



Legal update — September 2018

## Corporate & Real estate

# Update — overseas entities owning UK property to disclose details of owners in public register



### In July 2018, the UK Government published a Bill to establish a statutory register setting out details of the beneficial ownership of overseas entities that own UK real estate.

The draft Registration of Overseas Entities Bill (Bill) requires overseas entities that own, wish to purchase or dispose of UK real estate to register details of their beneficial owners with the Companies Registry. Broadly, the requirements in the Bill are in line with those outlined by the Government in March 2018.

The Bill applies to the UK but it applies differently in England and Wales, Northern Ireland and Scotland due to the different land registration regimes in the three jurisdictions. This note sets out the position for England and Wales.

#### Background – PSC register and consultation

The UK Government has long been concerned about the potential for the misuse of corporate vehicles and aims to make the UK a more transparent place to do business.

In 2016, the UK introduced a register of beneficial owners of UK companies, known as the register of people with significant control (PSC) or 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.

In April 2017, the Government's attention shifted to the ownership of UK real estate by overseas companies. The Government's aim in introducing the Bill is to prevent and combat the use of land by overseas entities for the purpose of money laundering or investing illicit funds. The new register will be the first such register in the world.

#### Main points

In July 2018, the UK Government published the Bill which will create an equivalent register to the PSC register for overseas entities that own, wish to purchase or intend to dispose of UK real estate.

**Timing** – the deadline for commenting on the Bill is 17 September 2018 and the Government intends that the register will be operational in 2021.

**All overseas legal entities to register** – all legal forms of overseas entity (body corporate, partnership or other entity) which can hold UK real estate (commercial and residential freehold and registrable leasehold property) will be required to register with the Companies Registry and provide information about their beneficial owners. There are exemptions for certain types of entity if this is appropriate e.g. to reduce the regulatory burden where there is already transparency of beneficial ownership information – this would be the case if the entity is already listed on a particular stock exchange. Trusts are excluded from the definition of overseas legal entity as they do not have separate legal status. The UK Government is consulting on exemptions for governmental bodies and public authorities.

Overseas individuals holding property in their own name or through a UK corporate vehicle will not be caught by the new proposals although if they own through a UK company that company will already be subject to the PSC regime.

**UK only?** – No. By the Anti-Money Laundering Act 2018, the Government intends for UK overseas territories including Bermuda, the British Virgin Islands, the Cayman Islands and Gibraltar (but not Jersey, Guernsey or the Isle of Man) to introduce their own registers equivalent to the UK's PSC register by the end of 2020. The impact of the Bill will therefore be mainly on those entities owning UK real estate that are not already subject to or do not adopt disclosure rules equivalent to those of the PSC regime.

**Registration at the Companies Registry** – overseas entities must provide details of their beneficial owners to the Companies Registry in order to register, following which they will be given an overseas entity ID. This ID will be used by the Land Registry to register the overseas entity's transactions, similar to the way in which a UK company's registered number is entered on the title register.

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**Disclosable owners** – the definition of beneficial owner for the register at the Companies Registry is very similar to that used in the PSC regime. Broadly speaking, a person will be a beneficial owner if he owns 25% of the shares or can control 25% of the overseas entity's voting rights, or has the right to appoint or remove a majority of the board of directors or otherwise to exercise significant influence or control over the overseas entity. If the overseas entity's beneficial owner is another entity, then the overseas entity must continue up the chain of ownership until it identifies an individual or it is clear that there is no individual, in which case the overseas entity will have to register its managing officers.

**Can entities unable to get information about their beneficial owners still register?** – Yes. Overseas entities will be required to take reasonable steps to find out who their beneficial owners are. If they are unable to provide beneficial ownership information (either because they do not have any or they cannot identify them) they can still register and will instead have to provide information about their managing officers.

**What information must be included in the register?** – The Government requires the same information for the new register as for the PSC register. For an overseas entity, this will be its name, country of incorporation, registered or principal office, service address, email address, the entity's legal form, its governing law and any public register in which it is entered. Not all of the information provided to the Companies Registry will be included in the publicly accessible register, so details of an individual's residential address and the day of their date of birth would be suppressed.

