

## BEIS Overseas Companies Beneficial Ownership consultation

Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement

(<https://www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-overseas-companies-and-legal-entities-beneficial-ownership-register>)

*Submission by [REDACTED] on behalf of OpenCorporates, the largest open database of companies in the world, and a successful UK company that is using open data relating to companies to bring new uses and insight to company information (we number companies such as PwC, Barclays Bank, credit reference agencies and the US government among our clients). Our free-to-use and open data website is also a primary source of information on companies around the world, and is used by NGOs, journalists, tax authorities, law enforcement, AML and due-diligence professionals.*

### Summary

- We strongly agree with the need for a public register of beneficial ownership for all overseas legal entities that own or wish to purchase land or property in the UK or participate in public contracting.
- We would like to stress that this register must – like the UK PSC register – be both public and available as open data. Only then will the aims of the government be achieved (for example, “greater transparency [to] support a better functioning property market”, “discourage criminals and the corrupt from choosing the UK to hide or launder their money”, etc). By making it not just public but open data, the data can be integrated into due diligence and KYC/AML systems, and combined and cross-matched with other data. Not only will this allow easy access by global law enforcement agencies, civil society, journalists, lawyers, it will provide access and integration by business, reducing their risk, and improving the business environment. It will also provide a strong disincentive for criminals to use UK property and procurement for money laundering and other criminal activities.
- No types of entity should be excluded.
- Full information about the entity should be collected and published to ensure that it can be understood, and to avoid disadvantaging UK companies.
- The register also needs to be up to date, with changes being required whenever there is a change in the underlying situation.
- Genuinely vulnerable people should be protected, as they are in the PSC register. However, there should be no exclusions without evidence, nor because people are located in any particular country or because they are rich or powerful. The process by which this protection is applied must be made clear publicly.

**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. There are a wide variety of types of legal entities around the world, many of which do not correspond to UK company types, with few being transparent about their control and ownership. Given these can own property in the UK, it is essential that all types of legal entity be covered (including all future types, and including trusts). Anything else would provide a strong incentive to use exempted types (such as trusts) to circumvent the legislation. Finally it is critical to collect the all core information about the company (see Q16 response), including of course the legal form<sup>1</sup>, and the ownership/control chain (see Q16 response).

As an observation and suggestion we think that many of the overseas companies that own properties, and that are suppliers to the UK government, will often be registered as 'branches' with Companies House, and one solution could be to require all legal entities that own property or bid for government contracts to set up branches (as they either have a physical presence in the country in the shape of property, or will be delivering services in the UK). This would then mean that the beneficial ownership information could be collected via the extension of the PSC register to branches, and would also mean that in some cases additional information (e.g. names of directors) could be captured.

**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?**

No comment.

**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?**

The current definitions of beneficial ownership in the PSC regime have a number of significant shortcomings, most notably the 25% voting percentage threshold. We think that this figure is far too high, for two reasons: first, it makes it too easy to avoid detection by slipping under the threshold (with, for example, 5 members of the same family owning 20%, but without any agreement between them); second, in cases of grand corruption, for example in major infrastructure projects or extractives licences, having even a 10% right to the profits would be enough to provide a sufficient incentive to act corruptly. In addition a survey of anti-money laundering professionals<sup>2</sup> 30% said they were required to use stakes of 10% or less. We would thus recommend a level of 5% of shares or voting rights (and that this should also apply to the PSC register). We would also recommend aligning the PSC definitions with this in the future.

**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 (but see response to question 6).

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<sup>1</sup> It may be possible to use the soon-to-be published ISO standard on Entity LEgal Forms: <https://www.iso.org/standard/67462.html>

<sup>2</sup> In a Dow Jones/ACAMS survey over 30% of AML professionals said their firms adhere to beneficial ownership verification for stakes of 10% or less

**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?**

We think these are a good starting point. However, we would stress that it is highly likely that there will be attempts to circumvent these adaptations, using different forms of control (via veto powers?), and so the situation should be monitored carefully (especially watching out for new types of corporate vehicle), and the adaptations updated accordingly. Close cooperation between business, civil society and government will help ensure loopholes are identified and quickly closed.

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

No comment.

**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?**

Clearly this policy will bring benefits to the wider society, particularly in creating a more hostile environment for corruption and money-laundering, advancing corporate transparency and providing better visibility for civil servants, ministers and citizens in government procurement (anti-corruption NGOs such as Transparency International and Global Witness have plenty examples of this, and we would strongly support their position).

