

Extending Corporate Transparency in the UK: the Register of Beneficial Owners of Overseas Entities

April 12, 2017

Key takeaways:

- The UK government intends to introduce a new register in the UK that will contain information on the beneficial owners of overseas companies and other legal entities that own real estate property in the UK or that engage in public procurement processes for large UK government contracts.
- 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.
- Failure to comply with the new requirements will effectively prohibit overseas companies and other legal entities from selling or purchasing UK property or from entering into large UK government contracts.

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The full text of BEIS’s call for evidence can be accessed via this link: [BEIS’s call for evidence, April 2017](#)

On April 5, 2017, the Department for Business, Energy and Industrial Strategy (“**BEIS**”) published a call for evidence seeking views on the proposed register of beneficial owners of overseas companies and other legal entities that own property (i.e., real estate) in the UK or that engage in UK government procurement. The concept of such a register was first explored by BEIS (then BIS, the Department for Business, Innovation and Skills) back in March 2016,¹ with the UK government confirming its intention to introduce such a register in May 2016.

¹ BIS, “*Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK*”, March 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf.



The proposal follows a trend in the UK of increased corporate transparency of legal entities that are present in the UK. In April 2016, the UK government introduced the register of persons with significant control, requiring UK incorporated companies and certain other legal entities to maintain a publicly accessible register of persons with significant control (the “**PSC Regime**”).² BEIS’s new proposal has substantially similar aims to the PSC Regime—primarily, the promotion of corporate transparency, here in the areas of ownership and control of UK property and in the procurement of public contracts. The UK government has emphasized that these two areas in particular “*should be seen as fair, transparent and clean in order to attract the right investors and owners*”.³

The call for evidence, which invites views on the proposed register (the “**New Regime**”), anticipates that a register will be created containing beneficial ownership information on overseas entities that: (i) own UK property; and/or (ii) engage in UK government procurement. The definition of a beneficial owner under the New Regime is intended to be aligned with the definition of a person with significant control used in the PSC Regime, and the New Regime will also apply to beneficial owners (with respect to overseas entities) the five conditions for defining significant control that are set out in Part 21A of the Companies Act 2006 with respect to UK incorporated entities, which are:

1. holding, directly or indirectly, more than 25% of the shares of that entity;
2. holding, directly or indirectly, more than 25% of the voting rights of that entity;
3. holding the right, directly or indirectly, to appoint or remove a majority of the board of directors of that entity;
4. having the right to exercise, or actually exercising, significant influence or control over the entity; and
5. having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm that would itself meet one or more of the first four conditions, if it were an individual.

The call for evidence also indicates that the UK government shortly intends to introduce amendments to the PSC Regime. In anticipation of these amendments, and being one year into the new regime, we discuss some initial observations that have been made as to the effectiveness of the PSC Regime.

² For further details of the PSC Regime, please see our Alert Memorandum, “*The Register of Persons with Significant Control – a new transparency regime for unlisted UK legal entities*”, January 2016: <https://www.clearygottlieb.com/~media/cgsh/files/publication-pdfs/the-register-of-persons-with-significant-control-a-new-transparency-regime-for-unlisted-uk-legal-entities.pdf>.

³ 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://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606611/beneficial-ownership-register-call-evidence.pdf.

Why are these measures necessary?

The UK government has expressed a clear intention to combat tax evasion and criminal activity in the UK, and believes that a key way of achieving this is by increased transparency of the ultimate ownership structures of certain legal entities. The UK government's first step in combating this, the PSC Regime, has been well received by stakeholders, and the UK government has expressed its desire to be the world leader of this drive towards corporate transparency.

According to BEIS's call for evidence, responses to a number of related discussion papers on this topic have indicated that there is a high level of support for the general principle that the beneficial owners of overseas entities owning UK property should be required to provide certain information about themselves to a central registry. UK companies are now required to provide this information under the PSC Regime, and given the extent of property ownership by overseas entities in the UK, this is considered to be a natural next step towards achieving the UK government's aims. Similar concerns have been raised in relation to government procurement, including the importance to the general public of knowing the true beneficial ownership of entities that are contracting with the UK government in relation to large contracts.

The call for evidence seeks views of relevant stakeholders on the New Regime regarding various aspects of the proposals, how they can be most effectively implemented and the possible practical consequences of the policy. The last date for comments on the call for evidence is May 15, 2017⁴.

⁴ Comments can be provided through BEIS's website: <https://www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-overseas-companies-and-legal-entities-beneficial-ownership-register>

Who will be required to provide information for the register?

The New Regime is intended to cover any overseas legal entity that can hold UK property or bid on central government procurement contracts. BEIS has stated that it is keen to ensure that entities are only required to report once under any similar and applicable regimes, and in particular is considering how the New Regime will interact with the requirements of the Overseas Companies Regulations 2009, which already require certain overseas entities with UK establishments to supply Companies House with certain particulars of the overseas entity and its UK establishment (but which does not, for the avoidance of doubt, extend to information on an overseas entity's beneficial owners).

