

## **Register of Persons Holding a Controlled Interest in Land: a new way of seeking transparency of ownership and control of property in Scotland.**

The Scottish Parliament has recently introduced a development that seeks to improve public transparency in relation to those individuals who have a degree of control regarding decision-making and land. Section 39 of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 – coming into force 1 April 2022 - has established a new register, the Register of Persons Holding a Controlled Interest in Land (the RCI for short), which shall narrate how the new property law framework can be complied with.

The new register should offer some significant improvements in terms of transparency and public access to information regarding control of land. There are, however, some fairly weight consequences for owners and tenants (for more than 20 years) for breach, and a failure to comply is a criminal offence and can result in a hefty fine. Further information is set out in the paragraphs below.

### Land Register and Sasines Register vs. The RCI

Whilst the purpose of the Land Register and Sasines Register is to identify the owner of the land, the new register is not a register of ownership, but rather a register of those acting behind the scenes.

The RCI is not concerned with 'beneficial' nor 'economic' ownership but instead, shifts focus onto those cases where the owner or tenant of the land does not have significant control or chooses not to exercise their decision-making powers.

### Recorded Person vs. Associate

The roles of 'recorded person' and 'associate' are of great significance in the RCI. A person who is registered as owner or tenant in the Land Register or General Register of Sasines and also registered in the RCI as having an associate, is considered a 'recorded person'. Whilst an 'associate' is a person who has some degree of power in directing what happens to the property. The Regulations state that the associate has the right to exercise, or actually exercises, significant influence or control over the recorded person's dealings with the land. However, the extent of the expression 'dealings' is varied within Schedule 1 of the Regulations.

### Notifying the Keeper

The owner or tenant (for more than 20 years) must supply the Keeper with details of the associate within 60 days, and a subsequent entry shall be made into the RCI. The associate must also be notified by the recorded person of their status, within 7 days of the notification to the Keeper, to allow them to fulfill ongoing obligations.

The RCI will be available for all to access and there will be no fee for searching the regime, nor for notifications made to the Keeper. Each associate will be provided with a unique one-off reference number which will be used to make a search in the RCI.

### Who has capacity to be a recorded person or an associate?

Schedule 1 of the Regulations contain five categories of recorded persons and provides examples of where the RCI regime will apply. Although each example does not use the expression 'associate' in the same sense, they do share some commonalities.

A recorded person may be an individual; partnership; trust; unincorporated body; an overseas entity; or an individual who owns or is the tenant of land on behalf of any of the aforementioned. This covers multiple scenarios. For example, if A is a trustee but is not named in the title sheet of the property as

one of the joint owners, as an off-register trustee, A is an associate and is therefore registerable, despite the fact A has no economic interest in the property owned by the trust.

The RCI is engaged if someone other than the recorded person has either (1) more than 25% of the shares or (2) more than 25% of the voting rights. Where the owners of a property make all decisions in relation to the land, the RCI is not engaged.

#### 'Significant influence and control'

the Regulations use the expression 'significant influence and control' when defining the role of an associate. They state that the test applies where the associate has the right so to act or, does, in fact, so act.

Three out of the five categories listed in Schedule 1 lay down examples of significant influence and control relevant to instances involving nominees, partnerships, trusts and overseas entities however, they are non-exhaustive.

#### Non-Compliance

Whilst the benefits of the new register should not be overlooked, failure to comply with the RCI will result in great consequences. Breaches by owners or tenants (for more than 20 years) and by associates to comply with their duties is a criminal offence and will result in criminal action and a fine currently set at £5,000.

There is a one-year grace period to allow for compliance however, as from 1 April 2023, underestimating the importance of the obligation to register will result in serious penalties.

#### Exceptions

Schedule 1 of the Regulations lists five types of situations where an 'associate' may be identified and Schedule 2, demonstrates exceptions where the RCI is not engaged. To avoid the issue of duplication of records, exceptions exist however, the scope of the exceptions is limited and they primarily focus on preventing double registration (this occurs where another transparency regime under UK law applies to the recorded person). Further exemptions apply if the registered owner or tenant is a UK Company, Limited Liability Partnership, Limited Company or a Public Authority.

There is no doubt that the RCI will provide a solution in respect of the on-going difficulties surrounding the lack of transparency of ownership and control of property. Landowners and those with a controlled interest must ensure that they cultivate a positive attitude to the recent developments and accept that registration in the RCI must now be considered a top priority.

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