However, as a company that works day-to-day with businesses (as well as governments and civil society), we strongly believe this will bring considerable benefits to business too, in the following four ways:

- First, it helps consolidate the UK as a good place to do business, one based on integrity, visibility and the rule of law.
- Second, it helps building new norms around transparency around beneficial ownership, which in a business context means knowing who you're doing business with – business is now all too well aware of the risks that it faces every day, particularly dealing with overseas companies, or companies controlled by overseas parties – fiduciary risk, reputational risk, and legal risk (via UK Modern Slavery Act, UK Bribery Act, Foreign Corrupt Practices Act, as well as inadvertent breach of sanctions). In fact, the B20 identified 15 business use cases that requires beneficial ownership transparency<sup>3</sup>.
- Third, it levels the playing field for UK companies competing for government contracts.
- Fourth, it will reduce the flow of illicit, dirty money into the UK, much of which is artificially inflating UK property prices in London, and making it difficult for London-based companies (for example in the FinTech sector) to attract and retain talented staff due to the cost, and inflating their cost base.

**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.**

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<sup>3</sup> <http://bteam.org/wp-content/uploads/2015/11/BOT-Report-Dec-9.pdf>

An important report<sup>4</sup> by Transparency International UK showed corruption has a detrimental impact on the London property market. In particular, it showed the effect not just on affordability (which affects both citizens and businesses alike), but also on communities that suffer from higher levels of empty or underused properties owned by anonymous companies. This not only damaging the communities and long-standing local businesses – communities and businesses that have developed over decades or longer – but undermines the diversity and vibrancy that have made London so attractive.

**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, this seems both reasonable and eminently achievable. We would expect criminals, however, to use this period to attempt to erase any evidence of their connections, either by attempting to obscure the trail, or by selling the property. This should be seen as an opportunity for law enforcement, and they should work with the Land Registry to analyse the data on sales during this period, for example investigating high-value properties sold below market rate.

**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?**

We agree that the statutory restrictions and criminal offences are essential to ensure compliance. However, if they are to act as a deterrent, it is important that wrongdoers perceive there is both a clear likelihood of discovery and prosecution. At the moment, we don't believe this to be the case.

Not only are there very limited resources at Companies House for doing such investigations, there is currently no clear route for users to report problems, falsehoods or contradictions in the data, or to challenge it in other respects. Contrast this with the Challenge process of the Global Legal Entity Identifier System<sup>5</sup> (the Global LEI system was set up by the G20 to assign identifiers to legal entities involved in the financial system, particularly derivatives), which provides a clear route for any user to challenge the data, and is also working on accepting bulk "data problem" submissions.

Additionally, there are a number of ways that detection of the inconsistencies, falsehoods, and errors could be improved (both for the existing PSC data and for the property and procurement data):

- Ensure the data can be linked to other datasets. Companies House and BEIS should work with the civil society-led and DfID-backed Open Ownership Register to develop the draft universal beneficial ownership data standard<sup>6</sup>, and ensure that the data produced by this is consistent with the standard, and thus more easily combined with other data, including beneficial ownership data from other countries.

<sup>4</sup> Transparency International UK, Faulty Towers (March 2017)

<http://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market/>

<sup>5</sup> <https://www.gleif.org/en/lei-data/challenge-lei-data>

<sup>6</sup> <http://beneficial-ownership-data-standard.readthedocs.io/en/master/>

- Ensure the data is as granular as possible - the current bands of 25-50%, 50-75% are far too broad and not only add ambiguity, and make it difficult to cross-check with shareholding data. They also make calculations of control through ownership chains problematic. For example, imagine the following scenario:

Person A controls company B by 50-75% of the shares, and company B controls company C by 25-50%. This means that person A controls company C by 12.5-37.5% of the shares, i.e. either well below 25% or considerably above it.

Such situations, and particularly the ambiguity and judgement called for, create loopholes, and make the information less useful for businesses who are vetting partners (if a company has 25% control threshold internally for beneficial owners of suppliers, should they consider person A to fall within it, or not?)

It also has implications for the new register. Would A in fact be considered a Beneficial Owner under the proposed regulations? Who would determine that: person A, a government procurement officer; a lawyer looking for loopholes? This also highlights a potential difference between UK and overseas companies: if both B and C are UK companies then the data still allows users to make the calculation, and to consider person A to be a Beneficial Owner of C. However, if these companies are overseas companies, owning property, bidding for a contract, or owning another UK company, the information about A controlling B might not even be reported.

