

May 2017

# CORPORATE TRANSPARENCY

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Another new register and changes to the PSC register



In 2016 the UK became the first country in the G20 to introduce a register of company ownership, allowing the public to access a central record of information about who really owns and controls UK companies (the People with Significant Control Register (the PSC Register)). Please see the AG alert [here](#). The UK is now taking a further step by creating a new register showing the beneficial owners of overseas companies that own or want to buy property in the UK, and of overseas companies involved in central government contracts. A government consultation, seeking views on how this register will be implemented, has just closed. The Law Society's detailed response is [here](#). This bulletin looks at the proposals relating to property ownership and highlights some imminent changes to the PSC regime.

## Why?

The aim of the new register is to ensure that the UK remains an open and transparent place to do business. Transparency plays a vital role in helping combat corruption and money laundering and the hope is that the introduction of this new register will stem the flow of illicit money into the UK and assist our law enforcement agencies. As UK companies already have to provide similar information, the new register will provide a level playing field for UK and overseas entities investing in the UK real estate market.

## Who?

All overseas legal entities (not just companies) which either currently own property in the UK or intend to buy UK property, will be affected and will have to register beneficial ownership information. The proposals also anticipate that entities which hold properties under a lease with a term of over 21 years will be included within the scope of the regulations. The new register will be held by Companies House and although there will be a fee for registering, it will be free to view on-line.

## How?

All overseas legal entities will need to register their beneficial ownership details in the new register before they purchase (or lease for a period of over 21 years) property in the UK. They will be unable to register their title to the property in the relevant Land Register without having done this.

The government intends to adopt the same definition of ownership control that is used for the PSC Register. This covers individuals who hold more than 25% of the shares or voting rights of the company, have the right to appoint a majority of directors of the company, or have the right to exercise or actually exercise significant influence or control over the company, trust or other legal entity. The information to be included in the register will again be the same as that included in the PSC Register however individuals will be able to apply to have their information suppressed from the register if they meet certain criteria.

Entities which already own property (or lease property under a lease with term greater than 21 years) will be given a transitional year in which they will be free to choose whether to disclose the information and register their beneficial ownership details or alternatively dispose of their property. If they still own the property an automatic restriction will be placed on title to the property at the Land Registry.

Once entities are registered they will be required to update the information held on the register at regular intervals. At the moment the proposal is that the information on the new overseas register should be updated at least once every two years.

## What happens if you don't comply?

If legal entities do not comply with the regulations they will be prohibited from selling, leasing or using their property for a loan. Anyone considering buying, leasing or taking a security over a property will be alerted to such a prohibition by a note on the title to the property. In addition, the government is considering whether to make it a criminal offence to fail to provide information to the new register or, where the entity has provided information, failing to keep it up to date.

## Will this apply to the whole of the UK?

The new regulations are intended to apply across the UK and the government is working with the Scottish, Welsh and Northern Irish administrations on the proposals. In Scotland, the Scottish government recently consulted on the setting up of a new register of "persons with controlling interests" in land. This new register, to be introduced under the Land Reform (Scotland) Act 2016, is aimed at making it simpler for anyone to find out who owns a given property in Scotland. As well as allowing easier resolution of disputes - over access or environmental issues for example - the Scottish laws are intended to deter the use of complex legal structures and entities to conceal the individuals who control Scottish land. We understand that both the UK and Scottish governments are keen to ensure that no companies will be required to report their information twice under the linked proposals.

## Does anyone else have a similar register?

Whilst the UK were the first G20 country to introduce a register of beneficial ownership, the European Union's Fourth Anti-Money Laundering Directive requires all legal entities incorporated in the European Union to collect information about their beneficial owners. Member States will be required to hold that information in respect of companies and certain other legal entities incorporated within their territory on a central register by June 2017. Member states can choose to make the register public (as with the UK PSC regime) or, as a minimum, make it accessible to law enforcement agencies and others with a "legitimate interest".

This European aspect still needs to be considered in the UK as until exit negotiations are concluded the UK remains a full member of the European Union. Although the UK PSC Register fulfils the requirements under the EU Directive in most respects some important changes are needed.

## Changes to the PSC Register – Scottish Partnerships

One of the most significant changes to be made to the PSC regime is that from 24 July 2017, Scottish limited partnerships will be required to register PSC information at Companies House for the first time. In addition from the same date, general Scottish partnerships, where there is a limited company as a partner, will be required to register PSC information at Companies House. Some of the other exemptions from the PSC regime are also changing with more entities being brought within its scope. For example, AIM listed companies will have to maintain a PSC Register and file PSC information. Another significant change is that the information on the PSC register will be required to be updated whenever there is a change to the beneficial ownership of a legal entity rather than annually. We await draft regulations which have been delayed owing to General Election purdah, so it may be that the theoretical required implementation date of 26 June 2017 is pushed back. We will update on this topic more when the regulations are available.

## What next?

The changes to the PSC Register are significant and those affected need to get themselves up to speed with the new requirements before the summer. The introduction of the new register for overseas companies will be further down the line. The consultation does not mention a target date for implementing the proposals although it is anticipated that this may take some time as the UK are the first county to introduce such a register and there is therefore no model to follow. The key will be finding the right balance between improving transparency and not deterring foreign investment. Care needs to be taken to avoid the new requirements being perceived as an additional hurdle to clear before investing in the UK ensuring that the UK remains an attractive place for overseas investors. While the EU Directive obliges member states to establish registers of 'beneficial ownership' other jurisdictions, notably the US, have not committed to introducing such a register, creating a possible imbalance. Unless such registers are maintained internationally, in the current global economy there may be a risk that investment moves elsewhere. The changes will need to be handled carefully to ensure that this does not happen.

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