



REGISTER OF OVERSEAS ENTITIES OWNING UK REAL ESTATE

The Government announced on Monday that it is ‘bringing forward’ legislation which will require foreign entities which own UK real estate to declare on a public register the identity of the individuals who own and/or control them.

The proposal for a public register of overseas owners of UK real estate has been around for several years. It was first announced in Spring 2016. The requirement for UK companies to register, and then confirm annually, the individuals who own and control them (‘Persons of Significant Control’) commenced in April 2016 and the proposal for a register of overseas owners of land was intended to follow similar principles. However, implementation has proved to be a drawn-out process.

A draft bill, the Registration of Overseas Entities Bill, was published in July 2018 and a consultation process followed. Concerns were expressed that the register would compromise the safety of some individuals by publicly disclosing their UK private address, while others considered that the proposals did not go far enough. Although it was anticipated at the time that the register would go live in 2021, the project was superseded by Brexit negotiations and preoccupation with the pandemic.

The motivation behind rushing the bill through Parliament now is driven by the desire to show that aggressive action is being taken against ‘oligarchs’ and ‘kleptocrats’ against the backdrop of events in Ukraine. The Government made clear in its statement on 28 February that the register was being introduced ‘to crack down on foreign criminals using UK property to launder money’. Although the bill is now being put before Parliament as part of the Economic Crime (Transparency and Enforcement) Bill 2022, it is unlikely to be passed as law for several months so it will still be some time before the register is operative. The Government is hoping that in the meantime, the imminent prospect of the register being introduced will act as a deterrent.

So what are the basic provisions?

- The register will apply retrospectively to foreign entities which acquired their UK real estate in the previous 20 years.
- The overseas entity (whether a company, foundation, trust or partnership) will be required to identify its beneficial owners and register them with Companies House.
- Upon registration, an ID will be issued to the entity which will then be required to update and confirm the position each year, within 14 days of the end of the update period.

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- The overseas entity will need to register in order to demonstrate title to the real estate. If it has failed to comply, such that it cannot demonstrate title, it would in practice be very difficult to sell the property.
- Failure to comply is a criminal offence leading to fines and prison sentences of up to 5 years.

'Registrable Beneficial Owner' is defined in the bill and, in relation to a company, is a person owning more than 25% of the shares or more than 25% of voting rights. It also extends to a person with the right to appoint or remove a majority of board members, or someone who can or does exercise significant control over the company. 'Registrable Beneficial Owner' of a trust, foundation or partnership is someone who fits one of the above descriptions, and, probably most relevantly, is someone who has the right to exercise, or actually does in practice exercise, significant influence or control over the entity.

The introduction of the register will enable HMRC to identify owners who have sold entities which own UK real estate. Since April 2019, tax has been payable on capital gains arising on indirect disposals of UK property by non-residents. So if a person with a holding of at least 25% sells the shares in a company deriving at least 75% of its value from UK land, the gain is subject to UK tax. In practice, it would not have been apparent to HMRC that the property-owning entity had changed hands. Although many owners will have filed returns to report the gains and pay the tax due, it is likely that some will have been non-compliant. The register, with the requirement for the annual confirmation of the owner's identity, will in most cases enable HMRC to identify that an overseas entity has been disposed of and provide the contact details of the person potentially liable to tax.

The register will also put under the spotlight the large number of high-end properties held in offshore companies, exactly who owns them and the extent of SDLT avoidance which would have resulted from the buying and selling of companies rather than the real estate itself. This may lead to rapid media pressure, and subsequently political pressure, to extend SDLT to the purchase of UK property-rich offshore companies.

For non-UK resident trusts owning UK real estate, the introduction of this register is likely to represent a significant expansion to their reporting requirements, at least in terms of the degree of disclosure. Although such trusts will have had to provide information for the existing trust register, access to this is restricted to those with a legitimate purpose, such as revenue authorities. The information to be provided under the new register is available to anybody.

There is nothing required to be done immediately, but the draft bill sets out in detail the information which will need to be provided, the accuracy of which will have to be verified. It may therefore be sensible for the service providers involved in the management of overseas entities which will be affected by these provisions to consider what the requirements will be, engage with the beneficial owners and start preparing the information which will have to be provided.

Please get in touch with your usual Rawlinson & Hunter contact should you require further information or assistance with the above.

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