



Dry January Is Hard Enough Without Transparency Disclosure Too!

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In This Issue ...

In this month's edition of *REF News & Views* we will be taking a look at the most recent proposed changes to the United Kingdom real estate investment trust (REIT) rules that have been published by the UK Government in the proposed UK Finance Bill 2023-2024. The proposed changes have been proposed in response to the concerns of investors and their advisors over the cost and rigidity of converting to REIT status, and the competitiveness of the UK's REIT regime. Without a doubt, the birth of REITs internationally since the 1960s has had a massive impact on the accessibility of private investors to the real estate market and the constant evolution of REITs is critical to meet the demands of the housing market, investors and financial institutions.

We will also be discussing where further developments are likely this year in the ongoing attempts by the Government and the Real Estate Market to reform REIT accessibility and flexibility so as to encourage growth in the Real Estate Market as a whole.

Finance Bill 2023-2024 Introduces Changes to REIT Rules



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Amendments to the UK real estate investment trust (REIT) rules were introduced in the new Finance Bill 2023-2024, which is expected to become law in the summer of 2024. Published on 29 November 2023, the amendments reaffirm a number of measures announced by the UK Government when the first draft of the legislation was published in July 2023, as well as containing a number of further changes to the REIT rules.

Key Changes

The key changes can be summarised as follows:

- Condition D of the REIT rules requires a REIT to be non-close or only close as a result of an institutional investor being a participator; this will be amended so as to confirm that this condition can be satisfied through indirect ownership by institutional investors.
- Unit trusts, OEICs and limited partnerships will only qualify as institutional investors if they meet the non-close condition (i.e. they are not a close company, or would not be close if they were a company).
- A company will not be considered close just because 50% or more of the voting power is possessed by a manager of a collective investment vehicle or a general partner of a limited partnership that is a collective investment scheme. Furthermore, non-UK residence will not prevent a company from qualifying as close.
- Disposals of UK property-rich co-ownership authorised contractual schemes will now also receive tax exemptions for gains.
- “Property financing costs” will mean costs referable to the UK property rental business for the purposes of the interest cover test, but will not include non-deductible expenses.
- The “Group” definition will now include insurance companies that hold interests of 75% or more in group UK REITs.
- Definition of “relevant time” in the context of determining if the property rental business condition is met by ownership of a single commercial property will be amended such that the condition will be met if the value of the property is, or was at any time from the relevant time (being the later of entry and acquisition of the property) at least £20 million.

Finance Bill 2023-2024 had its second reading in the House of Commons on 13 December 2023 and received its Committee debate on 16 January 2024. The Commons Report stage and third Commons reading is expected on 5 February 2023.

Following the 5th February reading, it is expected by investors and advisors that further changes to the REIT regime will be announced in 2024, most notably in relation to the relaxation of rules concerning genuine diversity of ownership, the rules concerning disposals of a property within three years of development, and the changes to withholding tax concerning distributions.

Final thoughts

The changes being proposed are valuable incentives to real estate investors and highly relevant to lenders. Lenders may well be asked to consent to changes within structures to accord with the legislative changes. We will continue to report on these changes and discuss how lenders should be liaising with their borrowers to ensure appropriate consents are given under finance documents in order that technical breaches and gaps to security packages are avoided.

The proposed changes to the UK's REIT regime are all the more welcome given the decision by the UK Government, at least at this stage, to decline to introduce draft legislation for a new tax transparent unauthorised vehicle, known as the reserved investor fund. While considerable discussions regarding the reserved investor fund have been ongoing between advisors and the UK Government following a public policy consultation in 2023, we will need to watch for developments in this area during 2024.

Nowhere to Run to Baby, Nowhere to Hide: An Overview of the New York LLC Corporate Transparency Act and Its Disclosure Requirements



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If you thought you could hide behind your LLC in this new year, think again. Governor Kathy Hochul signed the New York LLC Corporate Transparency Act (the “Act”), which will go into effect in late 2024.^[1] The Act provides for disclosure of the ultimate beneficial ownership of limited liability companies (individually, an “LLC” and collectively, “LLCs”), similar to its federal counterpart, the Corporate Transparency Act (the “Federal Statute”). The Act requires the creation of a database of the beneficial owners of limited liability companies, which will allow for members of law enforcement and regulatory authorities to uncover misconduct surrounding disclosure of LLC ownership.^[2] Such disclosure will prevent the use of anonymous LLCs for illicit activities, such as fraud, tax evasion, money laundering, and violations of real estate leasing, government contracting laws and campaign financing.^[3]

Before jumping into the Act, let’s take a step back and review the Federal Statute, which went into effect January 1, 2024. The Federal Statute requires all entities that are registered with a secretary of state, including LLCs, to file certain identifying information, such as their name and business address, with the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of the Treasury that collects and analyzes information about financial transactions in order to combat financial crimes. The Federal Statute requires corporations, limited liability companies and other entities created or registered to do business in the United States to provide personal identifying information to FinCen, such as the beneficial owner’s name, their address, date of birth and identification number, either from a driver’s license or passport. If the company is sold or ownership changes, such information must be updated within 30 days of any change in the beneficial ownership. Only federal, state, local and tribal officials will have access to such information. Those that do not comply face both civil and criminal monetary penalties of \$500 to \$10,000 per violation and jail time of up to 2 years. A “beneficial owner” is defined as an individual who, directly or indirectly, either “exercises substantial control over the entity” or “owns or controls not less than 25% of the ownership interests of the entity.”^[4] The Federal Statute provides exemptions for large operating companies, broker-dealers, publicly traded companies, public accounting firms, insurance companies and registered investment advisers, to name a few.^[5]

