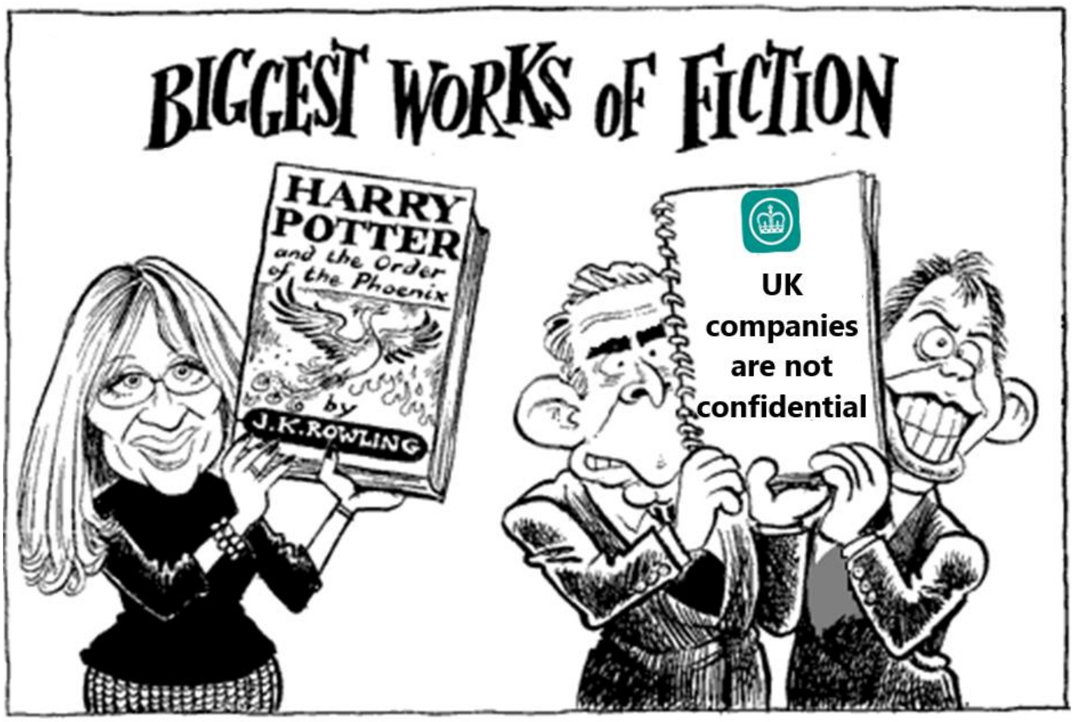
UK Companies owned by trusts offer better confidentiality than other jurisdictions



The registered beneficial owner of a UK company owned by a trust is only the trustee. Other jurisdictions, including UK overseas territories (BVI, Cayman, etc) and crown dependencies (Jersey, Isle of Man, etc) record the trust's settlors, protector, trustees and trust's beneficiaries.

This is because the UK registers Person of Significant Control, rather than Ultimate Beneficial owners.

A director can't be a PSC by fulfilling their normal directorial duties.

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What makes an individual a PSC of a UK company?

Under Schedule 1A to the Companies Act 2006, if an individual ("X") meets one or more of the following conditions in relation to a company ("Y"), they must be registered as a PSC in respect of Y:

1. X holds, directly or indirectly, more than 25% of the shares in company Y.
2. X holds, directly or indirectly, more than 25% of the voting rights in company Y.
3. X holds the right, directly or indirectly, to appoint or remove a majority of the board of
 directors of company Y.
4. X has the right to exercise, or actually exercises, significant influence or control over company Y.
5. **The trustees of a trust** that, under the law by which it is governed, is not a legal person meet any of the other specified conditions in relation to company Y, or would do so if they were individuals, and, X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust

HMRC's summary guide for companies – register of people with significant control

What is the register of people with significant control?

- UK companies, SEs, LLPs and ESPs will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a register of people with significant influence or control (PSCs) in relation to them, in addition to existing registers such as the register of directors and register of members (shareholders), and must file the PSC information with the central public register at Companies House. SEs and LLPs will need to refer to the full guidance.
- ESPs are not required to keep their own register but must file their PSC information with the central public register at Companies House. They should also refer to the full guidance. The full guidance for companies, guidance for PSCs, and separate guidance for LLPs and ESPs is available here.
- The PSC register helps to increase transparency over who owns and controls UK companies and will help inform investors when they are considering investing in a company. It will also support law enforcement agencies in money laundering investigation

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A PSC is an individual who meets one or more of the following conditions:

i. An individual who holds more than 25% of shares in the company.
ii. An individual who holds more than 25% of voting rights (often attached to shares) in the company.
iii. An individual who holds the right to appoint or remove the majority of the board of directors of the company.
iv. An individual who has the right to exercise, or actually exercises significant influence or control over the company

Where a trust would satisfy one of the first four conditions if it were an individual. Any individual holding the right to exercise, or exercising, significant influence or control over the activities of that trust

