



By Email

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Dear Sir/Madam

**BEIS call for evidence: register of beneficial owners of overseas companies and other legal entities**

As part of a global law firm, our real estate practice handles some of the most complex real estate transactions in the world. Our work includes advising on investment transactions, development projects, co-investment structures, such as joint ventures, and other real estate workstreams. We advise on all aspects of corporate real estate, plus we have a very strong hotels and leisure practice. We work for some of the largest, most high-profile organisations in the sector: private equity, sovereign wealth and pension funds, real estate investment trusts, and property developers and financiers.

We assisted the British Property Federation (**BPF**) in drafting their response to your call for evidence and have seen a copy of their final submission. We endorse the comments in that response, subject to the following additional comments:

**Questions 4, 5 and 6:** We support the aim of making the beneficial ownership regime consistent with the PSC regime. Paragraph 6 of the BPF response supports the idea of using the same guidance to identifying beneficial owners of entities that are not like UK companies as applies to the PSC register. While we agree with this, we note that there are certain quirks/ambiguities caused by the interaction between the guidance and the underlying legislation in relation to the PSC register and we would like to work with you to resolve those – both for the proposed new beneficial ownership register and also for the PSC register.

**Questions 12, 13 and 14:** We would like to add to the points made in paragraphs 23 and 24 of the BPF response. In keeping with the position in the BPF response, we do not agree with



the proposal to stop beneficial ownership passing to an overseas entity without a registration number, as we consider that this would be disproportionate in its detriment. A purchaser which completes a purchase without a valid registration number would, if beneficial ownership did not pass, have paid over the completion monies and have no interest whatsoever in the property. Its mortgagee would be in the similar position, having advanced funds without any security (even on equitable mortgage). While we understand that the purpose of the rules is to ensure that overseas entities register, a failure to obtain a valid registration number could occur through an oversight, especially early in the regime when it is not yet well known, and perhaps through the overseas entity and/or mortgagee being poorly advised rather than through their own dishonesty or negligence. Not obtaining the legal title is already detrimental, but not even to obtain a beneficial interest is disproportionate. It is unclear too what would happen in such a scenario as regards the seller: it would retain the valuable beneficial interest in the property but would also have received the purchase monies. These could not be returned to the overseas entity if they had already been used to redeem a mortgage or by the seller in completing a related purchase.

On a related matter, and as noted in the BPF's response to question 9, it is important to ensure that there is protection for the purchaser in a range of property transactions where there is a time lag between money being paid and a transaction completing or some other right becoming exercisable.

**Question 19:** We do not support the BPF's suggestion that annual updates of the beneficial ownership register would be sensible. This would impose an unnecessarily onerous administrative burden on entities affected and would significantly increase the risk of inadvertent breach. As noted in the BPF's response to question 9, many real estate transactions extend even beyond the proposed two year period for updating the register, which will create difficulties for parties seeking to satisfy themselves that an overseas counterparty has complied fully. That difficulty will arise on more transactions if annual updates are required.

We would welcome the opportunity to engage with you further on this project once you have reviewed the evidence submitted and developed more detailed proposals.

Yours faithfully

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Freshfields Bruckhaus Deringer LLP