



Cabinet Office

Oik Coonceil ny Shirveishee

Chief Secretary
Cabinet Office
Government Office
DOUGLAS
Isle of Man
IM1 3PN

Tel: [REDACTED]
Fax: (01624) 685710
Email: [REDACTED]

Our ref: WG/VC

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

By email to: transparencyandtrust@beis.gov.uk

16 May 2017

Dear Sir/Madam

Overseas companies and other legal entities beneficial ownership register: call for evidence

Please find attached the Isle of Man Government's response to the Call for Evidence by the Department for Business, Energy and Industrial Strategy (BEIS) on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement.

As you may be aware, in April 2016, the Isle of Man and United Kingdom Governments signed an Exchange of Notes which committed both parties to the sharing of timely and accurate beneficial ownership information between law enforcement agencies. In delivering this the Isle of Man has passed a Beneficial Ownership Act which will establish, by 30 June 2017, a central database of beneficial ownership of corporate and legal entities incorporated in the Island. This work builds on existing arrangements in respect of the mutual sharing of beneficial ownership information and is designed to enhance the effectiveness of long-standing law enforcement cooperation between the Isle of Man and United Kingdom.

The call for evidence, in respect of a new register of beneficial owners of overseas companies that own property in the UK, is of interest to the Isle of Man. We welcomed the opportunity for Isle of Man Government officers to attend a presentation from BEIS on this important issue earlier this month.

We are also grateful to be able to provide the attached short submission for consideration. This provides a response to the questions posed in the call for evidence or notes areas where the Isle of Man Government has no comment to make at this time. Should you require any further information or clarification of any of the points made in the attached please do not hesitate to contact me.

We look forward to continuing to work with BEIS as these proposals are developed.

Yours faithfully

[REDACTED]

Response from the Isle of Man Government to the United Kingdom Government call for evidence in respect of a register of Beneficial Owners of overseas companies and other legal entities beneficial ownership register

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?

Response:

It is unclear whether the reference to "legal forms" includes trusts, and the Isle of Man Government notes that a trust is of course not a legal person. The Isle of Man Government does not believe that there is any particular argument to exclude any specific legal forms in the sense of recognised legal structures, such as varieties of incorporated company. However, it could be questioned whether the objective of transparency will be achieved when certain vehicles are used. For example, it is noted that when a trust holds the property then the likely details registered will simply be the professional trustees – rather than the ultimate owners – depending on the nature and/or terms of the trust.

Question 2:

Is the suggested definition of leasehold appropriate?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response:

The Isle of Man Government would note that whilst this approach is consistent with other approaches taken by the UK Companies Registry it does not match that used in the Exchange of Notes agreed with the Isle of Man, other Crown Dependencies and Overseas Territories.

The Isle of Man Government has worked closely with the Island's industry over a considerable period of time to ensure that they provide information to our Central Registry to respond to UK enquiries. The UK Government proposal to store different details on a UK based system does therefore cause concerns.

It is understood that the data will be used for different purposes and would note that this will mean additional administration costs when considering buying UK property from overseas. The lack of consistency with previous decisions could affect the competitive position of our industry.

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?

Response:

The approach appears simplistic and the Isle of Man Government would query how the rules will be applied to different structures such as Foundations, different types of trust and other variants. Any implementation would require detailed guidance notes and examples to ensure that the data that is provided is consistent, not only from a specific overseas jurisdiction but between different jurisdictions, and would query if consideration has been given to the resources that would be required to provide adequate user notes.

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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response:

The Isle of Man's regulated sector already having a high level of awareness as they are used to keeping up to date with evolving international standards and developments. However, it is noted that the knowledge of the requirement to register in the proposed fashion will be limited outside the UK. Given the widely spread ownership base, it is noted that this is a significant issue when, after costly purchaser due diligence on properties, the overseas owner may find themselves unwilling to provide sensitive information (for example, from a personal safety perspective – see later) and so withdraw from the transaction.

The Isle of Man Government would suggest that a logical route to raise awareness in the first instance may be through the conveyancing departments of solicitors/lawyers, property agents, property development companies, and similar parties within the property industry. One approach could be a requirement on these parties to ensure that any third party is made aware that foreign ownership could be involved before any meaningful costs are incurred.

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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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.

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response:

The Isle of Man Government would suggest that to appropriately reflect the need to raise awareness, gather source data and ensure that management and reporting systems are created, a period of at least two years would 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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response:

Please see above response to Question 4 for inconsistencies with the beneficial ownership information methodology already agreed, and being progressed, between the UK and the Isle of Man and also the other Crown Dependencies and Overseas Territories.

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

Response:

Yes, but this would need to be considered carefully so as not to confuse purposes for the register.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response:

These four measures do provide some degree of comfort. However, the Isle of Man Government would note that the decision making process may be complex. There are a range of factors to consider in which the experience of the assessment officials will be key; for example, the liability on the authorities if their opinion proves to be flawed and personal loss is incurred.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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?

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.

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

Response: The Isle of Man Government does not have any specific comment to make at this time.