



Legal update — May 2018

Corporate Public registers in British Overseas Territories – further regulatory pressure on overseas investors into UK real estate



On 1 May 2018, the UK parliament voted in favour of an amendment to the Sanctions and Anti-Money Laundering Bill to require the British Overseas Territories to create “a publicly accessible register of the beneficial ownership of companies” containing information broadly equivalent to that available in the "People with Significant Control" (PSC) register in the UK.

This represents more regulatory pressure on overseas investors into UK real estate, following on from a hectic couple of years of change, as explained further below.

The current regulatory and tax environment for inward investment into UK real estate

On the regulatory side, in April 2016, the UK introduced a register of beneficial ownership of companies, known as the PSC register, which allows the public access to a central record of this information. However, the PSC register does not apply to companies incorporated outside the UK. Therefore, in April 2017, the government's attention shifted to the ownership of UK real estate by overseas companies.

In a recent response document, the UK government proposed that as from 2021, all legal forms of overseas entity which can hold UK real estate will be required to disclose details of the underlying beneficial owner(s) in a register based on the PSC register mentioned above.

This will apply to both existing owners and intending purchasers.

On 31 January 2018, the UK government introduced Unexplained Wealth Orders (UWOs). Essentially, A UWO is an investigation order issued by the High Court in England (Court of Session in Scotland) upon satisfaction of a number of tests. A UWO can and will usually be accompanied by an “interim freezing order” (IFO) to prevent the property being dealt with in any way while subject to the UWO.

A UWO requires a person to explain the nature and extent of their interest in a particular property, and to explain how the property was obtained.

Finally, as mentioned above, on 1 May 2018, the UK parliament voted to require the British Overseas Territories to create “a publicly accessible register of the beneficial ownership of companies” containing information broadly equivalent to that available in the PSC register in the UK.

Turning to the UK tax landscape, in recent years the UK tax environment for inward investment into UK real estate has been in a state of almost constant change. New taxes have been introduced, such as the Annual tax on Enveloped Dwellings, and Non-Resident Capital Gains Tax; and the existing tax regime has been revised on numerous occasions, for example, restrictions on deductible borrowing costs and the expansion of the corporation tax regime.

Public registers in British Overseas Territories

The following British Overseas Territories will be required to create public registers:

- Anguilla
- Bermuda
- Cayman Islands
- Gibraltar
- Montserrat
- Turks and Caicos Islands
- Virgin Islands

Note that Jersey, Guernsey and the Isle of Man are not included (since these jurisdictions are British Crown Dependencies). However, Andrew Mitchell MP has said that "Parliament would expect the government 'to make the point persuasively, that we hope that the crown dependencies embrace the same ethical position and equal transparency'".

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The deadline is 31 December 2020, otherwise the UK government will impose the requirement by what is known as an Order in Council.

What information will be available in the register?

The publicly accessible register will contain the beneficial ownership of companies. A "beneficial owner" of a company will be broadly in line with the criteria used to identify "persons with significant control" under the PSC regime. Such persons must meet one or more of the following conditions:

- Directly or indirectly holds more than 25% of the shares in the company.
- Directly or indirectly holds more than 25% of the voting rights in the company.
- Directly or indirectly holds the power to appoint or remove a majority of the board of directors of the company.
- Otherwise has the right to exercise or actually exercises significant influence or control over the company.
- Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which meets one or more of the above conditions.

The legislation also provides for situations where individuals hold rights or shares collectively or in a joint arrangement.

Impact on overseas investors into UK real estate

For various reasons, it is common practice for overseas investors into UK real estate to structure the investment via an overseas corporate structure. Such structures may be all or partly based in one or more of the British Overseas Territories. It may be that a publicly accessible register of the beneficial ownership of companies in those territories will have little or no impact, but in some cases – for entirely commercial reasons – such a register may be a disincentive to make use of that territory, in which case some structures may need to be unwound or not used as from the outset.

The ever changing regulatory landscape

As ever with any new regulatory powers, the extent and effectiveness of the use of publicly accessible registers in the British Overseas Territories will only become clear after a period of time. Given that regulatory wheels often grind very slowly, it may take some time to make an assessment.

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