

Response to BEIS Call for Evidence

Property ownership and public contracting by overseas companies and legal entities: beneficial ownership register

1. We are grateful for the opportunity to provide evidence and views to inform proposals for a register of beneficial ownership information for overseas companies or other legal entities that own or buy UK property or participate in UK central government procurement.
2. We strongly support the Government's aim of making the job of law enforcement agencies easier and discouraging criminals and the corrupt from choosing the UK to hide or launder their money, **but do not consider that the case has yet been fully made of the need to create a public register of beneficial ownership for overseas companies given there remains the need for Government to assess the effectiveness and proportionality of the newly introduced register of persons with significant control over UK companies (the PSC Register).**
3. We consider that further preparatory work is required given the potential unintended consequences of this measure, such as risks of exposing beneficial owners to harm and deterring foreign investment into the UK. We also consider that further Government work is required to manage the impact of this work on banks' commercial risk appetite for dealing with foreign clients, including procedural uncertainty resulting from varying requirements for identification of beneficial ownerships between the new register and anti-money laundering (AML) checks.
4. There is also a need to consider how any such power would also align with the range of requirements and proposals from Government that could be seen as interdependencies with this proposal, such as the 4th Money Laundering Regulations, the Criminal Finances Act, and the forthcoming General Data Protection Regulations (GDPR). Whilst all these are valuable initiatives, they run the risk of being less effective than the sum of their parts unless more considered thought is given to how these and indeed other initiatives in this space align. There also remains a need to see if other more proposals for solving the problem outlined in this call for evidence exist, such as greater powers on information and intelligence sharing.
5. We set out our concerns below where possible in direct response to the questions posed, but note that the format of the call for evidence implies that this proposal will be taken forward with questions only seeking views on the design and impacts of a settled policy position. We consider that this is a missed opportunity for more considered consultation of the potentially significant risks raised by extending public registration of beneficial ownership from UK to overseas companies.

Question 7 – Methods of awareness raising

6. We support the development of comprehensive guidance to assist the diversity of affected stakeholders with varying levels of sophistication. The Government should continue to work with third parties who will be affected by how foreign companies react to these proposals, including banks and other lenders, to ensure that the new register will not prevent or interfere with commercial arrangements between foreign companies and third parties. We believe that the guidance should include high level principles and a comprehensive range of specific examples, and be clear about what is not in-scope as well as what is in-scope.
7. We consider that an extended implementation period would be appropriate for future introduction of a finalised scheme. A year is not sufficient time for many affected beneficial owners of UK property and those acting on their behalf to consider whether to make an application for exemption, prepare the necessary material in support of their application and respond to the decision, if necessary by making arrangements

to sell their property without potentially significant loss of value. Without an extended implementation period there is a risk of decisions on whether to sell UK property being artificially rushed and concentrated, with a potentially significant downward impact on prices for certain property classes and damaging confidence in the UK property market as a whole.

8. An extended implementation period would also allow the details of the finalised scheme to be properly communicated and explained to affected parties, including managing officers, beneficial owners and those acting on their behalf. Communication will be complicated by the likelihood that many affected parties will not be residing in the UK. The risks of an inadequate period for awareness raising, guidance and support are highlighted by the proposed criminal penalty for failing to provide information and keep it up to date.

Question 8 – Costs and benefits to business, society and the economy

Question 9 – Impact on UK property market

9. We strongly support the Government's aim of making the job of law enforcement agencies easier and discouraging criminals and the corrupt from choosing the UK to hide or launder their money. However, the potential benefits of the proposed register will be constrained by a number of factors and further reduced by potentially significant risks and adverse impacts.
10. Firstly, the value of any register is only as good as the information it contains and the degree of challenge the owner of the register applies to confirming details are accurate. In order to deliver benefits the owner of the register needs to be properly resourced, to deal with the challenges of checking details submitted in relation to foreign companies and beneficial owners.
11. The potential benefits will also be constrained by the likelihood that those beneficial owners with criminal intentions will either not submit information or mask it in some way so as to avoid detection.
12. In addition, there are a number of significant operational, cultural and legal challenges inherent to the Government's proposals. If inadequately addressed, these challenges could serve as a barrier and disincentive to foreign investment and inflows, risk triggering a loss of confidence in the UK property market and expose persons who are listed on the register to the risk of harm (see paragraph 13, below).
13. It is not possible to take comfort from the PSC Register as it is still being populated. This means that any indications of disproportionality or ineffective protection will not crystallise and be identified for some years still. We consider that proper evaluation of the PSC Register should include the protection regime and the completeness and accuracy of details submitted, including the first required update.
14. An important consideration is how these proposals are complimented by similar initiatives in other countries. As noted in the call for evidence, the downside of demonstrating leadership is that the Government does not have a model to work from. The BBA notes that the concept of a public registry of beneficial ownership, as opposed to legal ownership, is still not readily accepted in some jurisdictions. Furthermore, public registration of beneficial ownership is not part of international standards for countering money laundering and other forms of corruption, which is currently limited to recommending central registration with privileged access for

