

## THE UK GOVERNMENT PROPOSES INNOVATIVE TRANSPARENCY REQUIREMENTS FOR OVERSEAS OWNERS AND BUYERS OF UK PROPERTY

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**Real Estate Investment, Development, and Finance Alert**

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On 5 April 2017, the then UK government published a Call for Evidence seeking views on the design of an innovative public register intended to show beneficial ownership of overseas legal entities ("**overseas entities**") that own UK property or participate in UK public procurement (the "**New Register**"). The Call for Evidence closed on 15 May 2017. At present we do not expect that the recent changes in the UK government will materially impact any decision whether or when to proceed with this initiative.

The government's stated intention is to improve transparency of beneficial ownership of overseas entities investing in the UK. This follows on from a similar drive for more transparency of ownership of certain UK entities. That drive culminated in the introduction, in April 2016, of the people with significant control register ("**PSC Register**") requirements under which companies incorporated in the UK are required to supply information about their beneficial owners - termed people with significant control ("**PSCs**") - to Companies House, the registrar of companies in the UK. For more information on the PSC Register, please see our alert [here](#).

### KEY POINTS

- It is intended that the New Register will, like the PSC Register, be held by Companies House.
- Under the proposals, overseas entities owning or proposing to acquire property in the UK would have to provide information to Companies House on their ultimate beneficial owners - PSCs - and apply for a registration number.
- Without a registration number, registration of title to property would not be possible. It is intended that overseas entities already owning UK property would be given a transitional period of 12 months to sell the property, or to comply and obtain a registration number which they would need if they wished to sell the property after the expiry of the 12 month period.
- It is proposed that a failure to register would result in a restriction being placed on the title register of the relevant property preventing a sale, long lease or legal charge of the property.
- Compliance with the New Register requirements is proposed to extend to owners and buyers both of freehold title, and of leases that have an initial term of at least 21 years and require registration.
- The New Register would be available for anyone to view without charge on the Companies House website. It is expected that Companies House would charge overseas entities a modest fee for registration.

- The government is looking at developing rules under which it would be possible in certain cases to keep certain information out of the public domain. This is likely to include a case where a person's safety would be compromised by the disclosure.

## WHEN WILL THIS CHANGE BE INTRODUCED?

It is not yet clear when or if the New Register requirements will become law. However, the Call for Evidence proposed a reasonable lead in period during which awareness of the New Register will be raised.

## WILL YOU BE AFFECTED?

The proposed change will affect overseas companies and other overseas entities that own or intend to acquire certain UK property. Further, the New Register requirements are also intended to extend to overseas entities wishing to participate in UK central government procurement contracts.

The government has not yet detailed exactly which types of overseas entities would fall within the scope of the New Register regime but the intention is to capture every kind of overseas entity that could hold UK property or bid on central government procurement contracts in the UK.

It is intended that relevant UK property would be freehold titles and leases that have an initial term of at least 21 years and which require registration. The requirements are not proposed to apply to overseas entities currently owning unregistered land; however a transfer of unregistered land would trigger registration requirements.

It is also proposed that overseas entities must supply beneficial ownership information before a UK central government procurement contract valued at over £10 million can be finalised. Compliance would be mandatory for procurements by central government and voluntary for wider public sector bodies such as Local Authorities.

To avoid duplication of reporting, the intention is to exempt overseas entities that are already subject to equivalent disclosure requirements to those proposed. It is also proposed that there will be no requirement to investigate further up a chain of ownership where a beneficial owner is already required to provide information about its beneficial owners to a publicly-accessible register - for example where a beneficial owner is a UK company currently subject to the PSC Register requirements.

## WHICH PEOPLE WILL BE PSCS OF OVERSEAS ENTITIES FOR THIS PURPOSE?

It is proposed that the definition of PSCs as understood under the PSC Register regime be adopted with some tweaks and that accordingly PSCs whose information needs to be disclosed will generally be individuals. On this basis the relevant individuals will be those who directly, or indirectly through a majority ownership chain, hold more than 25% of the shares or voting rights in the overseas entity or can control the appointment of a majority of the Board, or otherwise those who have the right to exercise, or actually exercise, significant influence or control over the overseas entity.

In line with the intention of capturing all overseas entities, beyond just companies limited by shares, it is proposed that provision be made for the control conditions under the New Register regime to extend for example to: voting

rights in relation to different overseas entities, rights to a share of the capital or profits of the overseas entity and rights to appoint and remove a majority of the equivalent management body of that overseas entity.

## **WHAT INFORMATION WILL NEED TO BE MADE PUBLICLY AVAILABLE?**

It is intended that information required about PSCs in the New Register is to be the same as under the PSC Register requirements. Particulars of PSCs required on the New Register would therefore include, among other things: name, date of birth, residential and service address, nature of control and when that person became a PSC. It is also intended that overseas entities will have to check the accuracy of information with their PSCs before disclosing information on the publicly-accessible New Register.

It is further proposed that the overseas entity provide information to Companies House about itself. This is expected to include its: name, legal form, registered office address, contact email and country of incorporation.

Overseas entities, much like UK entities, will be required to take all reasonable steps to locate PSCs and will be in compliance with the scheme if they record that they are unable to identify who their PSC(s) are after having taken all reasonable steps, provided reasonable steps have indeed been taken.

Where overseas entities are unable to supply information about their PSCs, it is proposed that they provide information about their managing officers. Details required on the New Register about managing officers would include: name, date of birth, service and residential address and nationality. If the managing officer is a legal entity, the firm name, registered office, legal form and the name of the register it is entered onto would be required.

## **PROTECTING INFORMATION**

The government is aware that an extensive protection regime may be required given that the New Register will connect individual properties to individual PSCs. Accordingly, it is expected that there will be a system allowing a PSC or managing officer to apply to have information suppressed and that this is likely to cover at least situations where an individual would be at risk of violence or intimidation as a result of information that would otherwise be made public.

## **WHAT ARE THE SANCTIONS?**

As noted above, where New Register requirements have not been complied with it is proposed that a restriction would be added to the relevant Land Registry title register prohibiting the sale, long lease or legal charge of the relevant property. It is also intended that registration of title would not be possible for overseas entities acquiring relevant property unless they comply with the New Register requirements.

The government proposes to make it a criminal offence for anyone to knowingly or recklessly submit false or misleading information to the New Register. The government is also considering making it a criminal offence if overseas entities continue to hold UK property at the end of the 12 month transitional period without having complied with the New Register requirements, or if they fail to update this information at least once every 2 years.

It is proposed that overseas entities on the New Register would be contacted three months before their update is due.

## **HOW WILL THE NEW REQUIREMENTS AFFECT PROPERTY LENDING?**

It is proposed that existing lenders will be permitted to enforce their existing security and sell property even where their overseas entity borrower fails to comply with the New Register requirements. In contrast, new lending secured against relevant property would not be possible where the borrower has not complied with the New Register requirements.

This raises the prospect of lenders getting involved in ensuring that the New Register requirements are correctly applied. The government is aware that beneficial owners of property could seek to circumvent the requirements by posing as a lender and repossessing their own property and therefore proposes that only accredited or legitimate lenders would be able to repossess and dispose of property which has a restriction against it.

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