

New proposals to tackle money laundering in the property market

06/09/2018

Property analysis: Will a new register of beneficial owners of overseas legal entities that own land in the UK provide greater transparency and crack down on the ability of criminals to use the British property market to launder their money? Dan Bunting, barrister at 2 Dr Johnson's Buildings, looks at the draft Registration of Overseas Entities Bill and considers whether the provisions are likely to achieve the aims of the Anti-Corruption Summit in 2016.

Original news

World's first public register of overseas entities' beneficial ownership, [LNB News 23/07/2018 13](#)

The Department for Business, Energy & Industrial Strategy has announced new draft laws requiring foreign companies who own UK properties to reveal their ultimate beneficial owners in a new, world-first public register. It also said that criminals who conceal the true owners of property could face up to five years in prison.

What is the background leading to the measure?

According to the Metropolitan Police, during 2004–14, more than £180m worth of UK property was purchased as the suspected proceeds of foreign corruption.

There is widespread public concern over the potential for abuse in ownership of land in the UK mainly, but not exclusively, in foreign ownership. David Cameron promised to crack down on the ability of criminals to use the British property market to launder their money by introducing transparency measures.

The draft Registration of Overseas Entities Bill (the Bill) only applies in England and Wales due to the different provisions for land registration in Scotland and Northern Ireland.

What are the key provisions of the Bill?

It aims to create a register of all beneficial owners of property (in England and Wales this means any freehold and any leasehold where the term is over seven years) held by an overseas entity in the UK.

An overseas entity is any legal entity that is governed by the laws of a country or territory outside of the UK and that holds property in the UK. The Bill sets out five ways that someone is a beneficial owner, which mirror the 'People with Significant Control' requirements under the [Companies Act 2006](#). The Bill effectively applies to anyone who:

- owns more than a quarter of the shares of voting rights in the entity
- holds the right to appoint or remove the board of directors of the entity
- exercises (or has the right to exercise) 'significant influence or control' over it

The Bill sets out what details of the beneficial owners (or the officers of the entities in some circumstances) must be registered. The register can be inspected by the public, but certain information (date of birth and home address) will generally not be made publicly available. The registration documents must be submitted in English (and not Welsh).

The register will not be a register of the properties themselves, but effectively a register of entities that are permitted to own property. Only when an overseas entity is registered will they then be permitted to be entered on the registry at HM Land Registry as the owner of a property (and otherwise deal with property).

The entity will be required to update the register annually (in default of which the entity, and anyone else responsible, can be criminally liable for a daily fine for each day of non-compliance). This is the case whether or not any changes have occurred. There is no requirement to update the register after any change in beneficial ownership, although the entity may do so.

After commencement, there will be an initial transitional period of 18 months during which an overseas entity that currently owns property can either dispose of it or register themselves.

The Bill creates a variety of offences. The most significant are:

- making a registerable disposition in breach of the legislation (five-year maximum)
- failing to register when required (two years)
- giving false information on a registration (two years)

What is the likely impact if implemented?

The justification from the government is to tackle money laundering and to reduce information asymmetry (although the latter is perhaps not a great issue in the circumstances). It is likely that this Bill will assist in reducing money laundering, although there is always a concern as to what other impact it may have.

There are currently nearly 100,000 properties owned by overseas entities. Just over half are located in London and all are probably at the more expensive end (for example, approximately half of the London properties are located in Westminster and Kensington & Chelsea).

However, overseas entities are not just used for nefarious purposes. There are historically other reasons why individuals would wish to use such a structure—two common ones are to protect the privacy of the owner and for tax purposes, although the latter has become less attractive as a result of changes to taxes such as inheritance and capital gains taxes over recent years.

The actual cost of compliance will not be that much, especially as it is not aimed at being revenue generating (and given the make-up of the people who are behind these companies it is likely to be loose change). There will be the inevitable burden on advisers to ensure that there is compliance, especially as there is a risk of prosecution, however likely or otherwise that may be.

At this stage, it is hard to estimate what difference it will make to foreign investment into London. Even if there is a drop in foreign ownership, it will not be possible to identify how much is due to this measure rather than other factors (most obviously Brexit) that may also impact.

Interviewed by Evelyn Reid

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