

May 24, 2016

An Englishman's Home is His Castle – Just!

Since the Land Registration Act 1925 the register of land in England and Wales has been interested only in legal title. All this is set to change. The Prime Minister announced on 12 May 2016 that any foreign company looking to purchase property in the UK will have to join a new public register of beneficial ownership. Through revealing the ultimate owners of property owned by foreign companies in the UK, the register aims to mitigate money laundering risks and reduce tax evasion. We examine these matters primarily from the perspective of real estate investors and ask whether this is a trend and just where the trend might end.

Attorneys
[Carol Hopper](#)
[Iain C.S. Morpeth](#)
[Partha Pal](#)

The Facts - Clampdown on Corruption

Over the past few years the government has come under increasing pressure to clamp down on corruption. This has been driven, in part, by a political desire to reduce corruption at a national level, but more importantly by a desire to tackle the issue of corruption globally, driven by a G20 agenda. This agenda is increasingly manifest in anti-money laundering and anti-bribery and corruption legislation, but this Alert highlights two specific recent moves and some background trends.

From 6 April 2016 all UK companies are required to identify all individuals who have significant control over them. A person of significant control (“PSC”) must be noted on a register kept by the company and available for inspection by the public at its registered office. A copy of the register must be supplied to anyone who has a proper purpose for requesting one. From 30 June 2016 onwards, companies will also need to provide the same information to Companies House in the confirmation statement that is being introduced to replace the Annual Return. That Companies House information will be publicly available online and searchable either by company or by individual. A company for this purpose includes a limited liability partnership. Thus, there will be considerably more information and transparency about PSCs.

A PSC of a company is an individual who owns more than 25% of a company's shares or voting rights or who controls the majority of the company's board, whether directly or indirectly. Whilst a PSC is always an individual there are rules that will capture other relevant legal entities, which can include corporates.

The announcement on 12 May 2016 at the anti-corruption summit that any foreign company looking to buy property in the UK will have to register with whom the beneficial title rests, targets not just UK property that may be owned by foreign companies in the future but also any foreign company that currently owns property in England and Wales (of which there are around 100,000).

These changes follow less well publicised changes made earlier this year in the United States, which were made on a temporary basis and which affect only property in limited areas (but including Manhattan) that require disclosure of beneficial interests.

They also follow the more obvious interest generated by the leak to a German newspaper of 11.5 million documents belonging to Panamanian law firm Mossack Fonesca, following which the UK government is setting up a new regulatory task force in conjunction with the National Crime Agency (the “Panama Taskforce”) to investigate money laundering and tax evasion linked to the release of those “Panama Papers”. This was not the only announcement at the UK-hosted Anti-Corruption Summit on 12 May 2016; in addition, any offshore firm bidding for a state contract is also to be placed on a central public register.

The Property Owners Register

Under the proposed new rules regarding registration of beneficial ownership of property, due to be launched next month, any foreign company wishing to buy a property in the UK will, for the first time, have to disclose the true owners of that property in a public register.

However, there is very little information on how the register would be implemented in practice. The following points, in particular, have not been addressed:

- a. How far up the beneficial ownership chain does the regime extend? This is especially important for funds and family offices.
- b. What are the penalties for non-compliance?
- c. Whilst this regime only applies to foreign companies, will it mean greater structuring involving UK entities as holders of legal title?

Our view is that the registration regime will apply similarly to the PSC register for UK corporates, where the ultimate beneficial owners of UK limited companies must be disclosed on the Companies House register and be fully publicly available. The obvious register would be the Land Registry, but quite how this will fit in with the government’s plans to privatise the Land Registry is less clear.

The Implications

The new proposals points to a number of practical issues relevant to investors in UK real estate:

1. When structuring a property’s holding companies offshore, investors need to be aware of the risk that the chain of ownership to the ultimate beneficial owner of that property is likely to be available in the future.
2. Forty jurisdictions, including a number of British Overseas Territories and Crown Dependencies with major financial centres, will automatically share beneficial ownership information under the proposals, underlining the wide-reaching effect of the proposed rules. This information is likely to be available not just to government enforcement entities but the public at large.
3. They suggest, in our view, a trend that will result in ever greater disclosure requirements and specific measures targeting those assets (which include real estate) that historically have had relatively light requirements designed to prevent money laundering and corruption. In the future this is likely to lead to ever greater requirements to carry out anti-corruption due diligence at the time of purchase, and everyone involved in buying and selling property should prepare themselves for more rigorous disclosure obligations.