

New Register of Beneficial Ownership for Overseas Entities Owning UK Land

Background

The UK Government is concerned about the potential for illegal activity to take place through overseas companies investing in the UK property sector. Companies incorporated outside the UK can be used to obscure the true owners of properties and this can make it difficult for law enforcement agencies to carry out effective investigations. The UK Government thinks that greater transparency of property ownership will make the job of the law enforcement agencies easier and discourage the laundering or hiding of money by criminals or corrupt individuals.

In addition to these benefits, greater transparency will also support a more efficient property market because it will be easier to trace the people who control vacant property, tenants can know who actually owns the property they are renting and neighbours can identify who is responsible for work on adjoining properties that has affected them.

Therefore, in April 2017, the UK Government published a “Call for Evidence” inviting comments on a proposed new register of beneficial owners of overseas companies and other legal entities that own UK property. The consultation closed in May 2017 and the UK Government is currently evaluating the responses.

Aim and scope of the new register

The UK Government aims to create a register that contains useful information, is publicly and easily accessible, protects the information of those at risk and avoids creating disproportionate burdens or putting off legitimate investors.

Companies House will hold the new register because they have expertise in holding information from the existing Persons with Significant Control (PSC) Register and making this information publicly accessible. Companies House will be able to charge a fee for entities to register but the register will be free to view on the Companies House website.

The scope of the register will be focused on all overseas legal entities that can hold properties. It will not be restricted to entities in low tax jurisdictions.

In addition, the UK Government intends the register to include beneficial owner information not only for freeholds but also for leasehold property where the lease is required to be registered at the Land Registry and the original term is for more than 21 years.

Who is the beneficial owner?

The UK Government has decided to adopt the same definition of beneficial owner as for the PSC Register in order to avoid mismatches with information on UK companies and prevent manipulation of holding structures.

Under the current legislation, a person is a PSC if they meet one or more of the following conditions in respect of a UK company:

- (i) Directly or indirectly holds more than 25% of the shares in the company;
- (ii) Directly or indirectly holds more than 25% of the voting rights in the company;
- (iii) Directly or indirectly holds the power to appoint or remove a majority of the board of directors of the company;
- (iv) Otherwise has the right to exercise or actually exercises significant influence or control over the company; and
- (v) 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 conditions (i) to (iv).

The new register will require overseas entities that are not companies limited by shares to apply the adaptations provided by the existing PSC legislation, as appropriate, in identifying their beneficial owners. The UK Government intends to provide guidance to explain how entities assess themselves against the five conditions and the adaptations.

In cases where a legal entity that is required to provide information about its beneficial owners to a publicly accessible register (for instance if it is a UK company that is required to comply with the PSC regime) has significant control over an overseas legal entity, then the controlling entity's details should be provided by the overseas entity for the purposes of the new register, without the need to continue further up the ownership chain.

Information to be disclosed

The information required about beneficial owners will be similar to that currently specified by the PSC Register. This information will include the individuals' name, their date of birth (although the day of their date of birth is not publicly accessible), their nationality, the country or state (or part of the United Kingdom) where they usually reside, a service address, their usual residential address (again, this is not publicly accessible), the nature of his or her control over the company and the date that this control was acquired.

Overseas entities would be required to check the information with their beneficial owners prior to disclosing it for the new overseas register and they would not be able to apply for a registration number until they can supply the beneficial owner information required.

If overseas entities are unable to provide information about beneficial owners because:

- (i) They are unable to provide full confirmed information from their beneficial owners despite taking reasonable steps to contact them;
- (ii) They are unable to establish if they have any beneficial owners;
- (iii) They have carried out investigations and concluded that they do not have any beneficial owners as no person meets the condition of control

then the UK Government proposes to allow overseas entities to record that they are unable to provide beneficial ownership information for the purposes of the new register. In these circumstances, they will be asked instead to provide information about their managing officers. This will ensure that there will be at least some additional information on the control of overseas entities that are subject to the new overseas register regime.

It is proposed that the beneficial ownership information on the new register should be updated at least once every two years.

Penalties for non-compliance

If an entity does not supply the right information to Companies House it will not get an overseas registration number. Without this number it will not be able to buy property, and it will not be able to sell, lease or place a charge against any properties it already owns. The UK Government is concerned that some entities might be content to own property that is restricted in this way and therefore they are consulting as to whether it will be appropriate to create a criminal offence for entities that still own property at the end of the transitional period (see below) but have not complied with the new register requirements by that time.

The UK Government are also considering making it an offence if overseas entities fail to keep their information up to date at least once in every two years.

Furthermore, in order to prevent abuse of the provision for overseas entities to record that they are unable to obtain information about their beneficial owners, the UK Government intends to make it an offence for anyone to knowingly or recklessly provide false or misleading information. Such an offence already applies to information given to Companies House in relation to the PSC regime.

Implications for Property Transactions

If the proposals in the Call for Evidence are implemented, then overseas entities will not be able to buy or sell property in the UK unless they have provided information about their beneficial owners for the new register and obtained a registration number from Companies House. This number will be needed in order to register title to the property at the Land Registry.

Entities that already own property will be given a transitional period of one year in which they can choose to register the beneficial owner information or dispose of the property.

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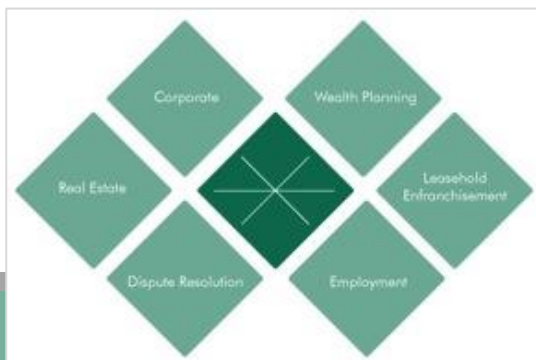
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