

April 11, 2018

New Compulsory Register of Beneficial Owners of Overseas Entities Holding UK Real Estate

The government has recently published its response to a call for evidence on the proposed UK register of beneficial ownership for overseas entities (the “OEBO register”) with implications for overseas entities that currently, or in the future propose to, own or lease UK real estate, as well as lenders lending to such overseas investors. The OEBO register will be the first of its kind in the world. It will be available for the public to view online at no cost and will, when reviewed alongside publicly available Land Registry title documents, reveal legal and beneficial owners of all registered UK property. The new register will create an additional layer of due diligence on future UK property transactions, it could impede transactions if not complied with and it will impose an initial and ongoing compliance burden on those owning and leasing registered UK property. Failure to comply with the new regime will result in criminal liability. With a draft Bill intended to be published in summer 2018, it is expected the OEBO register will become operational in 2021. We set out below the proposed scope of the OEBO register regime and next steps for those affected.

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What is a beneficial owner?

The OEBO register will require disclosure of beneficial owners in a similar way to the PSC register already in place for companies registered in England and Wales, being broadly any person that directly or indirectly:

1. holds more than 25% of the shares (or rights to the capital or profits) or voting rights (or equivalent) in an entity; or
2. has the power to appoint or remove the majority of directors on the board of a company (or equivalent managing officer(s) of an entity); or
3. exercises (or has the right to exercise) significant control or influence over the entity (as detailed in the statutory guidance issued in connection with the PSC register).

Who is required to comply?

The intention is that all legal forms of entities (apart from trusts) that can hold UK real estate will be subject to registration. The obligation on overseas entities will be to take reasonable steps to ascertain who its beneficial owners are. So far as an entity is unable to verify this information, or determines it has no qualifying beneficial owners to be named on the OEBO register, a statement to this effect can be made to Companies House. For such entities, disclosures must instead be made about the relevant entity’s managing officer(s) so that some information is available at least regarding the individuals involved in the upkeep of the properties they own. Potential exemptions are being considered for entities where transparency of beneficial owners is already in place, but the scope of these is not yet clear.

Period for registration

Although the government is still considering the time frame (initially a one-year period was proposed), it has indicated that overseas entities already owning UK real estate at the point the OEBO register is introduced, will have a period in excess of 12 months to comply with the registration requirement. Successful registration will provide an

entity with a registration number, which it will need to provide to the UK Land Registry to register any future property transactions.

System of notes and restrictions at the Land Registry

The government's proposals suggest a note will be placed on the registered titles of all qualifying UK property (both freehold and leasehold property with an initial term of more than seven years) after the expiry of a reasonable period (currently expected to be more than one year) from the date the OEBO register is formally introduced, thereby preventing overseas registered proprietors after the expiry of the relevant period from selling, leasing or granting security over their property without first complying with the OEBO register's requirements. So far as existing overseas registered proprietors do not intend to comply with the requirements, they will need to dispose of their property within the relevant time period to avoid later becoming unable to deal with their property. For future overseas registered proprietors, once the measures are introduced, no new purchases, leases or charges will be registered by the Land Registry without a registration number, so they must comply immediately with the OEBO register's requirements and, in any event, before completion of the relevant transaction in their favour.

The proposed note on registered titles means it will become a due diligence matter in future property transactions and all parties involved will be checking that their counterparties to the proposed transaction are complying, and have complied historically, with the OEBO register's requirements.

Ongoing compliance

The OEBO register must be kept up-to-date and overseas registered proprietors will be required to submit periodic statements confirming their beneficial owners. Initially a period of two years was proposed, but after consultation, the government is considering increasing the frequency of the periodic updates. Importantly, criminal offences are intended not only for knowingly or recklessly providing false information, but also for failing to update the register periodically. Each update to the OEBO register by an entity will reset the date their next update is due, and, if no update is submitted within the relevant period, the registration number will become invalid.

Third party protections and lenders

While transparency is key, the UK government has highlighted the need for the new OEBO register requirements to be workable and proportionate so that they do not prevent or interfere with transactions of overseas entities in UK property. In particular, the proposed notes or restrictions on title registers should not prevent lenders from enforcing their security or repossessing and disposing of secured property to recover their debt.

It remains to be seen therefore whether the legislation relating to the OEBO register will require overseas lenders also to comply with its requirements. It appears it would otherwise be possible to circumvent the requirements of the OEBO register by having a charge registered against registered UK property in the name of an overseas lender and realising the value of property instead via the purported "lender".

The government's response to the consultation also does not clarify exactly what the consequence of entering into transactions with non-compliant overseas entities would be. There is a suggestion that a sale of registered UK property to a non-compliant overseas entity would result in the transfer only of beneficial title, not legal title; however it is not clear what that might mean for the relevant seller, any tenants or lenders of the relevant property.

Next steps

The government is now working out the exact framework and detail of the OEBO register. The draft Bill is expected to be published for scrutiny this summer and the register to become operational by 2021.

We will continue to monitor developments on the OEBO register, and in the meantime we would be happy to discuss any of the above issues and consider what they mean for your UK real estate investments and loans.