competent authorities and possibly other gatekeeper institutions in the private sector. For example:

- FATF Recommendations 24 and 25 require governments to “ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities” [emphasis added; i.e. not access by the general public].
- G20 High-Level Principles on Beneficial Ownership Transparency, which were recently agreed and ask member governments to lead by example, recommend that countries “ensure that legal persons maintain beneficial ownership information onshore” and “consider facilitating access to beneficial ownership information by financial institutions and DNFPBs” [emphasis added; i.e. not registration of offshore companies / access by the general public].

Questions 17, 18, 19 and 20 – Reasonable steps by foreign companies

15. We welcome the proposal that the Government “will consider how the new register and MLR checks can work cooperatively to support each other and ensure accuracy of information” (para 103). We consider that such work should be based on an assessment of the operation of the PSC Register.
16. However, it is important that the Government produces clear guidance to manage the impact of this work on banks’ commercial risk appetite for dealing with foreign clients. Impacts could include procedural uncertainty resulting from varying requirements for identification of beneficial ownerships between the new register and MLR checks, and heightened reputational sensitivity in relation to foreign Politically Exposed Persons (PEPs).
17. In this regard we note that the Government is consulting on changes to AML requirements due to the 4th Money Laundering Directive (draft 4MLD regulations 29(2)(4-9) and 33(4-5)). These include new draft requirements to have ‘exhausted all possible means’ to identify beneficial ownership of corporate clients, which are currently under consideration by HM Treasury following extensive comment by the BBA and our members. It is not clear what will be expected of regulated firms if the new register states that a foreign client is unable to provide beneficial owner information or if the new register is at odds with the results of the bank’s own checks.

Questions 23 and 24 – Protection regime

18. We welcome the recognition that a more extensive protection regime may be appropriate for a register of foreign companies. However, we believe that the rationale for more extensive protections goes beyond the possibility that the register may include individuals’ residential addresses. The BBA continues to maintain there exist significant risks with making such a register public, including:
 - A risk that political, social or economic activists could use the register to identify investors and beneficial owners with an interest in contentious or unpopular businesses and industry sectors, and use that information to directly intimidate or threaten the property, reputation or commercial interests of those beneficial owners. This has been borne out by experience, with numerous examples of activists approaching or protesting at the home of a beneficial owner (or those they believe to be the beneficial owner) in furtherance of a political agenda;

- The lack of recourse to authorities should this publicly available information be misused or misapplied;
 - A risk of deterring foreign investors from jurisdictions placing a high premium on privacy or who, for political reasons or out of fear of prosecution or persecution in their home jurisdiction, would not want their property and business interests to be known publicly.
19. It is too early to tell how far these risks have already crystallised due to the introduction and ongoing population of the PSC, but it seems clear that the risks will be increased by extending the current public register of UK companies to foreign companies. We therefore consider that the finalisation of the scheme for the new registry should be deferred until the impact of the PSC register can be properly assessed, including the protection regime.

Question 26, 27 and 28 – Third party impacts

20. We welcome the recognition that restrictions on properties owned by unregistered overseas entities could impact on commercial transactions, and the proposal to ensure that such restrictions do not prevent legitimate lenders to sell the property to recoup their debt if necessary. We also consider that the new register could have a potentially significant impact on property ownership arrangements through joint ventures and co-ownership (see paragraph 13, above). The Government should work to manage these impacts, including through evaluation of the PSC Register and guidance with specific examples.