

Proposed disclosure rules for non-UK entities owning property or bidding for Government contracts

The UK Government proposes new rules requiring non-UK entities that already own, or intend to acquire, UK real estate, or that wish to bid for UK central Government contracts, to be required to disclose information about the beneficial owners of the entity.

On 5 April 2017, the Government issued a [Consultation Paper](#) with its proposals, inviting comment. The consultation runs from 5 April until 15 May.

This note gives a brief summary of the proposals.

Background

Since 6 April 2016, most UK companies and Limited Liability Partnerships have been required to maintain a register of people that have significant control (the PSC register) over the company or LLP. You can [read our note](#) explaining this here.

But those rules do not apply to entities established outside the UK. In March 2016, the Government published a Discussion Paper looking for views on how to enhance the transparency of beneficial ownership information for overseas companies investing in UK property.

Now the Government has further clarified its proposals. It claims that the intended register to hold the required information will be the first of its kind in the world, and says it will "therefore proceed cautiously".

The Proposed Regime in Outline

Here is an overview:

- No intended start date is announced. A date in 2018 seems likely;
- the regime would apply to any real estate in the UK, not (as envisaged in the 2016 Discussion Paper) just to England and Wales. But the Westminster Government intends to work with the devolved administrations (Scotland, Wales and Northern Ireland) to avoid duplications;
- it would apply to any legal entity capable of owning property, not (again as envisaged in the Discussion Paper) just to companies limited by shares;
- entities that already own real estate in the UK would be affected, not just those making acquisitions after the regime comes into force;
- entities wishing to bid for central UK Government contracts with a value of more than £10 million would be affected. Procurements by the devolved administrations would be the subject of separate discussions;
- a new register would be established by Companies House to hold the information. There would be "appropriate" fees to file the information, but it would be "available for anyone to view without charge";
- the definition of beneficial owner would be based on that used under the PSC rules already now in force. See further below;
- the rules would apply to both freehold and leasehold property, but only leases with a term of over 21 years would be within the regime;
- a non-UK entity intending to acquire applicable UK real estate would need to register the beneficial ownership information with Companies House. If the details supplied are sufficient, a registration number for that entity would be issued by Companies House;
- measures to enforce compliance would be included. See further below.

Who will be a beneficial owner?

Based on the PSC requirements, this would be a person who:

- holds, directly or indirectly, more than 25% of the shares or voting rights in the entity;
- directly or indirectly holds the power to appoint or remove a majority of the board directors; or
- otherwise has the right to exercise, or actually exercises, significant influence or control.

There would be adaptations for applications to entities that are not companies.

Where a person falling within the above criteria is itself a legal entity rather than an individual, there would be exceptions to avoid duplication of information, i.e. where the entity is already subject to the PSC rules.

What information will be required?

This is likely to be the same as that the PSC register, along with similar provision where (for example) the entity cannot find out the necessary information. See our above note for details.

The Government proposes obligations to keep the information up to date, with two yearly updates.

Entities that already own UK real estate

The proposals envisage a year for the non-UK entity to comply with the new disclosure rules. During this period, the property may be sold by the entity without being caught by the new rules.

But at the end of that period, a note would be placed on the entity's title to the property registered at the Land Registry reflecting a "general prohibition from selling, leasing or mortgaging their property unless they are fully compliant with the new requirements". Any transfer (and presumably any other dealing) would be void.

New acquisitions of UK real estate

A non-UK entity that proposes to acquire UK real estate would have to register the required beneficial ownership information with Companies House, and get a registration number. Without that registration number, any application to the Land Registry for registration of the buyer as owner will be rejected, and it will be unable to be registered as the legal owner of the property.

But on registration as owner, a note will be put on the title reflecting restrictions against selling, leasing or mortgaging the property unless the owner is fully compliant.

UK Government Contracts

The new rules would only apply to new contracts, not those already procured or where procurement procedures have already started.

Government asks for views on three options: (1) only the preferred supplier would be required to provide the information; (2) rejecting all bids where the information has not been supplied, with a three year exclusion from the contracting authority's contracts; (3) rejecting such bids, but without the three year exclusion.

Compliance

The Government envisages a mixture of offences and remedies (eg adverse consequences, such as the inability to be registered as owner of a property, or to sell it).

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