In addition, there will be an exemption for overseas entities that are incorporated in a jurisdiction with equivalent disclosure requirements. For example, from June 2017, the European Fourth Money Laundering Directive (the "4MLD") will require all companies and certain other types of legal entities incorporated in the EU to provide information about their beneficial owners to a central register, and therefore such entities will be entitled to such an exemption. At present, it is not clear which other jurisdictions, if any, have disclosure requirements which would be regarded as equivalent for the purposes of the New Regime.

The UK government has also proposed that the New Regime should follow the same approach as the PSC Regime regarding beneficial owners of overseas entities that are legal entities, rather than individuals. Therefore, where the beneficial owner of an overseas entity is a legal entity, if that legal entity is itself required to provide information about its beneficial owners to a publicly accessible register (e.g., because it is a UK entity that is subject to the PSC Regime), then the legal entity's details should be provided by the overseas entity for the purposes of the New Regime. The overseas entity would not be required to provide information on beneficial owners further up the chain of ownership. This section of the call for

evidence is very brief, but the implication of this is that if the legal entity was not required to provide beneficial ownership information to a publicly accessible register, the overseas entity would need to 'look through' the legal entity up the chain of ownership until it reached an appropriate beneficial owner that could be included on the register.

Requirements in relation to UK property⁵

The New Regime will require certain information relating to the beneficial owners of an overseas entity that owns UK property to be submitted to Companies House, for publication on a centralized and publicly accessible register.

Therefore, any overseas entity that either: (i) owns registered land⁶ in the UK on the date on which the New Regime comes into force; or (ii) buys registered land in the UK after the New Regime comes into force, will be caught. The New Regime is intended to apply to both freehold land and leasehold land (with an initial term of more than 21 years).

(i) Overseas entities that own UK property on the date on which the New Regime comes into force

There will be a transitional period for overseas entities that own UK property on the date on which the New Regime comes into force, whereby they will have one year in which to supply their beneficial ownership information to Companies House and to apply for a registration number, which will be granted by

⁵ Please note that we use the term "UK property" as shorthand to refer collectively to land in all parts of the UK. The proposals outlined in the call for evidence are intended to apply across the UK, and BEIS intends to work with the devolved administrations as the proposals develop. The Scottish government published its own consultation on this topic in September 2016 relating to land in Scotland, and BEIS have indicated that they are keen to ensure that overseas entities are only required to report once under both sets of proposals.

⁶ The New Regime is proposed to apply only to registered land. However, given that only 17% of land in the UK is unregistered land, and since 1990 it has been compulsory when buying unregistered land to apply to have the land registered within two months of a sale completing, it is not expected that this will create a loophole in the New Regime.

Companies House. If, after this one year period, no registration number has been granted to such overseas entity (whether due to an application having been rejected or simply having failed to be made), a restriction will be placed on the title register and the overseas entity will be unable to sell the property or to create a long lease or legal charge over it. The transitional period is intended to ensure that overseas entities have sufficient time to dispose of property if they choose to.

The UK government is also considering making it a criminal offence for overseas entities to continue to own property in the UK after this transitional period without having complied with the registration requirements under the New Regime, to ensure that overseas entities are actively encouraged to comply with the New Regime. Views on this specific point are canvassed in the call for evidence.

(ii) Overseas entities that buy UK property after the date on which the New Regime comes into force

Once the New Regime is in force, any overseas entity wishing to buy a property in the UK will be required to obtain a registration number from Companies House (if it does not already have one), and it will need to provide that registration number to the Land Registry in order to register its title to the property following completion. The Land Registry will be required to confirm that any registration number is valid before it will register title to the property in the name of that overseas entity. Failure of a purchaser to supply a valid registration number would result in an application to register the purchaser as the legal owner of the property being cancelled; the transfer of title would therefore not become effective.

BEIS intends to investigate ways to mitigate the risk that a property is held on trust for an overseas entity by the seller, for example where completion occurs but title cannot be transferred due to the purchaser not having a registration number at completion (which would result in the overseas entity holding a beneficial interest in the property). BEIS is canvassing views as

to alternative stages in the conveyancing process where safeguards could be triggered; for example, making the transfer document void if the purchaser has not obtained a valid registration number by the time of completion or instructing sellers not to exchange contracts until a registration number has been provided.

The call for evidence is clear to emphasise that the New Regime does not intend to prevent or interfere with any commercial arrangements that an overseas entity may enter into with its lenders. Any restriction entered on the title of a UK property would not prevent a bank or lender who had existing security over the property from selling the property where the debt had become enforceable. However, the call for evidence suggests that where a restriction has been entered on the title, no new lending secured against the property would be possible.

