SQUIRE PATTON BOGGS

Family Office Insights

UK to Introduce a Register of Beneficial Owners

The UK seems set to become the first country in the world to require beneficial owners of overseas companies to disclose their interests in a public register, or face a bar on acquiring or dealing with real estate. This initiative is being trailed by the Department for Business, Energy & Industrial Strategy as part of a wider move to improve corporate transparency and reduce corruption and money laundering. It is likely to have a particular impact on family offices. With an imminent general election, it is difficult to say whether the proposals will be taken up by the next government, but we should assume that they will.

Currently, the government's preferred approach is for all companies or similar corporate bodies governed by the laws of non-UK jurisdictions to provide similar levels of information about their beneficial owners, as UK companies are now required to do through the "people with significant control" register. It is worth noting that the details of the proposed register are the subject of a call for evidence issued on April 5, 2017 and therefore subject to change.

Defining a Beneficial Owner

A person will be regarded as a "beneficial owner" for the purposes of the new register if they meet any of the following criteria:

- They hold more than 25% of the shares in a company (whether directly or indirectly)
- They hold more than 25% of the voting rights in a company (whether directly or indirectly)
- They directly or indirectly hold the power to appoint or remove a majority of the board of directors of the company
- They otherwise have the right to exercise, or actually exercise, significant influence or control over the company
- They have the right to exercise, or actually exercise, significant influence or control over a trust or firm that is not a legal entity that meets one of the four conditions mentioned above

A proposed anti-avoidance rule will mean that distributing shares amongst family members or other trusted individuals will not prevent a person who would otherwise be regarded as a beneficial owner being caught by the rules.

What Details Will Be Included in the Register?

Any non-UK company caught by the rules will need to disclose details of its beneficial owner or owners to the new register, which is to be held by Companies House. The register will hold the following details of the beneficial owner:

- Name and nationality
- Country where they usually reside
- Address for service
- Nature of the owner's control over the company
- Date on which the control over the company began

These details will, subject to certain instances below, be publically available. Additionally, the register will hold the beneficial owner's date of birth and usual residential address, but these will not be publically accessible.

Any affected company must disclose these details to the register before it may purchase UK real estate – or, if it already owns such real estate, before it is allowed to sell or otherwise deal with it. The current consultation also raises the possibility that there will be criminal sanctions for individuals who knowingly or recklessly make false returns to the register.

How Will These Proposals Affect Family Offices?

Because overseas corporates acquire UK properties for different reasons, the register will affect individual decisions to invest very differently, depending on the circumstances.

It is likely that corporates created either in whole or part to protect the privacy of their owners will be the most affected. Ownership of UK land is, for the most part, open to public view at a very small cost; so those families or individuals (whether based in the UK or elsewhere) who strongly value their privacy sometimes wish to hide their identity behind a vehicle which is not the subject of public record. This can often be for personal safety, and the draft proposals for the register recognize this – anticipating that beneficial owners who can show good cause will be able to have their identities kept off the public record. They will still need to disclose the required details to the register. However, most beneficial owners will not benefit from anonymity under the new system and will have to decide whether the loss of privacy is outweighed by the benefits of investing in UK real estate.

Family offices whose ownership or control is already a matter of public record in their home jurisdictions, or who use corporate vehicles for convenience rather than privacy, may have no reason to be concerned by the new register.

A Successful Way to Reduce Corporate Corruption?

By introducing the register, the government intends to reduce corruption and money laundering via UK properties without adversely affecting investment by legitimate overseas companies. The government widely acknowledges that legitimate overseas companies make a significant contribution to the UK economy and therefore should not be discouraged from continuing to do so.

Whether this goal will be achieved will depend on two factors. Firstly, will legitimate investment be discouraged? The disclosure rules are not administratively burdensome, so it will largely depend on how many foreign investors value their privacy over the benefits of the UK real estate market; only time will tell how that will pan out. Secondly, will the proposals help curtail corrupt investment?

While, understandably, the government wishes to make it harder for corrupt corporates to operate in the UK, it is unlikely that the register will affect them. This is because of a deep flaw in the register system: ultimately, it relies on honest disclosure by the corporates themselves. Even in highly regulated countries with little evidence of corruption, beneficial ownership is often not the subject of any official record. The only information authorities know about beneficial ownership is what the corporates tell them. By definition, corrupt corporates would be controlled by those with no qualms about providing false information to the authorities, who would have no means to check it.

What Consequences Will the New Register Have?

Though outright criminality will be little affected, transparency will be improved. Law-abiding overseas companies will disclose relevant beneficial ownership information – this will allow UK authorities and interested members of the public to know more about who owns the UK's real estate. Some families who would otherwise have invested in the UK will choose not to.

One interesting possible consequence is that joint venture or private fund investments may become more attractive to privacy minded investors. If enough family offices join together so that none of them control the joint vehicle or own more than 25% of it, such vehicle could have no disclosable beneficial owners and privacy would be maintained.

Undoubtedly, there will be much thought given to all these issues as and when the next government firms up its proposals for the new register.

Contact

Michael Shaw
Partner, London
T +44 20 7655 1227
E michael.shaw@squirepb.com

26765/05/17