



**Campaign for  
Legislation  
Against  
Money-laundering in  
Property by  
Kleptocrats**

Response to

Open consultation on

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

Led by

Department for Business, Energy & Industrial Strategy

12 May 2017

## Campaign for Legislation Against Money-laundering in Property by Kleptocrats

Response to

Open consultation on

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

Led by Department for Business, Energy & Industrial Strategy

Part of: Corporate governance

Applies to: England and Wales

Title: Beneficial Ownership Transparency

Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK

Closing Date: 12 May 2017

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## Preamble

ClampK welcomes the opportunity to contribute to this consultation and appreciates the urgency and seriousness with which the UK Government is addressing this major issue, which represents

- a loophole which facilitates the impoverishment of innocent people in many nations with less robust governance than in the UK,
- a threat to the quality of civic life in the UK and
- an unfortunate compounding factor in the problematic domestic housing market.

ClampK welcomes the broad thrust of the consultation paper and believes the questions address the principal issues comprehensively. Our focus and expertise lie solely in the field of money-laundering through property transactions and, on this basis, we do not believe it is appropriate for us to respond to the questions regarding public procurement.

We echo the sentiments expressed in the opening pages of the consultation paper regarding the benefits, at home and abroad, of eliminating corruption for moral, fiscal and financial reasons. We welcome the changes and improvements to the legislative frame-work enacted in the Criminal Finances Act 2017 and we will work to support the Governments efforts to actively implement these powerful tools against corruption, money-laundering and property exploitation.

ClampK will be happy to engage with the Department in any subsequent dialogue, public or private, that the Dept. may care to organise. We can be reached at '[campaigns@clampk.org](mailto:campaigns@clampk.org)' or you can contact [REDACTED] directly on [REDACTED].

ClampK is an organisation created to highlight the scale of money-laundering in real estate and advocate for legislative changes to prevent it. The Committee was founded by people with direct experience of these at both the source and sink of the money flows. They have formed a coalition of like-minded organisations, activists, politicians and journalists and their activities have to date included production of TV documentaries, distribution of research and media materials, parliamentary briefings and the very well received 'Kleptocracy Tours', which have been reported on by UK, EU, US and Asian media across all platforms. The activities have been focussed in the UK to date and we are very happy to report that similar activism is prospering in countries around the world.

### **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?**

Yes. All legal forms of ownership of properties and other assets in the UK should be subject to reporting requirements of the new register. This is especially important for legal entities which have complex administration and beneficiary structures like discretionary trusts. The Government should not allow for any loopholes in this legislation so that international money laundering cannot be channeled through any types of legal structures.

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

Yes.

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

Yes. There is a danger that the short lease properties will become a safe haven for illicit investments if exempt from the same Ultimate Beneficial Owner (UBO) reporting requirements as the long lease and

freehold properties. This could eventually create a pricing distortions in the short lease segment or even a parallel market for these properties. If the Government insist on making short lease properties exempt from foreign beneficiary ownership register they should be subject to a different acquisition procedure which would scrutinize the buyers for money laundering and tax fraud.

**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, the two definitions should be aligned and so should be any further changes in these definitions. The PSC threshold is expected to fall below 25% in the 5th AML Directive. As FATF, FINCEN, EcoFin and other anti-money laundering authorities revise and tighten the PSC or UBO definitions, the UK Government should adopt these changes to comply with the best world practices.

**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?**

While these adaptations adequately capture the notion of beneficiary ownership of an entity with defined share capital or equity stakes, they do not cover some forms of partnerships, trusts and especially discretionary trusts. In order to apply to most legal entities, the adaptations must include:

any partners or persons – jointly and severally – entitled to affect statutory changes to the entity in question and/or make decisions typically delegated to the executive management or board of directors level;

for trusts and similar legal forms - settlors, testators or other persons contributing more than 10% of the combined trust's assets; and for discretionary trusts - historical beneficiaries, i.e. recipients of over 10% cumulatively or one-off distributions by the trustees.

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

BEIS should organize a publicity campaign aimed at international property investors and the professional community servicing them – company formation specialist, lawyers, accountants, estate agents, etc. The UK embassies will be able to identify professional associations and other organizations in each country which should be made aware of the register requirements. International professional associations such as FASB, the IBA, etc. should also be targeted.

**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?**

The quality of civic administration in the UK is a global exemplar of excellence in terms of clarity, fairness and absence of corruption. Separately, it is clear from the experience of afflicted countries that the elimination of corruption from civic administration, once it has taken root, is a task for generations. While corruption exists, growth is hampered and costs are increased across a spectrum of civic activities such as policing, courts, jails and local administration.

Corrupt money is by definition held by persons without scruples or morals. Further, any exposure of corrupt monies tends to result in total loss of same and so the holders generally go to extreme lengths to preserve these assets. The longer this money stays unchallenged in UK assets the greater the likelihood that some of it will start to leach into UK culture, institutions and practices.

The volume of corrupt money that has come into the UK via property acquisition represents a permanent threat to UK civic administration in the absence of a transparent 'inoculation' process such as that potentially provided by UWO's.

As such, the downside cost to allowing this threat to remain unchallenged is culturally and economically incalculable.

**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.**

Property markets in London are quite stratified between these multi-million pound 'prize' properties and the average half-million pound home. Further, property markets inside and outside the M25 have diverged significantly in terms of price growth and market volumes.

