

**From:** [REDACTED]  
**Sent:** 10 May 2017 09:50  
**To:** Transparency and Trust Paper <Transparencyandtrust@beis.gov.uk>  
**Subject:** Beneficial Ownership Register

I am [REDACTED] I responded to the discussion paper. I am [REDACTED] and this is a personal contribution with no connection to my former firm. I have no objection to this response being made generally available.

*Question 1: 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?*

Sovereign central governments and probably local governments. Possibly also entities controlled by them, although such entities would need to declare their ownership. Foreign embassies which own or lease their premises will presumably be exempt under diplomatic conventions.

Also foreign charities which do not have beneficial owners as such – although they might be required to register with the Charity Commission if they have land and a presence in the UK.

*Question 2: Is the suggested definition of leasehold appropriate?*

Consideration should be given to equitable leases (*Walsh v Lonsdale*) which can not be registered. They can confer a right to possession but are unlikely to have much capital value as they can not be registered and can not normally be sold.

*Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?*

A lease could be structured as for a term of say 15 years with a right to renew for a further term without payment of a premium. Although perpetually renewable leases are by the Law of Property Act 1922 s.145 and sch. 15 converted to terms of 2000 years, that does not apply to other renewable terms, say one which can be renewed once or twice. A lease capable of being renewed to be longer in all than 21 years would suffice – for comparison see Leasehold Reform Act 1967 s. 3(4).

*Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?*

Yes.

*Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?*

Yes.

*Question 6: 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?*

Where trustees (who may themselves be corporations but could also be individuals either UK or foreign) hold property on behalf of foreign corporate entities they should declare it. Where property is in the name of a single individual as nominee this may be difficult to detect but there should be a duty to disclose that so that failure to do so could attract a penalty. It may be difficult to distinguish between a foreign partnership established for commercial purposes and a joint ownership by a foreign family or group of friends. Presumably if a non-resident husband and wife buy a flat in London for personal occupation they would not need to register but that might be a cover. The Land Registry Form TR1 Box 10 requires a statement where the property is held on trust and it would be possible to add another statement "The property is not held on trust for a foreign entity". If that can not be given then the Land Registry may require further information.

A property may genuinely begin by being held by and for one or more individuals but subsequently the beneficial ownership may pass to a foreign corporation without any change on the register of title. It will be difficult to police that but there should be a duty to disclose any change in beneficial ownership and any person who becomes aware of the change should be disabled from relying on any rights. There could be alterations in beneficial ownership by operation of the relevant foreign law. For instance an individual might become bankrupt under a foreign jurisdiction and a corporate creditor might have the right to foreclose on UK assets and thus become the beneficial owner without any change in nominal title. However such cases may be rare and not worth covering.

*Question 7: What methods of raising awareness would be most effective?*

There could be a legal duty on any UK resident legally qualified person acting for fee or reward instructed on behalf of a foreign entity to draw the matter to the attention of the person giving instructions. This may not be effective where either a foreign lawyer is instructed or the entity handles the purchase in-house; such instances will be relatively rare although those seeking to avoid the controls may make use of them.

*Question 8: 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?*

*Question 9: 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.*

*Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?*

This is too short. They have to become aware of the need to register, to gather the information, to apply to Companies House (who may have a large volume of applications to process) and then ensure the information is put on the register of title and checked. Two years might be more reasonable.

*Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?*

No procedure will be fully comprehensive. There should be power for some government or police body to place a restriction on the register if they become aware that the entity owning the title has not done so.

*Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?*

Any attempt to control beneficial or equitable ownership can produce anomalies. Land transfer is usually a two stage process. On exchange of contracts the buyer often pays a deposit, typically 10%, and obtains an equitable right to enforce the contract in its terms. That is followed by completion, payment of the balance of the price, and transfer of legal title. Between contract and completion the seller is still the owner but owes duties to the buyer. Once the buyer has paid the balance of the price full beneficial ownership passes irrespective of whether there has been a transfer.

There used to be a standard means of avoiding the old style stamp duty under which there was a contract to sell and buy, the whole of the purchase price was paid, but there was no transfer of legal title. A buyer who wished to resell (whole or part) would direct the original seller to transfer to the sub purchaser. This would only be used where the buyer could trust the seller to meet these obligations. This could be used in the present context (see your para 52). This would most often be used for a short-term ownership, where the original buyer hopes to make a profit from reselling but in some cases, where there is a good relationship between the original owner and the buyer, it could be used for long term beneficial use. However a prudent buyer who did not take title would normally enter a notice of the contract on the register. It might therefore be necessary to extend the need to obtain a registration number not just to persons registered as proprietor but also to persons entering a notice on the register of title.

