



New Broad Street House  
35 New Broad Street  
London EC2M 1NH  
tel 020 7194 7920 fax 020 7194 7921  
email [ipfoffice@ipf.org.uk](mailto:ipfoffice@ipf.org.uk) web  
[www.ipf.org.uk](http://www.ipf.org.uk)

[redacted] contact details:  
direct line [redacted]  
email [redacted]

Beneficial Ownership Team  
Department for Business, Energy and Industrial Strategy  
1st Floor Victoria  
1 Victoria Street  
London SW1H 0ET

By email: [transparencyandtrust@beis.gov.uk](mailto:transparencyandtrust@beis.gov.uk)

15 May 2017

Dear Sirs

### **Overseas Entity Register Call for Evidence response**

This is the Investment Property Forum's response to your call for evidence issued on 5 April 2017.

The Investment Property Forum (IPF) is an individual members' organisation for those operating in the UK property investment market. We have a diverse membership of 2,000 - including investment agents, fund managers, bankers, lawyers, researchers, academics, actuaries and other related professionals. We are active in London, Scotland, the Midlands and the North of England.

We aim to enhance the understanding and efficiency of property as an investment, including public, private, debt, equity and synthetic exposure, for our members and other interested parties, including government, by: undertaking research and special projects and ensuring effective communication of this work; providing education; and providing a forum for fellowship, discussion and debate amongst our members and the wider investment community.

Our responses to the questions set out in the call for evidence are set out in the appendix to this letter. We have only addressed questions and issues relating to real property, and not any procurement related questions or issues.

Please do contact me if you would like to discuss any of our responses in more detail.

Yours faithfully

[redacted signature block]

[redacted name line]

[redacted name line] Investment Property Forum

**Overseas Entity Register Call for Evidence  
Investment Property Forum response 15 May 2017**

**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, we agree with this approach.

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

See our response to question 3.

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

We agree that short leases should be excluded. However, many leases granted for terms of more than 21 years do not really constitute "ownership" or "buying" property, because they do not have a capital value and including all leases over 21 years would have unintended consequences.

We suggest that:

- (a) only leases which are granted or assigned in return for a monetary premium are included; and
- (b) the minimum length of term is increased to 50 years (which is a length of term sometimes used in transactions to distinguish between a "sale" and a "letting").

**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?*

We agree that the PSC test should be used.

It then follows logically that this consultation process should not refer to "beneficial ownership". That term is about ownership, but the tests that are proposed to be applied relate to influence and control, which is clearly a different concept.

**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, we agree with this approach.

**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?*

This will need to be considered on a case by case basis. It will be important to ensure that the PSC definitions and conditions to be applied are clear and workable for each of the non-UK legal forms to be included. Therefore, if a non-UK legal entity does not fit into the existing parameters and adaptations for UK companies and limited liability partnerships, additional legislation and guidance may be necessary.

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

Working with international partners and across UK agencies (Land Registry, Companies House, BEIS) to raise awareness across as many media as possible, particularly during an initial period between the requirements being finalised but not yet in effect.

***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?***

We have no suitable quantitative data that we can provide, but we do know overseas investment into the UK real estate market is significant, and that such investment provides indirect benefits through payment of stamp duty land tax, as well as employment of the services sector in the UK. It is hoped that these measures will not affect that.

It is also worth bearing in mind that many UK institutions invest in UK property through overseas legal entities (for example, entities registered in the Channel Islands, the Isle of Man or Luxembourg) for perfectly legitimate reasons and such UK institutions would for these purposes be overseas investors.

***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.***

Provided it is properly implemented and there is a sufficiently high compliance rate, which gives the public the necessary confidence to rely on, the register may provide a useful anti-money laundering tool for the UK real estate industry in general. However, the register may also be a potential deterrent to some overseas investors who for entirely legitimate reasons, do not wish information of entities they control to be a matter of public record.

Also we note that a publically accessible register is not a requirement under the Fourth European Money Laundering Directive (MLD4) and that those that implement MLD4 without requiring public disclosure will not be considered equivalent disclosure regimes for the purposes of this register. This may put the UK at a competitive disadvantage which may be of particular concern given the current economic and political uncertainties.

***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?***

A number of points are raised by paragraphs 44 and 45 of the call for evidence, in addition to the one-year period, and we respond on those points as follows:

- (a) We do not consider that this should apply immediately on a retrospective basis. Instead, we suggest that the first time an overseas entity wishes to deal with their property (which may be many years hence), that is the point when that entity must register the beneficial ownership in order to deal with the property. We do not see that a transitional period is necessary. If there are no transactions in respect of a property, it does not seem necessary to require registration. That the entity will not be able to deal with its property until it has registered should be sufficient.
- (b) Even if it does apply immediately on a retrospective basis, we do not agree with the statement that a year is enough time to dispose of property. For example, for

complicated and high value properties that are in the process of development, it may take several years to dispose of property at the correct market levels, and to assume that overseas entities can dispose of properties quickly would damage the real estate market.

- (c) The title to a property that has been registered to the same owner for several years may not indicate on its face that the owner is an overseas entity; it may just state the entity's name and an address in the UK. We presume that Companies House and the Land Registries have been consulted on how all overseas entities owning registered land will be identified.

**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?*

Although criminal penalties reflect the PSC regime, we do not consider that they should apply to existing overseas owners of registered land.

**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?*

See our response to question 14.

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

See our response to question 14.

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

We do not agree that beneficial interest in the legal title to the property should not pass to an overseas entity that does not have a valid registration number at completion.

It is for a buyer to ensure that it can be registered with title to land at the Land Registry. Often the Land Registry has to raise requisitions about matters relating to registration before a transfer or lease can be registered, which would be the case here. It is not the seller's place to ensure that a buyer can be, and then is, registered with title at the Land Registry.

Quite often the identity of the buying entity is not known until very shortly before completion of a transaction, and so in those cases registration at Companies House would be impossible.

Voiding a completing transaction is a difficult concept as a matter of conveyancing practice and property law and not one that we consider is workable.

**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?*

Yes, we agree with this approach.

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

Where an entity has concluded that it does not have any registerable beneficial owners (para 85(c)), we do not think there should then be an additional requirement to provide information about its managing officers.

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

No additional information should be required.

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

We question the need for updates where there has been no change in beneficial ownership, and therefore suggest that updates are only required within a fixed period after such change.

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

We have concerns that a criminal offence is both disproportionate in the circumstances and how it can and should be imposed and policed in practice.

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

See our response to question 9.

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

We agree.

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

We do not think there are.

**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?*

We do not think it possible to define "legitimate" or "accredited" lenders. For example, other categories of entities other than banks have security of property (e.g. a party with the benefit of a delayed obligation to pay an overage, or a party with charging order over a property to enforce a court judgement).

Given that the controls proposed generally capture control and influence rather than ownership, we do not think that an overseas owner who wishes to circumvent the controls would give security to a related entity in order for the enforcement of the security to avoid the controls.

However, if you are concerned, we suggest that a common ownership test be applied between the owner and the mortgagee to ascertain whether the charge is "legitimate".

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

Any transaction that has been legally effected before the controls come into force, but which has a continuing element after they come into force (for example, a pre-emption agreement or an option) may be effected, or made impossible to complete, by the controls if the counterparty is an overseas entity. We, therefore, consider that the controls should only apply to future transactions.

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

Joint ventures between a UK entity and an overseas entity where property is jointly owned by those entities may be impacted; as the UK joint venture may find that the property cannot be sold because of the action, or inaction, of its joint venture partner.