In addition, this arrangement will only be extended to “accredited or legitimate lenders”. This is to avoid creating a loophole whereby beneficial owners take security over the property as a ‘lender’ and then enforce that security to force a sale of the property. It remains to be seen how “accredited or legitimate lenders” will be defined.

Requirements in relation to public procurement

The New Regime will operate in a similar way in relation to public procurement processes. Overseas entities wishing to enter into certain UK procurement contracts will need to supply information on their beneficial owners before the contract in question can be entered into.

This part of the New Regime is intended to cover the following types of contracts:

- New UK central government contracts;
- With a value of more than £10 million.

The regime will be mandatory for all central government contracts that meet these criteria; it will be voluntary for wider public sector bodies, such as local

authorities. BEIS intends to hold discussions with the devolved administrations regarding procurements by those administrations.

The New Regime will not apply to any tenders that are underway on the date on which the New Regime comes into force, nor to any public contracts that have already been procured.

Where an overseas entity participating in a public procurement process is incorporated in a jurisdiction with an equivalent regime or disclosure requirements, BEIS is considering varying the requirement for beneficial ownership information to be provided. For example, overseas entities could instead be required to provide details of the register in which those details are already held and how the relevant information can be accessed.

The call for evidence sets out three potential options for how the New Regime could apply to overseas entities involved in public procurement and requests views on each of these:

- Requiring only the preferred bidder to provide beneficial ownership information, which would be a condition of being awarded the contract;
- Requiring all bidders to provide beneficial ownership information as part of the procurement process, with any bidder who refuses to do so being excluded from the process (which, under existing procurement rules,⁷ could result in that bidder being excluded for three years from bidding for that authority’s contracts); or
- Requiring all bidders to provide beneficial ownership information as part of the process, with any bid from a bidder who refuses to do so being considered as incomplete and therefore rejected on those grounds (this exclusion would only apply to the procurement in question).

⁷ See regulation 57 of the Public Contracts Regulations 2015 (which implemented the Public Contracts Directive (2014/24/EU)).

What information will be contained in the register?

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; and
- If there are any restrictions in place on using or disclosing any of the individual's particulars.

It is also proposed that the overseas entity will be required to provide certain information on itself to Companies House, such as:

- The overseas entity's name and legal form;
- The contact details of the individual completing the application form;
- The address of the overseas entity's registered office;
- A contact email address for the overseas entity; and
- The overseas entity's country of incorporation and any other national registration number relating to that overseas entity.

As with the PSC Regime, there will be defined 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. The guidance on this is likely to follow that set out in the PSC Regime. BEIS appreciates that the protection may need to be more extensive than that under the PSC Regime, given that the information being published may, by its nature, include an individual's residential address.

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 obligations imposed on legal entities subject to the PSC Regime. The UK government intends to issue guidance as to how overseas entities should do this. 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. However, whereas under the PSC Regime, UK companies have the power to require third parties to disclose information relating to beneficial ownership of that company and may impose sanctions on persons who fail to provide accurate information, an overseas company may not have a corresponding power under the laws of its place of incorporation.

Overseas entities will be required to update the information on their beneficial owners on the register at least once every two years; 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 is intended to apply to an overseas entity that is unable to provide particulars about its beneficial owners. Where this is the case, the

overseas entity would 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. BEIS intends to create a broad definition of managing officers to ensure that such a person would be easily identifiable by looking at the overseas entity (including where it does not have an officer equivalent to a director).

The call for evidence indicates that criminal sanctions could apply in respect of certain failures by the overseas entity to comply with the regime. BEIS has called for feedback in relation to a number of areas where it has suggested that such sanctions could apply.

The PSC Regime – one year on

One year on from the implementation of the PSC Regime, there is limited analysis available regarding the effectiveness of, and general compliance by legal entities with, the PSC Regime. A recent study published by ICSA indicates that stakeholders have found that the register is helpful in building up a picture of company networks, and that it is extremely useful information to have publicly available, but that there appear to be some flaws in how the data is currently being collected, which will be fed back to Companies House⁸.

In addition, although the UK has largely complied with its requirements under the 4MLD in the form of the PSC Regime, changes will be required to the PSC Regime to ensure that the UK remains fully compliant with the 4MLD. The call for evidence states that the UK government intends to introduce amendments to the PSC regime shortly, in order to so fully comply. As mentioned above, the 4MLD will require all companies incorporated in the European Union to provide information about their beneficial owners to their respective Member States, with the intention that

each Member State will hold its own central register. The deadline for implementation of this requirement is June 30, 2017.

Given the UK government’s drive towards increased transparency in the corporate arena, and its desire to be seen at the forefront of this drive, it would seem unlikely that Brexit will have an impact on the UK’s intentions to ensure that the PSC Regime is aligned with the requirements of the 4MLD.

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⁸ <https://www.icsa.org.uk/knowledge/governance-and-compliance/features/february-2017-the-end-of-anonymous-ownership>