**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?**

No comment.

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

No comment.

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

Option 3. This will be by far the best option both for government (and hence wider UK society), for UK companies, and for integrity of the bidding process. Failure to do this would:

- Disadvantage UK companies (given they already disclose their Beneficial Ownership)
- Increase the likelihood of failed bidding processes (as the problems would only be discovered after award)
- Make it more difficult for procurement officers to compare bidders
- Reduce the likelihood of discovery, as it is often external parties (for example competing bidders) that expose corruption in procurement
- Introduce incentives to collusion and fake bidders

In addition, the data should be made available via the civil-society-led (and DfID-backed) [Open Ownership Register](#), which not only allows it to be combined with other data, but also provides

an easy-to-use interface to the data, for example giving the ability to search either by company or beneficial owner.

**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?**

We believe there are four requirements to ensure that the data collected is accurate, useful, usable and verifiable:

1. Collect all the core data about the entity. In the PSC register, the data on UK companies is controlled by Companies House, as the register of record for this information, meaning that users can freely access (as data) the core data for the company (address, incorporation date, etc), as well as the directors, filings etc. For non-UK companies, this is not the case, nor is there any certainty that the jurisdiction in which is incorporated will either collect the same level of information, nor make it freely available. Because of this we consider essential that this information is collected by Companies House (it already does so for many UK branches of foreign companies), and made freely available. In addition we would suggest that if an entity has an LEI code<sup>7</sup>, it should report this too.
2. The full chain of control should be collected and published. Given these are overseas companies, there is not the same visibility, nor ability to check the information, as in UK companies. This would also ensure UK companies are not disadvantaged, and provide visibility in UK government procurement.
3. The information on non-UK citizens should be able to be trusted by end users. This means it should be greater than that for UK citizens, as the difficulty of identifying them is significantly greater. So as well as the date of birth, nationality (or nationalities if they are dual citizens), country of residence etc, they should also have to verify their identity, either directly with Companies House, or via certification by a named professional (the details of this professional would be part of the public record). We would also recommend this step be brought in for non-UK citizens for the PSC register.
4. There should be no banding of ownership or control. As we show in our response to Q11, this severely limits the utility, quality and trust in the data.

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

For any business entering into an agreement with a company, knowing who they are dealing with is critical to understand and mitigate risk. Not knowing the Beneficial Owner will often require enhanced due diligence, and so it is essential that this information is highlighted, and can also be challenged (see response to Q11). We believe that the managing officers and directors ought to be collected and published as a matter of course (see Q16 response), and think it's likely that if managing officers can be substituted in place of Beneficial Owners this will lead to this becoming the rule rather than the exception. To avoid this it is essential that

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<sup>7</sup> LEIs are identifiers issued under a system set up by the G20, to identify entities in financial markets, and given the use of property (especially commercial property) as investments, it is highly likely that many of the entities will already have LEIs

<https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei> and  
<http://www.leiroc.org/>

enough information is provided about the control and ownership of a company to give clarity and certainty (see Q18 response)

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

At the very least, the shareholder register/ownership structure should be obtained – and made public – this would provide both evidence that there is no person as significant shareholder, provide routes to investigation, and provide third parties with confidence in dealing with the company. In addition, for those companies that have no beneficial owner because, for example, they are listed companies, this should be made clear, including the ownership chain, and sufficient information about the ultimate parent such that it can be categorically identified.

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

No. A period of two years will both make the data less useful and reliable, and also provide ample opportunities for gaming the system, as well as disadvantaging UK companies. We believe that the data should be updated contemporaneously, as with the PSC data. Failing this, the data should be updated at least annually with a record of the changes made since the last update.

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

Yes. However, this depends on the likelihood (and the perceived likelihood) of getting caught. See our response to Q11 for requirements to make this the case.

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

No comment

**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?**

Yes, provided sufficient information is available to make it dangerous to wrongdoers to take this approach. See our responses to Q11 and Q16.

**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, and the figures for the PSC register show that the regime has worked well so far. Genuinely vulnerable people should be protected, but care needs to be taken not to create loopholes (for example, automatically exempting minors, who are then used as nominees by their parents or guardians). The principle should remain that there can be no exclusions without evidence, nor because people are located in any particular country or because they are rich or powerful.

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

No. The criteria suggested are sufficient.

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

No