



PUBLIC REGISTERS UNDER THE SPOTLIGHT

In a landmark decision this week, the EU Court of Justice handed down a judgment declaring that public registers requiring the disclosure of beneficial owners of companies incorporated within the EU are illegal. Central to the reasoning for the decision is that the general public's access to information on beneficial ownership **'constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the (European) charter'**. In response to this, both Luxembourg and the Netherlands have already closed down their public beneficial ownership registers and other EU countries are expected to follow suit shortly.

What impact this might have in the UK remains to be seen. Whilst the UK is not technically bound by EU law, most EU law still remains within UK statute (including for example the anti-money laundering rules), notwithstanding the UK's exit from the EU. The UK Government is therefore significantly influenced by ECJ decisions on human rights and this judgment may have a knock-on effect on UK public registers of beneficial ownership, such as the PSC register requiring the public disclosure of persons having significant control over UK companies and, of particular relevance at the moment, the Register of Overseas Entities requiring the reporting of the beneficial owners of foreign legal entities which hold interests in UK land. The requirements of the Register of Overseas Entities were set out in our [***Tax Alert***](#) in March 2022.

At this point in time, the Register of Overseas Entities has been implemented by UK law (The Economic Crime (Transparency and Enforcement) Act 2022) and non-compliance is a criminal offence. One might speculate that, even if the Government responds to the ECJ judgment by withdrawing public access to the register, the requirement to provide the verified data (which would be available to UK law enforcement agencies and tax authorities) would remain. In the current uncertainty created by this judgment, with the possibility that the Government may react to it in the next couple of months, there is a strong case

for persons who are compiling data for verification and inclusion on the register to consider delaying submission of the completed information until closer to the 31 January 2023 submission deadline. This may avoid a situation where private information is made public, only for it subsequently to be withdrawn. Anyone with obligations to submit data for the Register of Overseas Entities may wish to discuss this with the party which is providing registration and verification services.

This ECJ judgment may also have an impact on the UK Government's initiative to require its Overseas Territories and encourage the Crown Dependencies to introduce public registers of beneficial ownership. The Cayman Islands, British Virgin Islands and Bermuda had committed to the introduction of public registers in 2023, Bermuda on the proviso that public registers were a global standard by then. There has to be a question mark now as to the feasibility, if not the legality, of enforcing such a requirement which has been declared a fundamental breach of human rights in the EU.

Please get in touch with your usual Rawlinson & Hunter contact should you require further information or assistance with the above.

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