

# UK Registration of Overseas Entities Bill – Update

August 13, 2018

## Key takeaways:

- Further to a call for evidence published in April 2017, the Department for Business, Energy and Industrial Strategy (“BEIS”) has published a draft bill for the implementation of a register that would require overseas companies and other legal entities that own property (i.e., real estate) in the UK to identify their ultimate principal beneficial owners.
- Overseas companies and other legal entities will be required to submit particulars on their ultimate beneficial owners to Companies House, the companies registrar in England and Wales, which will then be made available on a publicly accessible register.
- The UK Government’s current intention is for the register to be operational in 2021.
- The mechanism for obtaining beneficial ownership information of overseas entities that engage in UK government procurement, also set out in the call for evidence, will be dealt with separately.

If you have any questions concerning this memorandum, please reach out to your regular firm contact, any of our partners or counsel listed in the “Our Practice” section of our website or the following authors

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The full text of the draft registration of overseas entities bill and overview document can be accessed via this link:

<https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

On July 23, 2018, BEIS published the draft Registration of Overseas Entities bill (the “**Bill**”), that will require overseas companies and other legal entities owning or desiring to own land in the UK to take steps to identify their ultimate principal beneficial owners and to register their particulars on a publicly accessible register maintained by Companies House (the “**Register**”). The publication of the Bill follows a call for evidence published by BEIS on April 5, 2017<sup>1</sup>, to which it published a response on March 22, 2018<sup>2</sup>.

BEIS has requested comments on the Bill by September 17, 2018. Subject to receiving royal assent and the making of the relevant secondary legislation, BEIS anticipates that the Register will be operational during the course of 2021.

<sup>1</sup> BEIS, “Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement”, April 2017:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606611/beneficial-ownership-register-call-evidence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606611/beneficial-ownership-register-call-evidence.pdf).

<sup>2</sup> BEIS, “A register of beneficial owners of overseas companies and other legal entities – the Government response to the call for evidence”, March 2018:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/681844/ROEBO\\_Gov\\_Response\\_to\\_Call\\_for\\_Evidence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681844/ROEBO_Gov_Response_to_Call_for_Evidence.pdf).



## Background to the Bill

The UK has historically been a major destination for foreign direct investment, particularly in the real estate sector. A recent study has found that, since (and, seemingly, in spite of) the Brexit vote, overseas buyers have been returning to the London real estate market, spurred on by falling property prices and the drop in the value of sterling.<sup>3</sup>

In March 2018, BEIS published a response to its call for evidence, which had sought views on a proposed register of beneficial owners of overseas companies and other legal entities owning land in the UK or engaging in UK government procurement.<sup>4</sup> In its response, BEIS confirmed its intention to proceed with implementing such a register. The intention behind the registers has been a desire to increase transparency around who ultimately owns land in the UK. The UK Government has cited evidence from UK law enforcement and transparency campaigners, which shows that overseas entities are often used as vehicles for criminal organisations and corrupt individuals to hide and launder the proceeds of corruption, bribery and organised crime.<sup>5</sup>

The draft Registration of Overseas Entities bill (the “**Bill**”) was published on July 23, 2018, and will establish a register of beneficial owners of overseas companies and other legal entities owning land in the UK (the “**Register**”). The Bill was published along with an accompanying overview document explaining how the Register will work and inviting comments on some technical aspects of the Bill, and an associated research paper (BEIS Research Paper Number 13). The last date for comments on the Bill

is September 17, 2018.<sup>6</sup>

The UK Government has confirmed that a separate mechanism will be implemented with respect to beneficial ownership information that overseas entities will be required to provide in the context of UK central government procurement processes.

## Requirements in relation to UK real estate

The key elements of the Bill (the “**New Regime**”) are as follows:

- The New Regime will apply to all “*overseas entities*” that own real estate (but will exclude trusts). An “*overseas entity*” is defined in the Bill as a body corporate, partnership or other entity that is a legal person under the laws of its (non-UK) jurisdiction of incorporation.
- For the purposes of the New Regime, ‘real estate’ constitutes both freehold land and leasehold land where the lease has a term of more than seven years from the date of grant.<sup>7</sup>
- The New Regime will be similar to the persons with significant control regime under Part 21A of the UK Companies Act 2006 (the “**PSC Regime**”), which requires the identity of certain beneficial owners of relevant UK incorporated entities to be entered on a register of beneficial owners. The New Regime follows the PSC Regime in terms of who constitutes a “*beneficial owner*” with respect to an overseas entity, and the information that the overseas entity will be required to provide to Companies House.
- An overseas entity owning or wishing to acquire real estate in the UK will be required to supply information on its ultimate principal beneficial owners to Companies House, and to apply for a registration number (which will be needed in order for the overseas entity to register title at the UK Land Registry).

<sup>3</sup> The Times, 6 August 2018, “*Weaker pound encourages EU buyers bank to London*”,

<https://www.thetimes.co.uk/article/weaker-pound-encourages-eu-buyers-back-to-london-bkclw9w7l>

<sup>4</sup> For further detail, please see our Alert Memorandum: <https://client.clearlygottlieb.com/63/194/uploads/20170412-extending-corporate-transparency-in-the-uk.pdf>

<sup>5</sup> BEIS, “*Overview Document: Draft Registration of Overseas Entities Bill*”:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINA\\_L\\_Overview\\_document\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINA_L_Overview_document_1__1_.pdf)

<sup>6</sup> Comments can be provided through BEIS’s website: <https://beisgovuk.citizenspace.com/business-frameworks/draft-registration-of-overseas-entities-bill/>

<sup>7</sup> We note that the distinction between freehold land and leasehold land is not applicable to real estate located in Scotland. For real estate located in Northern Ireland, the requirement for leasehold land is that the lease has a term of more than 21 years from the date of grant.

