



# UK OVERSEAS ENTITIES BILL

JULY 2019

The move towards public registers which identify the owners of offshore entities has continued to gather pace over recent months.

The most recent development was the announcement by the governments of Guernsey, Jersey and the Isle of Man on 19 June 2019 that they are committed to introducing public registers domestically (click [here](#) for our article on this announcement). But alongside this the UK government is driving forward proposals to introduce its own public register which will identify the beneficial owners of overseas entities holding UK property.

The draft Registration of Overseas Entities Bill was published by the UK government on 23 July 2018. In summary:

- the UK Government intends to introduce a register of beneficial owners of overseas entities which own land in the UK (**Register**) by 2021;
- the Register will be held and maintained by Companies House and will, for the most part, be public;
- to enforce compliance with the new regime, the Government plans to use a combination of what it describes as "novel land registration requirements" and criminal sanctions (including significant fines and up to five years imprisonment);
- the land registration requirements will involve adding a restriction to the registered title of property owned by an overseas entity and preventing registration of transactions where an overseas entity has not complied with the regime.

The key drivers behind the Register are transparency and tackling corruption. The UK Government is of the view that overseas entities are used often to conceal and launder the proceeds of bribery, corruption and organised crime, and that investigations are hampered by a lack of information as to the ultimate ownership and control of those entities.

Click [here](#) for our UK Real Estate team's summary of the Bill and some action points from the perspective of offshore property owning companies which may be affected.

## What's the latest?

On 20 May 2019, a Joint Committee of the House of Lords and House of Commons issued a report on the draft Bill, a copy of which can be downloaded by clicking [here](#).

The report includes a number of recommendations for amendments to the Bill and some observations for the Government to consider. Subject to the recommended amendments, the report is supportive of the Government's ambition to improve the transparency of overseas beneficial ownership in the UK property market by introducing the Register.

The report recommends that both the Bill and the EU's Fifth Anti-Money Laundering Directive (which extends to the registration of

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trusts, which are not covered by the Bill) be presented to the UK Parliament as soon as possible.

Other recommendations in the report include:

- the definition of "overseas entity" in the Bill should be amended to make it clearer that the registration requirement does not apply to individuals who own UK property directly;
- Companies House (rather than the UK Land Registry) should be responsible for determining whether a particular legal person or structure is an "overseas entity";
- the Government should issue guidance on how the definition of "overseas entity" should be interpreted;
- there should be a pre-clearance mechanism which confirms in advance of transactions whether legal entities are registrable (to avoid registrations which are out of scope);
- entities should be able to register their beneficial ownership information as quickly as possible, particularly in the case of special purpose vehicles and property holding companies which may be incorporated only a few days before a transaction;
- the proposed 25% ownership and voting threshold for the definition of beneficial ownership should be lowered;
- a model version of the Register should be published as soon as possible so that users have the opportunity to see how it will work;
- in addition to the proposed annual update requirement, the Bill should include a specific requirement on the overseas entity to update the Register before any disposition is made and a third party should be able to request enough information to ascertain whether the overseas entity has complied with its duty;
- the Government should establish workable verification mechanisms for the Register, the Trusts Register and the Register of Persons with Significant Control and it should ensure that the Register includes a mechanism allowing users of the Register to "flag" suspicious or potentially incorrect information.

## Issues for lenders

Whilst the obligation to register falls squarely on overseas entities which own UK property, the establishment of the Register will raise some issues for banks and other lenders who provide acquisition finance to such entities, particularly where security is to be taken over UK property.

Issues for lenders to be aware of include:

- the proposal for the Register to be updated before a disposition is made could mean a third party (such as a lender) is unable to register a transaction if the overseas entity selling the property has not complied with the registration requirements at the time of sale (not dissimilar to the restrictions which may be imposed when there has been a breach of registration/notification requirements relating to the PSC Register or beneficial ownership registers);
- consideration needs to be given to provisions which may need to be included in the finance documents to accommodate the registration requirement (including appropriate covenants, representations and warranties and events of default);
- how lenders will use the information on the Register, bearing in mind there is no verification under the current proposals, and the extent to which they will carry out their own searches of the register, or require their advisers to carry out searches on their behalf.

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## Watch this space

The UK Government has stated that it is considering the recommendations made by the Committee and will publish a response in due course. We do not as yet know when that response will be available, nor when a revised draft of the Bill will be published. We will publish further guidance for lenders once the legislation has been finalised.

The proposed timeframe is still to introduce the Register by **2021** but there is a possibility of this becoming expedited as international pressure for public registers to become standard intensifies. Lenders should start to consider the impact of the new Register on their lending procedures and finance documents, and take appropriate legal advice, without delay to ensure they are ready for the introduction of the Register.

### FOR MORE INFORMATION PLEASE CONTACT:



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