
From: [REDACTED]
Sent: 21 April 2017 09:13
To: Transparency and Trust Paper
Cc: [REDACTED]
Subject: Overseas Entity Register Call for Evidence response - Stephenson Harwood LLP consultation comments

Dear All,

Further to the recent publication of the call for evidence on the proposals for a register of beneficial ownership, I set out below some comments on two of the questions raised (and adopting the question numbering used in the call for evidence).

These comments are sent on behalf of Stephenson Harwood LLP.

Many thanks and please let me know if anything further is required at this stage.

Kind regards,

[REDACTED]

[REDACTED]

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Question 28

Whilst the proposals discuss allowing lenders to enforce their security and sell the property, this seems to be a reference just to a sale by way of the chargee enforcing its power of sale. The proposals at present do not seem to consider the affect on other types of distressed asset sales – i.e. sales by insolvency practitioners such as administrators, receivers and liquidators. It is much more common, in our experience, for lenders to appoint administrators/receivers and affect a disposal of the property that way, rather than sell under their power of sale.

Insolvency practitioners enter into property sale agreements as agents for the seller (i.e. the non-compliant overseas entity) in order to realise returns for secured creditors. As such, it seems fair that, in an insolvency situation, the insolvency practitioner should be able to act as agent of the overseas entity to sell the property even if that overseas entity had not complied with its register requirements (e.g. by failing to keep the register up to date).

It is acknowledged that if insolvency practitioners are permitted to dispose of a property despite the insolvent entity's failure to comply with beneficial ownership reporting requirements, a difficulty arises if the proceeds of the property sale result in a surplus once creditor debts have been settled. Whilst in the normal course of business the surplus would be repaid to the insolvent entity, this would be an undesirable outcome here if satisfactory beneficial ownership information had not been recorded on the register. Consideration should be given as to how to deal with this issue. One possible solution may be to require the surplus to be paid into a central (Government controlled) fund and returned to the non-

complying entity once it has provided the necessary beneficial ownership information (i.e. once it has become compliant).

Question 23

It is unclear why details of a beneficial owner's residential address needs to be added to the register. Would it not be sufficient to have the other information required (i.e. name, country of residence and address for service)?

Although the residential address information will not be made public, it is envisaged that many beneficial owners will not want their residential address appearing on the register at all, and so Companies House may be inundated with requests for that information to be redacted. This therefore has the potential to become a significant administrative burden for Companies House. Further consideration should therefore be given as to whether residential address information really is essential information needed for the register.

It is our view that the beneficial owner's name, country of residence and address for service is sufficient in order for them to be identified and give transparency as to who really owns the Property – i.e. achieve the stated aim of the Beneficial Ownership Register. Additionally, it seems likely that a person's residential address may change fairly regularly and so the need to update the register to reflect these changes may be more common than the Proposals currently envisage. The high volume of applications to update the Register to reflect a change of residential address may also add to the administrative burden on Companies House.

It is acknowledged that a person's residential address may be useful information in the context of a criminal investigation. However if a beneficial owner were to become subject to a criminal investigation, presumably the relevant law enforcement organisation in that country of residence would be able to obtain a residential address through alternative means.

**STEPHENSON
HARWOOD**

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