

Response to the Department for Business Enterprise and Investment Strategy on Register of Beneficial Owners of Overseas Companies and other Legal Entities

Q1	Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?
A1	Yes, we think that scope should follow the PSC regime. If the intention of the new regime is to capture information about the ultimate control and ownership of real estate with a capital value in the UK then it should not be possible to register through an entity that is not subject to disclosure requirements. It is important that the register and regime have comprehensive affect. We suggest there is scope to allow regulations to make exemptions as appropriate.
Q2	Is the suggested definition of leasehold appropriate?
A2	We believe that 21 years is probably too short. The proposed definition of leasehold will capture both leases with a capital value and leases without. Leases with terms of more than 21 years that do not have a capital value are very common. The typical length of a lease in the hospitality and leisure sector, including hotels, pubs, cinemas etc is conventionally 35 years but with a full rent payable. It would be important to consult with those in the affected sectors as to whether such a definition will create an unnecessary additional compliance burden.
Q3	Will setting the leasehold definition at leases over 21 years create any unintended consequences?
A3	As mentioned in the response to question 2 above, this will bring leases without capital value in some sectors.
Q4	Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC and the PSC regime?
A4	We agree that there should be an alignment between the concepts used in the PSC regime and in this proposed new regime. This will produce consistency and will build on the existing understanding of the PSC regime by UK registered companies. However, the expression "beneficial owner" as used in the proposed regime could be confusing. The concept of the beneficial owner of property is very specific and has a defined meaning in land law. This is not the same as the persons or individuals with ultimate control of a corporate entity holding that property. For instance, and very commonly, where a property is held by two nominee companies as trustees for the beneficial owners (in the true sense), the persons with control of the nominee companies will be the persons caught by the proposed regime but they will not be the beneficial owners of the property. We would suggest that an alternative expression that is closer to a concept of a "Person with Significant Control" should be used. We suggest there is scope to allow regulations to make exemptions as appropriate.
Q5	Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?

A5	Yes, we agree. In our view, the adaptations cover the potential situations that could arise. It is important for consistency and costs that any guidance issued in this regard should follow that of the PSC regime.
Q6	Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?
A6	We are satisfied with the proposed adaptations and believe that they will provide sufficient flexibility.
Q7	What methods of raising awareness would be most effective?
A7	A distinction needs to be drawn between the general residential market, the residential investment market and the commercial investment market. In the commercial investment market conveyancers will be more than aware of the effect of the regime through the normal processes by which new legislation is publicised. These conveyancers will be able to advise their clients fully if the new regime only applies to new acquisitions. In the general residential market, few affected overseas entities will be active and so raising awareness is not such a concern, again, so long as the regime only applies to property acquired in future and not to existing holdings. The most significant area where there may be lack of awareness is in the residential investment market where new build properties are marketed to overseas investors, mainly investors based in Asia. Such investors often buy property without visiting or inspecting the site or completed development. An obligation should be placed on developers who are promoting new residential property as investment to such overseas buyers to include information and guidance on the new regime in their marketing materials.
Q8	Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?
A8	Whilst we do not have quantitative information about this, we have canvassed the opinions of clients in the commercial real estate direct and indirect investment markets. We have been told that the existing PSC regime is not considered excessively burdensome for UK companies and is not usually a deterrent to those who choose to structure their investments through the use of UK registered vehicles. It seems likely to us, therefore, that extending a similar regime to non UK registered vehicles would not in principle be particularly disruptive, as long as the mechanism is carefully designed so as not to cause unnecessary delay or uncertainty (see A9 below).
Q9	What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.
A9	There may be an effect on the process of land registration. Conveyancers will need to develop systems whereby they can assure their compliant clients that transactions will not fall down because of non-compliance by a counter party. In particular, there may be difficulties with transactions that occur over a period longer than one year, or even two years. For instance, it is common for the developer of a site to enter into an agreement for lease with a tenant before starting work on site. The lease itself will not then be granted until after construction has been completed. The developer will be contractually bound to the tenant when the agreement for lease is exchanged, but if the lease cannot be granted when the

