



Legal update — April 2017

# Corporate Overseas companies owning UK property to disclose details of owners in public register



**More details of the government's proposals for a public register showing the beneficial owners of overseas companies which own UK property have been published. The government launched a call for evidence on 5 April 2017 which outlines how the new register will operate and seeks views on the new requirements.**

The government has long been concerned about the misuse of corporate vehicles for illicit activities and has aimed to make the UK a transparent place to do business. In 2016, the UK became the first country in the G20 to introduce a register of company beneficial ownership, known as the register of people with significant control (PSC) or PSC register, which allows the public access to a central record of information about the beneficial owners of UK companies.

Attention has now shifted to property ownership by overseas companies in the UK. The government's stated aim is to make property ownership more transparent thereby strengthening the reputation of the UK property market and discouraging criminals from choosing the UK as a place to hide and launder their money.

In addition, the government is concerned about who owns overseas entities which enter into government contracts and proposes to extend the registration requirements to these entities.

### Who will the new overseas register apply to?

In summary, the new register will apply to all overseas legal entities (OLEs) that buy or hold UK property or bid on central government procurement contracts. These OLEs will need to record details of their beneficial owners on a public register. The new register will be held by Companies House and will be available for anyone to view without charge on the Companies House website. It is proposed that the new regime will be based on the current UK PSC register regime.

### Buying or holding property in the UK

#### *OLEs buying property in the UK*

An OLE that wishes to buy property in the UK will need to first provide information about its beneficial owners to Companies House. Once this is done, the OLE will be given a registration number and this number will be required in order to register title to the property at the Land Registry.

This will also apply to OLEs entering into leases where the lease is required to be registered and the original term is for more than 21 years.



Source: Fotolia

#### *OLEs that already hold UK property*

An OLE that already owns UK property will be given a transitional period of one year in which to either disclose beneficial ownership information to Companies House and apply for a registration number or dispose of its UK property.

If at the end of this transitional period, the OLE has not complied with the new register requirements, it will be prohibited from selling the property or creating a long lease or legal charge over it. This will be reflected in a note inserted on the title of the property at the Land Registry stating that the property cannot be sold, leased or mortgaged.

Published by  
Trowers & Hamlin

Trowers & Hamlin LLP  
3 Bunhill Row  
London  
EC1Y 8YZ

t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001

[www.trowers.com](http://www.trowers.com)

Trowers & Hamlin LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamlin LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamlin LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamlin LLP's affiliated undertakings. A list of the members of Trowers & Hamlin LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamlin LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamlin LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

These proposals only apply to OLEs that own registered land. An OLE would not need to provide beneficial ownership details if they hold unregistered land in the UK. However, any transfer or lease of unregistered land triggers a registration requirement and so the new proposals would apply to an OLE buying unregistered land.

### **Bidding on UK government contracts**

The proposal here is that an OLE that wants to participate in UK central government procurement will need to disclose its beneficial ownership information in the new register. The registration requirement would only apply to new UK government contracts (not those that have already been procured or where procurement procedures have started) and only to contracts worth more than £10 million.

The government is exploring three differing methods for how the scheme would work in practice:

- requiring the preferred supplier to provide its beneficial ownership information as a condition for being awarded the contract;
- excluding bids from entities that have not provided beneficial ownership information (resulting in a three year exclusion from bidding on that contracting authority's contracts); or
- treating bids without specified beneficial ownership information as incomplete or non-compliant and rejecting them on this ground (this would not result in a three year exclusion).

### **Who is a "beneficial owner"?**

A "beneficial owner" would be identified by the same criteria used to identify persons with significant control under the PSC regime. These criteria define a beneficial owner as a person who:

- 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; or
- 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 of more of the conditions above.

An OLE will need to update the information on the new register at least every two years.

### **What details need to be included in the overseas register?**

The government is proposing that the same information will be required on the new register for overseas entities as a UK company currently needs to disclose under the PSC regime.

As with the PSC register, an OLE will be required to check the information with their beneficial owners prior to disclosing it on the register.

If an OLE is unable to get full confirmed information from the beneficial owners despite taking reasonable steps; or is unable to establish if they have beneficial owners; or have carried out investigations and concluded that they do not have any beneficial owners that meet the conditions, then the OLE can record these statements in the new register and in addition will be required to provide information about their directors or other "managing officers".



Source: Fotolia

### **Any exceptions to the regime?**

*OLE already subject to equivalent disclosure requirements*

The government states that it wants to avoid "double reporting" so an OLE will be exempted from the new requirements where it is already required to provide information on its beneficial owners to a publicly accessible register in another country. The European Fourth Money Laundering Directive will require all companies and certain other legal entities incorporated in the EU to provide information about their beneficial owners to a central register by June 2017. Depending on how other EU Member States implement the Directive, OLEs incorporated in other EU countries may be exempted from the new proposals.

*Protection regime*

There will be a protection regime which allows the information to be suppressed where the beneficial owner is at risk of harm or there is a wider public safety risk if the information was made public. There is a similar provision in the PSC register regime. However, for the overseas register the government is proposing a slightly wider test.

*Procurements exempt on national security grounds*

OLEs involved in procurements that are exempt from the current procurement regulations on national security grounds will not be required to disclose information on the register. The government also asks whether there are other situations where an exemption should be permitted.

**What next?**

Responses to the call for evidence are requested by 15 May 2017. The government acknowledges that the downside to being the first country to introduce such a register means that there is no model from which to work and so it is anxious to get it right and produce an effective disclosure regime that does not put too great a burden on overseas investors in the UK. Whether it strikes the right balance and does not deter overseas interest in the UK will remain to be seen.

**April 2017 © Trowers & Hamlins**

For more information please contact

Michael Pattinson  
Partner  
t +44 (0)20 7423 8455  
e mpattinson@trowers.com