

The next frontier in economic transparency

Simon Gibb, a partner in McDermott Will & Emery's London private client practice, looks at what Britain's crackdown on financial crime means for foreign landowners

NEARLY FOUR YEARS have passed since the government first published draft legislation to establish a public register of land ownership. There had been no major developments in this policy proposal during that period, until the rapid adoption in March of the Economic Crime (Transparency and Enforcement) Act 2022, three weeks after the situation in Ukraine prompted a swift buttressing of the UK's sanctions regime.

The Act implemented the original proposal to establish a register of overseas entities which own certain interests in UK land. Importantly, this register would list the ultimate beneficial owners (UBOs) of the overseas entities and be open to the public. This article summarises the main provisions of this new register. At the time of writing, the timeframe for compliance with the new register is not entirely clear (although it is expected to be fully implemented in 2022).

Overview

The Act places an obligation on entities established outside the UK to provide certain information to the companies registrar. For the obligation to be triggered, the non-UK entity must own or wish to be registered as

the owner of UK land. In order to be registered, the non-UK entity must provide, among other information, details of individuals who are identified as their ultimate beneficial owner for the purposes of the Act. The core implications are as follows:

- The non-UK entity must undertake reasonable steps – including serving formal information notices – to identify individuals who:
 - directly or indirectly own 25 per cent or more of the entity's capital or voting rights;
 - have the right to remove or appoint the majority of the entity's board; or
 - who exercise, or have the right to exercise, significant influence or control over the entity or a trustee/partnership which meets any of the foregoing criteria.
- This information must be verified by the non-UK entity.
- It will need to be updated or confirmed as accurate every year.
- Without such registration, the entity will not be able to register as the owner of property at the Land Registry, which could prevent sale or further lease of the land. In effect, an entity which does not meet these disclosure obligations would not receive full legal title to the land.

- Failure to comply with the obligations will carry criminal penalties for the entities and their officers and will impinge on the entity's ability to transact in relation to their UK land.

Who is affected?

The Act is aimed at entities established under the laws of a jurisdiction outside the UK which, under those same laws, have separate legal personality. This could be a limited company, a body corporate, certain types of partnership, civil law foundations etc. The definition of legal entity would cover most common corporate ownership situations, such as Channel Island holding companies or US limited liability companies. There is provision to exempt certain non-UK entities from these obligations, but these are narrow and unlikely to be practically relevant to most holding structures.

Companies and partnerships established under the laws of a UK jurisdiction are not covered. However, it is likely such UK entities will already have had to disclose their UBO.

What interests in UK land trigger the obligation?

From an English perspective, any freehold or leasehold (equal to or in

excess of a seven-year term) interest in UK land – whether residential or otherwise – will trigger the obligation. Furthermore, where the interest was already owned on 28 February 2022, there will be an obligation to comply with the Act's requirements if the land is in England or Wales and was acquired on or after 1 January 1999. Due to the separate legal systems, the definition of relevant interest in land is different for Scotland and Northern Ireland.

What will change?

Rather than simply registering the non-UK entity's legal ownership with the relevant UK land registry (England, Wales and Scotland have separate registration regimes already), the non-UK entity will need to register with the companies registrar and be issued with a registration number. To obtain that registration number, the entity will need to identify any relevant owners and controllers, the UBOs, and collect the registrable information on each. It should be noted that a registrable UBO of the non-UK entity is not necessarily the same as the owner or controller of the UK land which triggers the registration obligation.

Entities that currently hold UK property will be granted a six-month transition period, but at the time of writing the start date for this period has not been settled.

What needs to be registered?

The non-UK entity will need to register specific details about itself, but the centre of the proposed regime is the non-UK entity's owner/controller register, based on and closely resembling the existing PSC registration regime. The initial obligation on the non-UK entity is to take steps to identify the existence and identity of registrable UBOs. These can include serving information request notices on known or suspected UBOs and undertaking (at the time of writing, unpublished) information verification obligations before the entity actually registers any information with Companies House.

Where a registrable UBO is identified, the information which

must be registered will include:

- name
- date of birth (this won't be public)
- nationality
- usual residential address (this won't be public)
- a service address
- the date they became a registrable UBO
- the nature of their control over the entity

In relation to the final item of information, the Act adopts a broadly similar definition for registrable ownership and/or control as the one used for the PSC regime. Therefore, any individual who meets one or more of the following criteria will be considered a reportable person for the purposes of the new register:

- holds (directly or indirectly) more than 25 per cent of the shares or voting right in the non-UK entity
- has the right to replace more than half the board or exercises significant influence or control over the non-UK entity
- has the right to, or does in fact, exercise significant influence or control over trustees (or members of a firm) where such trustees meet one of the foregoing criteria

If the owner happens to be another entity, the non-UK entity will be required to take steps to identify and disclose the ownership and control further up the ownership chain until either a relevant individual is identified, or it becomes clear there is no such controller. In the latter case, the non-UK entity's managing officers must be registered.

There are provisions for individuals who hold rights or shares collectively, so that their beneficial ownership cannot go unreported as a result of dilution of their shareholding (or equivalent).

What if a registrable UBO is a trustee?

In a departure from the draft legislation of 2018, the Act brings in new obligations on trustee UBOs to disclose information on the trust. While this trust information will not be available for public inspection (unless it is already in the public realm), it is a significant additional disclosure obligation as the

information can be shared by Companies House with HMRC and any other public persons which are specified in regulations in the future.

The registrable trust information includes the name and date of the trust and information on all beneficiaries of, settlors of and holders of certain powers over the trust, whether or not they are registrable UBOs. In the latter case (certain powers holders), the relevant powers are those which enable the holder to remove and appoint trustees and any power which is a right held 'in respect of the exercise by the trustees of their functions', such as consent powers.

What are the sanctions for failing to comply?

Serious practical repercussions could stem from failure to register beneficial ownership. Without the registration number, the entity will not be able to register the acquisition of property at the relevant land registry. Inability to register as the owner of the land will make it nearly impossible to effectively sell, grant security over (including by mortgaging), lease or otherwise make any dispositions regarding the land. This is likely to complicate land purchases in the future unless these obligations are considered early in the process.

Furthermore, failing to comply with registration requirements, failing to update information, or supplying false or misleading information will be criminal offences committed by the non-UK entity and the entity's officers. People who fail to respond to formal information requests will also be committing an offence.

What next?

All indirect owners of UK land, whether by simple or complex ownership structures, need to undertake a review to determine whether they are caught by the Act, and if so, to undertake the required UBO identification steps. This may be straightforward for corporate holding structures but is likely to be more complex for structures held in trusts. It would be sensible to begin this due diligence process sooner rather than later.

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