There may be less straightforward situations, particularly involving options or conditional contracts or staged acquisitions. These are often found in development contexts. A buyer may take an option to purchase, which confers power to use part of the land, to make surveys and apply for planning consent. Occasionally a buyer in that situation may even exercise the option and start building works but without legal title especially if the amount of the purchase price is to be determined by valuation at the date of planning consent and legal title does not pass until that is done and the money paid and there are delays in agreeing or determining the price. If the buyer has spent money on the property it may be unfair to deprive it of any benefit or to confer that benefit on the seller.

If the beneficial interest does not pass to the entity, and if it has left the former owner, as it would if the purchase price has been paid in full, or if there is some beneficial right arising simply from the contract, and if you prevent any beneficial interest passing, it is unclear where the beneficial interest would rest. If the seller had been paid it would be unjust for the seller as former owner to retain the beneficial interest. That might pass to the Crown (as in effect happens already on escheat if a foreign corporation is dissolved e.g. *UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners* [2011] EWHC 3368 (Ch.)). A beneficial interest can pass as bona vacantia under Companies Act 2006 s. 1012(1) where property was held on trust for a dissolved company (but if the company was merely trustee the legal title does not pass). The effect would be a forfeiture for failure to obtain a registered number. Presumably if the entity did subsequently obtain a number the beneficial interest would revert - compare Companies Act s. 1034.

This should only apply to land. For instance if a foreign entity wishes to acquire sporting rights or a rentcharge or a franchise of ferry there might be no objection even if it does not have a registration number.

Title to land is not always acquired by a transfer document. The most common is adverse possession. Under English law where a person takes possession of land, for however short a period, without the consent of the paper owner, that by itself creates a fee simple. After a length of time

(12 years for unregistered land and 10 years for registered land) the possessor may become the unchallenged owner. The squatter will normally apply for registration, either first registration for unregistered land or to replace the paper owner for land already registered and if it does not have a number this would not be permitted but once again it raises the issue of who owns the land if the title of the paper owner has been extinguished. If a foreign entity was in possession of English land for long enough to extinguish the paper title but under the current proposals it did not acquire a beneficial interest the effect could be that the land had no owner or that it escheated as above.

There are few other circumstances where title passes without a transfer. Appointment of a trustee in bankruptcy is unlikely to raise problems. It is possible that a foreign corporate entity might be an executor of an individual who owned English land and that could be covered by providing that land would not vest in that case unless the executor had a registration number. Other instances, such as automatic vesting of the surface of former highway land when the highway rights are extinguished are rare and probably not worth covering.

*Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?*

No. To declare the transfer void could penalise an innocent seller and produces other problems. The fact that a foreign entity intended to acquire land might only become apparent after contract. There might be what appears to be a purely UK transaction but the UK resident “buyer” might sub-sell or might be an undeclared agent or nominee for the foreign entity. This could be a particular problem for sales by auction where the seller has no means of knowing who might buy.

Suppose a UK seller has a mortgage to a bank. On completion the foreign buyer pays the Bank sufficient funds to pay off the mortgage and pays the balance to the seller who use it to purchase another property. If the transfer is void, presumably that includes the receipt for the purchase price which is incorporated and so is the payment of the money. Should the Bank repay? If so is the seller still liable to make payments under the mortgage? If the seller has paid the balance to the someone else to buy another house is that money recoverable?

Most contracts incorporate standard conditions of sale. If the buyer does not complete on the due date the seller has various remedies. Presumably specific performance would not be available if the buyer does not have a registration number. In that case the presumably the seller would forfeit the deposit so the legislation would have to say that even if the buyer expressed itself ready and willing to complete and tendered the purchase price that would be regarded as a failure to complete.

Suppose there was delay at Companies House and the buyer got its registration five days after the date fixed for completion. Would that retrospectively validate the transfer?

The effect of voiding the document would be that legal title would never leave the seller. Under the Land Registration Act 2002 s. 6 and 7 title passes but if the buyer does not register in time title reverts to the former owner but in that case the transferee still acquires beneficial or equitable title. The seller holds the land in trust for the buyer who is responsible for outgoings. In a UK context this is acceptable as the buyer will be subject to the jurisdiction of the UK courts. If the buyer was a foreign entity, and had no legal title, and especially if it had no beneficial right under the suggestion in Q 12, then the result would normally be that the seller retained both, even if the purchase price had been paid in full.