Any price reductions that might arise in prime London properties arising from the deployment of UWO's is not likely to have significant wider impacts for the reasons mentioned above.

**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?**

Yes.

**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?**

The government should enforce the requirements to provide PSC data of foreign companies just as it is responsible for enforcing this vis-a-vis UK companies. The same principles should apply – financial penalties for the companies and criminal responsibility for the directors. However, enforcement of these measures on foreign soil is difficult, costly and positive results are far from guaranteed. Enforcement of criminal charges against foreign company officers is possible, but will require extradition procedures conducted in cooperation with Interpol or local law enforcement authorities. Enforcement against foreign companies will be fully dependent on the local courts and legal system. In some countries, the authorities could refuse to cooperate due to local data protection laws. Moreover, some regimes of state-sponsored corruption - such as Russia or Venezuela - can intentionally pass laws making it illegal for their companies to disclose UBO information to foreign authorities. Therefore, it is absolutely critical that a workable enforcement mechanism be created for foreign companies, or the legislation will lack effective teeth. We believe that the only effective mechanism would be that after some reasonable notice/cure period, where a foreign company continues to evade disclosure, the UK authorities should be entitled to have recourse to the land/property itself. The message should be clear: disclose or you are out of the market!

**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?**

Yes.

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

Yes.

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

No.

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

ClampK was founded to campaign on the specific issue of combating money-laundering through residential property purchases. As such we have no expertise in or knowledge of how current UK public procurement processes may be vulnerable to facilitating money-laundering. On this basis, we do not feel it appropriate to make any responses to the relevant questions. We do commend the UK Government for being thorough and complete in its review of all potential sources of money-laundering transactions.

**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?**

The government should consider the fact that Companies House does not perform any upfront checks during the initial registration period. We believe that this fact, and the difficulties of enforcement on foreign soil, call for stricter version of due diligence conducted by Companies House upfront when dealing with countries which - in the view of the UK government - are not fully compliant with 4MLD provisions. These could include submission of originals/wider range of documents and various checks and certifications to be performed by UK government-authorized bodies. From this perspective, it is absolutely critical to have the PSC data on foreign companies open to the general public, so that all interested parties holding relevant data can spot errors and falsifications in the registered entries. It is vital that the open access, low fees and transparency provided by the Companies House methodology be extended to this register, so that the widest range of civil authorities, professional agents, businesses, media and other investigators be empowered to contribute to the AML initiative in the UK and abroad.

**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?**

Entities that are unable to provide information about their beneficial owners should be immediately scrutinized for money laundering and tax evasion by relevant law enforcement authorities.

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

UBO data in the register should be updated every time there is a change in the ownership structure or the legal entity that owns a property. If no changes occur, the legal entities should confirm the validity of previously submitted information on an annual basis. The static two-year reporting period is grossly inadequate to combat money laundering and does not match the UK PCS reporting system nor 4th MLD principles.

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

In the case of foreign companies already owning land/properties in England and Wales not submitting PSC information or its annual updates or submitting false information, the UK government should definitely charge the officers of the entity with criminal offences but it will be very difficult to enforce in many jurisdictions. The only efficient enforcement will be the one which allows the government to have potential recourse to the land/property. After a deadline for submission of data has passed, severe financial penalties should be imposed on the companies refusing to disclose PSC data or present additional evidence in the case that their disclosure is being questioned. All their UK assets also should be frozen until the matter is fully resolved. We believe that the option suggested in the consultation paper of daily accruing fines would be the most appropriate measure in this case. Should the foreign company not comply with the requirements after a certain period, the daily accruing fine should step-up drastically and again in perpetuity. Once the amount of fines due from a foreign company exceeds a certain threshold, the UK Government should be entitled to claim the moneys in the English courts following the standard commercial debt recovery procedure.

This is a well-tested, robust and fully enforceable procedure which will not require any input from foreign or international authorities. If the court finds the claim acceptable it will issue a money judgement in favor of the government, appoint a liquidator and, if the foreign company still does not pay up and present required UBO information, it will order the liquidator to sell the property. The past due fines will be paid from the liquidations proceeds and the balance will go into the Court Funds Account awaiting the legitimate UBO to claim it.

Foreign companies violating the UBO disclosure regulations will not be able to “pay their way out” by simply settling the penalties. The UK Government should not accept payments of any kind from an unknown source such as a foreign company with an unclear UBO structure. Therefore, the fines will continue accruing on the daily basis until the required and satisfactory PSC information disclosure has been made. In the case that the foreign company declares bankruptcy the English courts will still place moneys owed to the UK Government ahead of other creditors. If during the period the company changes control the new owners will be liable for the accrued fines and will still have to disclose their identities in order to unfreeze their corporate assets in the UK.

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

Only a staggered approach combining fixed penalties, criminal charges with property freeze and confiscation in an escalating sequence will achieve the desired result – full compliance with the UBO disclosure requirement.

**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?**

No comment.

**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?**

No.

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

No comment.

**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?**

Lenders with SWIFT or BIC identifiers issued under ISO 9362 have been vetted by banking regulators and the Society for Worldwide Interbank Financial Telecommunication (SWIFT). Lenders without an ISO 9362 identifier will need to be examined on a case by case basis to establish their legitimacy and compliance with AML procedures.

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

No transactions will be disrupted as the result of implementation of the proposed restrictions regime other than criminal financial flows into the UK property market.

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

FCO should consider sanctions and other retaliatory measures against countries which would attempt to impede implementation of the UBO register.