The Act’s requirements are broadly patterned after the Federal Statute. The Act adopts the same definition of beneficial ownership as the Federal Statute and its implementing regulations, however, the Act applies only to LLCs formed or authorized to do business in the state of New York, and such filings must be filed with the New York Department of State. LLCs must update their information within 90 days of any change in beneficial ownership for NY LLCs. The Act also requires

companies to update their LLC's organizational certificate, such as the articles of organization, any time there is a change to the organizational documents. This requirement might result in more frequent disclosures for NY LLCs because of the requirement to disclose amendments to the articles of organization for minor events such as engaging a new registered agent or a change in managers. Failure to disclose the beneficial owners of an LLC is punishable by the payment of a civil penalty of \$250.[6]

Similarly to the Federal Statute, access to such records are available to law enforcement and government officials via a searchable database, which will display the name, business street address and other personal identifying information of each beneficial owner. Originally, the Act required the creation of a public database, where the name and business address of each beneficial owner would be displayed for the public to access. Governor Hochul, however, struck such requirement and limited access to the database for law enforcement and government official use only. The creation of a database for law enforcement and government officials to easily search LLCs and their ultimate beneficial owners will allow law enforcement and state agencies to monitor and hopefully, discourage those hiding behind a corporate shield from engaging in illicit activities. While LLCs are used to limit liability of the ultimate beneficial owners, it also masks their identities, which those of nefarious intent can use as a tool to hide income or launder money.

For those in the Real Estate Finance sector, Lenders should consider making changes to their loan documents by adding additional covenants and obligations of the borrower to comply with such disclosure requirements. Many real estate transactions commonly use special purpose entities ("SPEs") to finance, acquire and develop real property to limit liability within an organizational structure. Under the Federal Statute, SPEs may be exempt from such reporting if they are considered to be a "large operating company". The "large operating company" exemption requires that an entity (a) has an operating presence in a physical office within the United States; (b) employs more than 20 employees on a full-time basis in the United States; and (c) filed federal income tax or information return in the United States for the previous year demonstrating more than \$5 million in gross receipts or sales from US sources.[7]

So, when and what should you report?

Pursuant to the Federal Statute, for companies created before January 1, 2024, filings will be due by January 1, 2025. Reporting companies created on or after January 1, 2024 must file their initial reports within 30 days. Reporting companies must disclose it's (a) legal name, (b) trade name, (c) business address, (d) jurisdiction information and (e) US IRS taxpayer identification number. Beneficial Owners must disclosure their (a) legal name, (b) date of birth, (c) current address and (d) identification number (such as one found on a driver's license or passport). [8]

Under the Act, Companies formed on or before the effective date of the Act will be required to file their reports by January 1, 2025. Companies formed after the effective date will have 30 days to file their reports. For LLCs that file under the Federal Statute, the Act permits the LLC to file a copy of the same form with the NY Department of State.

[1] S. 995B, enacted December 22, 2023.

[2] <https://www.governor.ny.gov/news/governor-hochul-signs-llc-transparency-act>

[3] See Memorandum in Support of Legislation, Assemb. A03484, 2023-2024 Sess. (N.Y. 2023-2024), https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=2023&Memo=Y.

[4] Corporate Transparency Act, H.R. 6395, 116th Cong. §§ 6403 (a)(3)(A)(i)-(ii), p. 1219.

[5] LLC Transparency Act, N.Y. S.995 (2023); see also 31 U.S.C. Section 5336(a)(11)(B).

[6] [https://today.westlaw.com/Document/I3b1603d673fe11ee8921fbef1a541940/View/FullText.htm?transitionType=Default&contextData=\(sc.Default\)&firstPage=true;https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=2023&Memo=Y](https://today.westlaw.com/Document/I3b1603d673fe11ee8921fbef1a541940/View/FullText.htm?transitionType=Default&contextData=(sc.Default)&firstPage=true;https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03484&term=2023&Memo=Y)

[7] 31 U.S. Code § 5336(a)(11)(B)(xxi).

[8] See 31 U.S.C. Section 5336(a)(11)(B); <https://www.congress.gov/bill/116th-congress/house-bill/2513/text>

Key Takeaways From the 30th Annual CREFC Conference in Miami



Kicking off the new year in customary fashion, Cadwalader recently deployed a team of attorneys to the 30th Annual CREFC Conference in Miami. We wanted to share with you the valuable perspectives we heard while there and hope you find them useful as 2024 continues to unfold. We look forward, as always, to answering any questions and providing additional insights tailored to the specific needs of your organization.

Click [here](#) for a recap on the hot topics from CREFC 2024.

Topics included:

- Interest Rates
- Asset Classes
- Property Insurance
- Lending Volume
- Distress/Workouts
- Securitization

Click [here](#) for a deeper dive into [Lisa Pauquette's](#) panel that discussed managing securitization workouts.

Recent Transactions

Here is a rundown of some of Cadwalader's recent work on behalf of clients.

- Represented senior admin agent in mezzanine foreclosure of New York City hotel asset currently subject to ongoing bankruptcy
- Represented a lender in connection with the \$200 million refinancing of an office park located in Sunnyvale, California
- Represented lenders in connection with the \$57 million refinancing of a retail center located in Dallas, Texas, anchored by Walmart/Sam's Club
- Represented an administrative agent and lender in connection with a \$564 million refinancing of two office buildings in Texas