*Questions Question 14: Is there another way that we could achieve this result?*

If the beneficial interest does not pass there could be problems of human rights under A1P1. It would be better not to deprive the foreign entity of ownership but merely to provide that it cannot be exercised. In all these situations it would not be sufficient to provide simply that the beneficial interest does not pass to the foreign entity. It would be necessary to provide where it might vest, and if there are associated liabilities (such as for dangerous trees, contaminated land, planning obligations or outstanding payments) who would be responsible for them.

I suggest that legal title should not vest and the entity should not have any equitable right to enforce the benefit of ownership of land either but otherwise the provisions of the contract should stand. Thus if a seller's mortgagee has been paid off, the entry on the register protecting the mortgage should be cancelled. If the seller has been paid then he will have no right to the land so some provision will need to be made for responsibility for it and where the legal estate would vest. As a foreign entity could not be registered, the LRA 2002 s. 7 would already apply (after 2 months) and re-vest title in the seller. That could involve him in expense and uncertainty and possible liability but the seller usually has a choice as to whether to sell to any particular buyer and would have the right not to sell to a foreign entity. That is not so for a public auction, but the auction conditions could provide that a foreign entity without a registration number would not be allowed to bid.

Alternatively legal title might be vested in the Crown or in the Secretary of State for Business. Once the entity had complied with registration formalities, and provided there was no other offence (such as money laundering) then it would be able to assert the beneficial ownership and ask for title to be transferred.

If a contract does proceed with a foreign entity which does not have a registration number and the land is in a dangerous condition, for example if a tree falls and injures a passer-by, there needs to be someone responsible. If legal title remains with the seller he will have a right of recourse against the beneficial owner. It may be right for the foreign entity to be liable but it may be difficult to take proceedings against it if it has no presence in the UK and if (by definition) its property is not available to meet liabilities, although presumably the seller will have a trustee's lien and a successful third party claimant could be given a charging order over the land.

*Question 15: Which is your preferred option for procurement and why?*

*Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?*

*Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?*

Yes.

*Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?*

A copy of any constitutional document.

*Question 19: Is a requirement for an update every two years appropriate?*

This should not be a positive obligation but it should be provided that information more than two years old can not be relied on.

*Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?*

If the managers of the foreign entity are abroad this could be of limited effectiveness. Perhaps a civil penalty might be more easily recoverable.

*Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?*

There may be some instances where a family has retained a UK base for some years in a single purpose family company. There could be a concession for such instances. Many of such structures are being unwound because of the stamp duty land tax position but some may remain.

*Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?*

Provision of false information would be difficult to detect. There might need to be liaison with foreign registering authorities but some jurisdictions may not be willing to cooperate. That is more a political issue than a legal one.

Likewise if there are frequent changes in beneficial ownership and these are not reported it may be difficult to detect. It may be possible to place a duty on any UK resident professional conveyancer to report any changes.

*Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?*

Yes.

*Question 24: Are there additional situations we should consider where protections should be granted?*

As indicated, any trust situation presents a potential problem. Where property is in the name of foreign trustees they may be required to provide information.

*Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?*

*Question 26: How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?*

If it is evident from the face of the title that the owner of the land is a foreign entity, it might be possible to place the onus on a buyer by saying that title would not pass unless the buyer is satisfied that the mortgagee will not part with the net proceeds until the landowning entity has registered. If necessary the buyer might pay to the mortgagee sufficient to pay off the mortgage and pay the

balance into court. However many repossessed properties are sold at auction where a contracting buyer may have limited opportunity to investigate before contract. Also if the lender is itself foreign it may be difficult to enforce a prohibition on dealings between lender and borrower both of which operate out of the jurisdiction. In relation to land acquired after the change in the law, there ought not to be a problem as the owner will have to have be registered. In relation to land already owned, it may be necessary to take the risk.

Where the lender is a UK Bank or other regulated body it should be able to enforce its security but should not part with the net proceeds (after discharging the debt) to a foreign entity without a number. If the lender is some other person, especially if it is itself a foreign entity, it should be required to register and should not be able to give a good title unless it had. That might involve foreign chargees over land needing to have a registration number just as owners of land will need.

*Question 27: We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.*

If the transfer is void any transaction dependant on it would be void also. That could include leases, construction contracts and the carrying on of a business.

*Question 28: Are there additional third party impacts that should also be addressed?*

If a foreign entity seeks to acquire a superior interest in property subject to lease, for example buys the freehold of a fully let shopping centre or an office block, rendering rights unenforceable could impact on property administration. The (possibly UK resident) seller might have become insolvent so the tenant may have no one against who they have recourse. This could also happen with a block of flats subject to residential leases, leaving the lease holders with no one against whom they can enforce their rights.