



Exclusions and connected persons

Fact sheet

Connected persons

Schedule 6, paragraph 45) of the act sets out seven definitions of different individuals and entities who are classified as a connected person in relation to the supplier.

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(a) A person with “significant control” over the supplier within the meaning given by section 790C(2) of the Companies Act 2006.	<p>An individual or entity has “significant control” over a supplier where one or more of the following conditions (set out in Part 1 of schedule 1A of the Companies Act 2006) are met:</p> <ol style="list-style-type: none">1. they have more than 25% of shares in the supplier2. they have more than 25% of voting rights in the supplier3. they have the right to appoint or remove the majority of the board of directors4. they have significant control or influence by other means5. they are a trust or firm that controls the supplier <p>Examples: shareholders, investors, trusts and firms and directors, in each case with significant control.</p>

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(b) a director or shadow director of the supplier	<p>A director is defined in the act by reference to the definition in section 250 of the Companies Act 2006. A director is a person who exercises real power within the company, particularly in relation to decision making. The names of directors should be registered for that company on Companies House.</p> <p>A shadow director is defined in the act by reference to the definition in section 251 of the Companies Act 2006. A shadow director is a person who is not a director, but whose directions and instructions are customarily acted on by the directors of the company.</p> <p>Examples: shareholders, investors, and individuals.</p> <p>Professional advisors to a company, e.g. lawyers or accountants, are not classified as shadow directors under the Companies Act.</p>
(c) A parent or subsidiary undertaking of the supplier	<p>“Parent undertaking” and “subsidiary undertaking” are defined in the act by reference to the definitions in section 1162 of the Companies Act 2006. A parent undertaking holds a majority of the voting rights in a subsidiary undertaking, is a member of the subsidiary undertaking with the right to appoint or remove a majority of its board of directors, has the right to exercise a dominant influence over the subsidiary undertaking, or is a member of the other undertaking and controls a majority of the voting rights in the subsidiary undertaking. Alternatively, a parent undertaking may have the power to exercise, or actually exercises, dominant influence or control over the subsidiary undertaking or may be managed on a unified basis with the subsidiary undertaking.</p>

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(d) A predecessor company that has ceased trading due to insolvency	<p>A “predecessor company” is defined in the act as meaning a company which— (a) became insolvent and ceased to trade, (b) before it ceased to trade, carried on the same or substantially the same business as the supplier, (c) has transferred all or substantially all of its assets to the supplier, and (d) had at least one director or shadow director who is or has been a director or shadow director of the supplier; “shadow director” has the meaning given in section 251 of the Companies Act 2006. Sometimes known as a “phoenix company”: organisations which have become insolvent and ceased to trade where the business has effectively been transferred to the supplier, which has been newly created to carry on a similar business, and where one or more of the directors of the supplier was a director of the predecessor company at the point at which it ceased to trade. This will primarily be relevant for the discretionary exclusion ground relating to bankruptcy and insolvency situations.</p>
(e) any other person who could reasonably be considered as standing in an equivalent position in relation to the supplier as a person in (a) to (d)	<p>Any person who is in an equivalent position.</p> <p>Examples include: persons in an equivalent position in relation to entities which are not covered by the Companies Act 2006.</p>

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<p>(f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier, and</p> <p>(g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control</p>	<p>Captures any individual or entity not covered under sections (a)-(e) but who has significant influence or control. Examples may include individuals or entities who:</p> <ul style="list-style-type: none"> • direct the activities of the business • have the right to veto decisions related to the running of the business • are a company founder who no longer has significant shares in the business but still has influence or control • regularly direct or influence a considerable section of the board, despite not being a board member themselves • have the right to appoint or remove a chief executive