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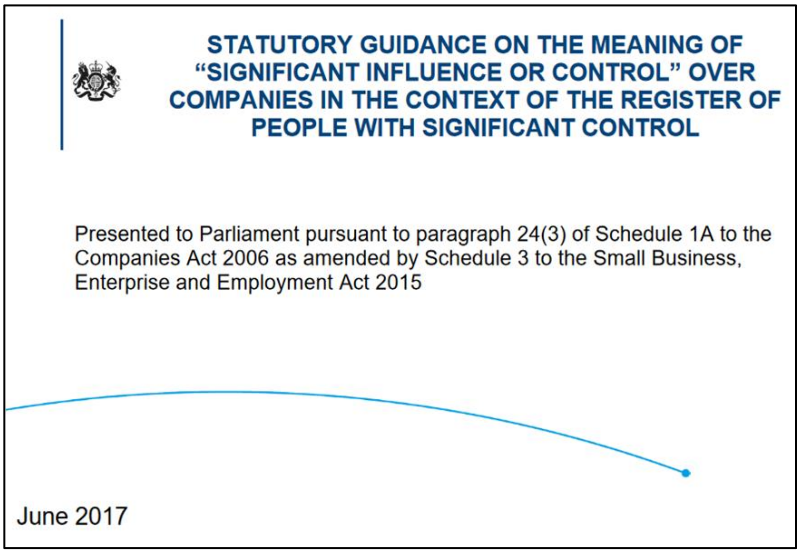
UK STATUTORY GUIDANCE ON THE MEANING OF "SIGNIFICANT INFLUENCE OR CONTROL" OVER COMPANIES IN THE CONTEXT OF THE REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL


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

June 2017

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

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

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Right to exercise significant influence or control – trust

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 may result in that person being a PSC in relation to the company if that trust 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

if that person has the right to direct or influence the running of the activities of the trust or firm:

(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

(d) Right to amend the trust

(e) Right to revoke the trust.

Actually exercises significant influence or control – trust

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 person who issues instructions, which are generally followed, as to the activities of the trust 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.

A director can't be a PSC by fulfilling their normal directorial duties.

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Ultimate Beneficial Owner (UBO) vs Persons of Significant Control (PSC)

Distinguishing between Ultimate Beneficial Owners (UBOs) and Persons of Significant Control (PSCs) is crucial for financial security and compliance in business, particularly due to evolving financial regulations and economic challenges.

What is an Ultimate Beneficial Owner (UBO)?

- At the heart of corporate governance lies the concept of the Ultimate Beneficial Owner.
- Simply put, a UBO is an individual who holds ultimate ownership or control over a company or asset, reaping its benefits regardless of formal ownership documentation.
- As financial regulations evolve, the identification and verification of UBOs have become imperative for entities across diverse sectors.

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Understanding UBO Checks

- A UBO check refers to the process of identifying and verifying the individuals who ultimately own or control a company or asset. These checks are conducted to ensure corporate ownership structure transparency and mitigate risks such as fraud, money laundering, and corruption.
- The UBO check typically involves examining the ownership of shares or voting rights in a company to determine who holds significant control or benefits from its operations.
- This process may also involve investigating complex ownership chains, nominee arrangements, and other structures designed to obscure the true ownership of assets.
- UBO checks are often mandated by regulatory authorities in various industries, such as banking, real estate, and legal services, as part of Know Your Customer (KYC) and Anti-Money Laundering (AML) compliance requirements.
- By conducting UBO checks, businesses can verify the identities of their clients or partners, assess their risk exposure, and ensure compliance with relevant laws and regulations.

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What are Persons of Significant Control (PSC)?

- Understanding and identifying PSCs is essential for maintaining the integrity of corporate structures and promoting transparency in business operations.
- A PSC (Person of Significant Control) refers to an individual or legal entity that holds significant influence or control over a company.
- PSCs are typically identified based on criteria set by regulatory authorities, often including factors such as ownership of shares or voting rights, the ability to appoint or remove directors, or the power to exercise significant influence or control over the company's operations.
- Similar to UBOs, PSCs play a crucial role in ensuring transparency and accountability in corporate governance.
- Identifying and disclosing PSCs is important for regulatory compliance and risk management purposes, as it helps to prevent financial crimes such as money laundering, corruption, and tax evasion.
- In many jurisdictions, companies are required to maintain a register of their PSCs and disclose this information to the relevant authorities. Failure to comply with PSC disclosure requirements can result in legal penalties and reputational damage for the company.

The Distinction: UBO vs. PSC

- While UBOs and Persons of Significant Control (PSC) often intersect, it is important to remember they are different.
- While UBOs primarily focus on ultimate ownership and benefit entitlements, PSCs wield substantial influence over a company's operational decisions and directorial appointments.
- Understanding this contrast is crucial for regulatory compliance and risk mitigation strategies.

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