	<p>property is built because the tenant has become non-compliant in the interval, this will cause difficulties. It may be that this problem can be solved by persuading such buyers and tenants always to use UK registered vehicles to hold property. However, this may increase the cost of transactions and the administrative burden on investors. There is a risk that this will discourage overseas investment or create red tape. This may, as a knock on effect, affect values and bank covenants in that lenders will be more reluctant to lend if the enforcement of their security or if is adversely affected of if transactions are more difficult and expensive.</p> <p>It is difficult to provide evidence of these likely outcomes at this stage. The actual situation will only be revealed once appropriate conveyancing practices have developed.</p>
Q10	Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?
A10	We think that the rules should not apply to existing owners of UK property as the penalties for non-compliance are severe and the likelihood is high that many foreign owners despite any communication plan will not become aware of the new rules until they attempt to sell. If the rules are nevertheless applied to existing owners, then we would also point out that one year is an unreasonably short timeframe for divestment by owners who may have legitimate reasons to want not to appear on the register but who do not fall within the narrow categories of exemptions. This is especially the case if we take into account the fact that it may take some time for such owners to become aware. Pressure like this may well affect pricing.
Q11	Is a system of statutory restrictions on putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance
A11	Using the land registration system seems like an effective way to ensure compliance. There remains a risk that overseas ultimate owners will deal with their interest in holding companies in ways recognised by their own legal systems but not those of the UK. There will be no way of attributing criminal liability. This will fall on the corporate entity, often administered by agents. It is difficult to see how criminal offences can be prosecuted when the persons responsible will largely be outside the jurisdiction. As overseas owners who transact outside the scope of UK law may not be able to enforce their rights in in UK courts, this may not be a significant concern.
Q12	Do you agree that we should prevent any beneficial interest in the property passing to an overseas entity that does not have a valid registration number at completion or settlement?
A12	As long as the restriction affects only the beneficial interest then this may be acceptable. If the legal title can be vested in the overseas legal entity then the interests of third parties can be protected.
Q13	Do you agree that the most appropriate way to do this would be to void the transfer document?
A13	This would not be a sensible solution. To void the transfer document would result in legal title not transferring to the non-compliant entity. This could prejudice innocent third parties significantly. Interests that flow from the legal title and are held by other innocent persons should remain valid and be enforceable.

Q14	Is there another way that we could achieve this result?
A14	Please see our reply to questions 12 and 13.
Q15	Which is your preferred option for procurement and why?
A15	No comment
Q16	Do you agree that the information on the new register for overseas entity should be the same as the information required under the PSC regime?
A16	In the interests of a consistent and transparent market we would suggest that the regimes applicable to both UK entities and non-UK entities should be the same.
Q17	Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?
A17	This could be a sensible alternative.
Q18	Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?
A18	Not that we are aware of.
Q19	Is the requirement for an update every two years appropriate?
A19	Given that the reporting cycle for UK entities is annual, it may be appropriate to require the same of non-UK entities.
Q20	Would a criminal offence be an appropriate way of enforcing the requirement to update information?
A20	There would be problems in enforcing criminal penalties in this context as mentioned above particularly where the persons managing an overseas entity are also based overseas. This could place an unnecessary burden on the enforcement authorities. Management of the market and property by using measures involving the ability to have ownership of land registered is likely to be much more efficient. There would however be a cost in transferring information lodged at Companies House. The land registries are not currently set up to receive this information and there must be an initial cost in setting up such a system.
Q21	How are proposals to achieve a balance between ensuring compliance and enabling overseas entities to maintain existing assets?
A21	The proposals may lead to overseas entities being incentivised to transfer their assets into UK registered entities as for the penalties for non-compliance by these may be significantly less severe.
Q22	Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?

A22	No comment
Q23	Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?
A23	Undue invasion of privacy may be issues as well as safety.
Q24	Are there additional situations, which you consider where protection should be granted?
A24	See A23
Q25	Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?
A25	No comment
Q26	How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?
A26	Charges may not be limited to lenders to the relevant entity. An entity may provide security over its assets collateral to a portfolio loan, securitisation or other types of secured financial borrowing transactions, including hedging arrangements, which may also be provided to secure other transactions which are not lending, such as overage, deferred consideration or development costs. As a general principle, the protections should be available to all third parties.
Q27	We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.
A27	Please see the reply to question 26.
Q28	Are there additional third party impacts that should also be addressed?
A28	Protection should be put in place to allow joint venturers, funds or co-owners to realise assets where they are held in common with non-compliant parties. For example, an owner of a 25% stake in a property may have complied itself but be locked into its stake in an asset due to the failure by its partners/co-joint venturers to comply. This is particularly worrisome where property is already held under such agreements, as no provision will have been made in the agreements for dealing with this situation. This further adds to the already strong case for limiting the effect of these proposals to future acquisitions only.