- There will be an 18-month transitional period for overseas entities that already own property on the date on which the New Regime comes into effect, to apply for a registration number.
- The information on the Register will need to be updated annually (with failure to do so being a criminal offence).

### Who is a ‘beneficial owner’ for the purposes of the New Regime?

The UK Government expressed its desire for the definition of “*beneficial owner*” in the New Regime to align with that used in the PSC Regime to define persons with “significant control”. In the Bill, a person (“X”) is a “*beneficial owner*” of an overseas entity or other legal entity (“Y”) if one or more of the following conditions are met:

1. X holds, directly or indirectly, more than 25% of the shares in Y.
2. X holds, directly or indirectly, more than 25% of the voting rights in Y.
3. X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.
4. X has the right to exercise, or actually exercises, significant influence or control over Y.
5. (a) The trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed, meet any of conditions 1-4 (in their capacity as such) in relation to Y, and (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of the trust or entity.

Generally, only individuals may be entered on the Register as a beneficial owner. However, similar to the PSC Regime, a legal entity may be the registrable beneficial owner in relation to an overseas entity (rather than an individual) for the purposes of the New Regime, if that legal entity: (a) satisfies at least one of the five conditions set out above, and (b) is subject to “its own disclosure requirements”, which means that it:

- is a legal entity that is subject to the PSC Regime (e.g., a UK private limited company);

- has voting shares admitted to trading on a regulated market which is situated in an EEA State;
- has voting shares admitted to trading on a specified market in Switzerland, USA, Japan, or Israel;
- is an eligible Scottish partnership; or
- is registered in the Register.

### What information will an overseas entity be required to provide to Companies House?

The information that an overseas entity will be required to provide on its beneficial owners will be the same as that required of persons with significant control (who are individuals) under the PSC Regime, namely:

- The individual’s name.
- Their date of birth (although the day of their date of birth would not be publicly accessible).
- Their nationality.
- The country or state (or part of the UK) where they usually reside.
- A service address.
- Their usual residential address (this would not be publicly accessible).
- The nature of the individual’s control over the company (i.e., which of the five conditions for control are met).
- The date on which that person became a beneficial owner of the overseas entity.
- If there are any restrictions in place on using or disclosing any of the individual’s particulars.

The overseas entity will also be required to provide certain information on itself to Companies House, including:

- The overseas entity’s name and legal form.
- The contact details of the individual completing the application form.
- The address of its registered office.
- A contact email address for the overseas entity.

- The overseas entity’s country of incorporation and any other national registration number relating to it.

There are certain circumstances where an application can be made by a beneficial owner for his or her information to be suppressed from appearing on the public register. In this regard, the Bill largely follows the PSC Regime, in permanently suppressing an individual’s date of birth or information about their usual residential address. However, the UK Government has recognised that there may be circumstances in which all of a beneficial owner or managing officer’s required information (over and above the date of birth and usual residential address) should also be suppressed from public disclosure. The Bill provides the Secretary of State with the power to make regulations allowing an application to be made to Companies House for any of an individual’s details to be protected from public inspection on the Register (or from disclosure by Companies House).

### **What are an overseas entity’s responsibilities?**

An overseas entity that is subject to the New Regime will be required to take reasonable steps to identify its beneficial owners in a similar way to the UK legal entities subject to the PSC Regime. Likewise, in the same way that the PSC Regime works, an overseas entity will be required to confirm information with its beneficial owners before that information can be submitted to Companies House.

Overseas entities will be required to update the information on their beneficial owners on the register at least once every year; however, there will be no automatic requirement to update information as and when it changes. Overseas entities will be able to update the information sooner than this, if they choose to do so.

Under the PSC Regime, where an entity is unable to provide particulars about its persons with significant control (e.g., because there are none or because the entity has not been able to identify them), it is permitted to make certain statements to this effect in the register. The same principle will apply to an overseas entity that is unable to provide particulars about its beneficial owners. Where this is the case,

the overseas entity will need to provide information instead on its “*managing officers*”, to ensure that there is at least some information on the register that would indicate to a third party reading the register who controls or has charge of the overseas entity. For the purposes of the Bill, “*managing officer*”, in relation to an overseas entity, includes a director, manager or secretary.

### **Sanctions for non-compliance**

Failure by an overseas entity subject to the New Regime to obtain a registration number or to comply with the updating requirements will result in:

- Certain dispositions of land by that overseas entity being incapable of registration at the UK Land Registry (thereby impacting the ability of the overseas entity to sell or lease the land, or to create a charge over it).
- The overseas entity being unable to register as a proprietor of land in the UK (necessary for obtaining full legal title, again impacting the ability of the overseas entity to sell or lease the land, or to create a charge over it).

In addition, where an overseas entity makes a disposition of property that cannot be registered (by virtue of a restriction or prohibition against registration), or an overseas entity fails to comply with the updating requirements, a criminal offence will be committed by that overseas entity, as well as any officer of that overseas entity.

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