenders, outside previously agreed lending thresholds; or
 - d) Winding up the company.
- 2.9. Where a person holds absolute veto rights over the appointment of the majority of directors.
- 2.10. 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 company, for a temporary period of time, 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 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 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 individual 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 they are involved in the day to day management and direction of the company, for example:
 - A person, who is not a member of the board of directors, 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.
- 3.4. A person whose recommendations are always or almost always followed by shareholders which hold the majority of the voting rights in the company, when they are deciding how to vote. For example:
 - Where a company founder no longer has a significant shareholding in the company they started, but makes recommendations to the other shareholders 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 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.
- 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 of a third party, which is treated as a person with significant control over the company.
- 4.7. Where the person is a director of a company, including:
- a) a managing director;
 - b) a sole director; or
 - c) a non-executive or executive director who holds a casting vote.
- 4.8. A person who makes recommendations to shareholders 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 a company 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 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 has significant control over a company 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 a company may result in that person being a PSC in relation to the trust 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 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
 - 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.