

Transparency enhanced in the UK

UK Government takes further steps to improve transparency with a new register of persons with significant control of companies which hold UK property.

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IN JUNE 2016, IN RESPONSE TO THE INEXORABLE DRIVE towards global transparency, and following implementation in the UK of the PSC Register and the extension of this initiative to UK trusts and trusts with a UK tax footprint (the Trust Register), the Government announced a proposal to implement a new register of persons with significant control of all overseas companies (and other similar entities) which hold UK property.

The register will impact ultimate beneficial owners of (and PSCs of companies owning) UK property of any nature - both commercial and residential.

The rationale behind the introduction of this new register is to continue to increase transparency in corporate ownership of the UK property market and to prevent investment vehicles being used to shield the proceeds of crime, evade tax or finance criminal activity. The aim is that it will be operational by 2021.

The Government's 4 key objectives

The register must:

- Contain useful information
- Be publically and easily accessible
- Protect the information of those at risk and;
- Avoid creating disproportionate burdens or putting off legitimate investors.

The Register in outline

The register will be publically accessible (unlike the Trust Register) and will contain specific personal information regarding the person with significant control. It is proposed that the regime will apply to all legal entities that can hold properties.

“Beneficial ownership” is currently defined as:

“Any individual who meets one or more of the following conditions in respect of a UK company:

- 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. (The meaning of ‘significant control’ is set out in the statutory guidance.)
- 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 conditions set out above.”

Overseas entities

The Government’s proposition is relevant overseas entities which currently hold UK property will be required to submit the required information to Companies House within one year of the new regime coming into force. This is intended to provide such companies with sufficient time to sell or transfer properties in the transitional period.

Selling property

Overseas companies will only be able to sell UK property if they have a registration number from Companies House which shows that they have complied with the requirements of the new regime. A note will be entered on the title of properties held by overseas companies (presumably in the form of a restriction) stating that no transfer may be registered without the requirements of new regime having been met. This will alert a purchaser to the need to ensure that the selling company is compliant with the regime in order that the purchase can be registered.

Purchasing property

Overseas companies purchasing property for the first time will need to comply with the regime in order to obtain a registration number from Companies House. This will need to be submitted to the Land Registry in order for the purchase to be registered. A note will be added to the title following completion of registration.

Any application to register a transfer where the required registration number is not included will be cancelled.

Issues still under consideration

- There is a proposal that contrary to the usual position on a failure to register a purchase, a failure to comply with the requirements of the register will result in

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the transfer being void if there is no valid overseas company registration number for the relevant entity/ies in place by completion.

- It is being considered whether a failure to comply with the regime should be a criminal offence.
- There will be a fee to make the relevant filings although the information held at Companies House would be free to access.
- The Government recognises that there will be circumstances where there are individuals with a legitimate interest in not disclosing personal information to a public register. It is proposed that information can be suppressed where:
 - i. The individual is at risk of violence or intimidation due to the activities of the entity or the way the property is being used.
 - ii. Certain characteristics or attributes of that in-

dividual when associated with that entity or property could put them or someone who lives with them at risk of violence or intimidation.

- iii. Publically linking the property or entity to the individual will lead to an elevated public safety risk.
 - iv. Protection for minors or people with diminished capacity.
- An application will need to be made to a designated body to authorise suppression of information.

It remains to be seen whether the increased burden on those who are already compliant and the concerns of those who refer to it as “the kidnap register” will be outweighed by the potential to stymie the nefarious deeds of seasoned criminals who (mis)use the UK property market for their ill-gotten gains. ■

