

# Briefing document

## Register of Overseas Entities

### Introduction

The UK already has beneficial ownership registers that apply to UK legal entities (such as companies) and to certain trusts with a UK connection. In addition to this, the UK Government has also announced that they intend to introduce a beneficial ownership register to apply to overseas legal entities that own or are seeking to acquire UK real estate – referred to as the “Register of Overseas Entities”.

The Register of Overseas Entities is to be modelled on the existing beneficial ownership register that applies to UK legal entities – the People of Significant Control (PSC) register. Draft legislation has been published for the new register.

This note considers the information that is currently available about the Register of Overseas Entities.

### What is the purpose of the Register of Overseas Entities?

Details of the person who owns a property (e.g. the name of an individual or corporate owner) are already added to the Land Registry for the relevant part of the UK. In order to increase transparency, the government intends to introduce a comprehensive register of beneficial owners of overseas companies and other legal entities that own or are seeking to acquire UK land. Specific considerations apply to trusts, as set out below.

### Trusts

Trusts themselves do not have the legal personality required to be within the remit of the Register of Overseas Entities and so will not need to provide beneficial ownership information for addition to the new register. However, the trustees’ details, and details of any individual with significant influence or control over the trust, may need to be added to the register (see ‘who are beneficial owners’ below). Consequently, details of trust beneficiaries who do not influence the trust’s operation should not need to be added to the new register.

There is an existing trust beneficial ownership register to which (broadly) trusts with a UK connection and a UK tax liability must submit beneficial ownership information. Information can be accessed on a limited basis by, for example, law enforcement agencies. The information held is not publicly available.

The trust register is in the process of being amended in order to comply with the European Union’s Fifth Money Laundering Directive (5MLD). The range of trusts required to register will expand to include most UK trusts that do not incur a UK tax liability and non-UK trusts that enter into certain business relationships with UK persons or which acquire UK land.

Access to information held on the trust register will be broadened. Access will be granted to persons with a ‘legitimate interest’ in the information held. 5MLD does not require there to be a legitimate interest in order to access information where a trust or similar legal arrangement holds a controlling interest in a non-EEA entity, where the entity is not required to be registered on a corporate beneficial ownership register in an EU Member State, though information requests can be denied if the request is not made in line with the objectives of 5MLD. The government is currently considering how to implement the 5MLD trust register, including access to information.

### Who are beneficial owners?

The government states that they intend for the Register of Overseas Entities to list the names of individuals, legal entities, governments and public authorities who own and/or control the foreign legal entity, based on the

requirements of the existing PSC register. This would mean that the beneficial owner would need to be named on the new beneficial ownership register if they meet one or more of the below conditions:

1. Directly or indirectly owns more than 25% of the **shares** in the company;
2. Directly or indirectly owns more than 25% of the **voting rights** in the company;
3. Holds the right, directly or indirectly, **appoint or remove the majority of the board of directors**;
4. Has the **right to exercise, or actually exercises, significant influence or control** over the company;
5. Finally, where trustees of a **trust** or members of a **firm** that is not a legal person meet any of the above conditions (or would do if they were individuals), an individual who has the **right to exercise, or actually exercises, significant influence or control** over the activities of that trust or firm.

### **Public access**

The intention is for information held on the new register to be publicly accessible at Companies House. However, for security reasons, Companies House will not typically publish some information that would pose a risk to individuals if it were published, including individuals' usual residential address and the day an individual was born (though they will publish the month and year of birth).

The exception to the above is that Companies House can disclose this information if it is already available on a different public register, and they can disclose the information to persons or bodies that serve a public function, which would presumably include law enforcement agencies.

The government acknowledges that further information may need to be suppressed from the public register in some cases where publication would place an individual at risk of violence or intimidation.

The existing PSC register on which the Register of Overseas Entities will be based enables the UK legal entity or the individual who exercises significant influence or control to apply for protection from public disclosure. The draft legislation for the Register of Overseas Entities includes similar terms. The government intends to specifically consult on this point in due course.

### **When will information need to be provided?**

The intention is that overseas entities will be required to provide beneficial ownership information for addition to the register before they will be able to register the legal title of UK land. The same principle is intended to apply to registering a long lease or a charge against a property.

The intention is for legal entities to update the register or confirm there are not changes at least annually.

### **When will the register come into effect?**

The register is due to come into effect in 2021.

Overseas legal entities that acquire a new UK property will be required to provide their beneficial ownership details for addition to the new beneficial ownership register from the date the new register comes into force.

Overseas entities that acquired property in England or Wales on or after 1 January 1999, or in Scotland on or after 8 December 2014, will have 18 months from the date the UK register comes into force to either provide information for addition to the register or dispose of the property. If information is not so provided, the entity will have committed an offence and will be unable to register changes with the relevant Land Registry.

The 18 month transitional provisions for existing overseas owners will not apply to property acquired before the aforementioned dates, nor to property situated in Northern Ireland.

### **Find out more...**

This note reflects the law in force and information available on the Draft Register of Overseas Entities Bill and the UK's approach to expanding the trust register in order to comply with 5MLD as at 21 April 2020. Changes may be made before enactment of the draft Bill. This note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact or Mark Stokes ([mastokes@deloitte.co.uk](mailto:mastokes@deloitte.co.uk)). For further information visit our website at [www.deloitte.co.uk](http://www.deloitte.co.uk).

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