**Must current real estate owners register?** – Yes. Current owners of UK real estate will be required to register and obtain an overseas entity ID (as well as intending purchasers). There will be an 18 month transition period to comply with the new requirements during which overseas entities can still sell UK real estate of which they became the registered proprietor on or after 1 January 1999. At the end of the transitional period, if the current owner is still in breach of the registration requirements it will be prohibited (subject to certain exceptions) from dealing with the real estate by way of a restriction on the title register at the Land Registry. The exceptional circumstances in which it will be able to deal include where the dealing is pursuant to a statutory obligation or court order, where the contract was entered into before the restriction was registered and where a lender (e.g. a bank) exercises its power of sale to realise its security. Failure to register will also be a criminal offence, punishable by fine or imprisonment or both.

**Must intending buyers register?** – Yes. An intending buyer will have to apply to the Companies Registry to register details of its beneficial ownership with the Companies Registry and obtain an overseas entity ID number to enable it to register both its legal title to the property and, where it has borrowed monies to fund the purchase, for its lender(s) to register a mortgage of the land. A restriction will be added to the title register that prohibits dealing with the property if the owner is in breach of the registration requirements.

Additionally, the Government intends to allow the beneficial interest (but not legal title) to pass to an overseas entity that does not have a valid registration number at completion or settlement.

Where an intending buyer's real estate purchase is to be financed, the lender is likely to insist on the buyer registering details of its beneficial ownership at the Companies Registry as a condition precedent to providing the financing for the acquisition.

Buyers/sellers of real estate will also need to consider whether ensuring that an overseas entity has obtained an overseas entity ID number is a condition of exchange of contracts, which we would expect to see become the norm.

**Annual obligation to keep the information on the register up-to-date** – overseas entities will be required to update the information provided to the Companies Registry annually, although they will be able to choose to update more frequently. Failure to do so will result in criminal sanctions. Overseas entities will be able to apply to be removed from the register if they cease to be interested in UK real estate. Note that the updating obligation subsists for as long as the overseas entity remains registered, even if it no longer owns any UK real estate. So once property is sold, an overseas entity should apply to be removed from the Companies Registry.

#### **Consequences of breach**

Overseas entities that fail to register, or fail to comply with the obligation to update the registered information, will not be able to deal with the UK real estate that they own.

It will also be a criminal offence for both the overseas entity and its officers:

- to deal with UK real estate without being registered;
- to fail to comply with the obligation to update the registered information at least annually; or
- to deliver misleading, false or deceptive information to the Companies Registry.

The sanctions for the criminal offences include fines and/or imprisonment, depending on the severity of the breach (the maximum penalty is an unlimited fine or five years' imprisonment).

### **Practical implications**

Overseas entities with UK real estate portfolios will need to start planning what they propose to do once the new regime comes into force: whether to keep or dispose of some/all of their UK real estate. If they plan on keeping it they will need to put in place appropriate compliance arrangements to ensure that the requirements of the new regime are met. Entities should not underestimate the time taken to identify beneficial owners, especially in complex structures.

Overseas entities intending to acquire UK real estate should keep the proposals under review, consider identifying their beneficial owners now and will need to obtain an overseas entity ID once the regime is in force. SPVs that are set up to acquire UK real estate will need to ensure that they can obtain an overseas entity ID number in advance of completing the purchase of real estate.

Individuals who own their UK real estate through overseas entities to safeguard their privacy will need to consider how to deal with that property once the proposals become law. If they wish to restructure their real estate portfolios they will need to evaluate the costs of such restructuring which may well be expensive especially if loan finance is involved.

Parties (sellers, buyers, investors and lenders) dealing with overseas entities will want to check that the overseas entity has an overseas entity ID number, appears on the register of overseas beneficial owners and try to obtain some assurance that the overseas entity will comply with its annual updating obligation. In addition, buyers and lenders will need to ensure that they have the contractual protection in place so that they can be registered as the proprietor of the property/charge respectively at the Land Registry.

### **Conclusion**

All current and intending overseas owners of UK real estate need to be aware of and comply with these provisions once the Bill is in force.

### **September 2018 © Trowers & Hamlins**

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