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Dear Sir/Madam

**Call for evidence on a register of beneficial owners of overseas companies and other legal entities - response**

This is a response from PricewaterhouseCoopers LLP to the call for evidence on “A register of beneficial owners of overseas companies and other legal entities” issued on 5 April 2017. We are commenting to the extent possible at this early stage in the process based on our experience with clients and we are limiting our comments to those areas relating to UK real estate; consequently our response does not cover the questions relating to government procurement.

We are long-term supporters of well-considered transparency by business, of which this proposal is the latest development. We have responded to a number of earlier consultations on this topic, including a response in September 2013 to the “Transparency and Trust discussion paper” issued by the Department for Business, Innovation and Skills [BIS].

This call for evidence addresses a number of issues and asks for responses to specific questions, which we include in the attached appendix. In summary, while we are strongly supportive of effective measures which enhance the transparency agenda and the anti-money laundering (AML) regime, we have some concerns regarding the current proposals. Firstly the potential for personal risk and significant commercial damage in having certain transactions and personal details in the public domain; and secondly the likelihood that adding to, rather than enhancing, existing registration programmes results in significant additional time and costs for the conscientiously compliant, without countering the deliberately non-compliant. Overall, this could have an impact on the potential attractiveness of the UK property market.

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The call for evidence does not include details of the timing of the introduction of the proposals. We would suggest that sufficient time is allowed for experience to be gained following the implementation of the people with significant control (PSC) register so that these new proposals adopt only those elements which experience has shown to be practicable.

Should you wish to discuss our comments in more detail, please feel free to contact me on the number shown below.

Yours faithfully  
For and on behalf of PricewaterhouseCoopers LLP



Enclosures

## APPENDIX - Responses to detailed questions

### Scope of the new register:

- 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? [Para 25-29]**

We agree that not including all legal forms of property owner would make it difficult to monitor the "true owners of UK property"<sup>1</sup>. However, it will be important to define the meaning of ownership clearly, particularly given the distinction between legal and beneficial ownership including trust arrangements, which will not be familiar to many overseas owners.

The extent of any ownership also needs to be clarified; for example, does the regime apply to any interest in the property (including an option over property), or only to an interest which equates to a direct freehold or leasehold interest? Additionally, what is the position for an interest in a unit trust scheme or a general or limited partnership (none of which has separate legal personality) which owns UK property?

One concern from this is that in order to create a level playing field, it would seem that the regime would also need to extend to the identification of beneficial owners of property held in a nominee arrangement. If the nominee holder was an individual, this would appear to fall outside of the proposed disclosure requirement.

We note that the existing requirements in respect of PSC are to be extended as a result of the Fourth Money Laundering Directive to include certain UK entities (e.g. Scottish Limited Partnerships) in addition to UK companies. In respect of the proposed requirements for UK property, we would welcome confirmation of whether the intention is to extend the regime to all legal forms, including entities not similar to those within the PSC regime, but which nevertheless have separate legal personality (eg certain overseas pension funds?). Failure to do so could result in UK and non-UK entities being treated differently.

A significant proportion of UK property is held by funds. Whilst these funds will often be widely held, in some cases, they may have a small number of investors, who may be institutions. These funds may hold UK property directly, or via UK and non-UK companies. We would welcome confirmation of whether it is proposed that, as these funds are typically publicly regulated, the funds, and companies held by these funds, will be exempted from the proposals.

- 2. Is the suggested definition of leasehold appropriate? [Para 29-30]**

The suggested definition is reasonable. We consider that there needs to be an exclusion for short-term use of land. Twenty-one years, while not including all interests which might have a capital/investment value, should mean that the measures are targeted towards the vast majority of ownership that we believe the policy is intended to cover.

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<sup>1</sup> Paragraph 10 of the Call for Evidence

**3. Will setting the leasehold definition at leases over 21 years create any unintended consequences? [Para 29-30]**

We have no comments to make in relation to this question.

**4. Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC [people with significant control] in the PSC regime? [Para 31-33]**

It is helpful for the two systems to have as many points in common as possible, as a consistent approach will simplify the administration of, and adherence to, the different regulations.

However, it should be recognised that the PSC provisions are limited to companies, *societas Europaea* (SEs) and Limited Liability Partnerships (LLPs), whereas the proposed beneficial owner of property rules apply to all legal entities (see comments above in relation to question 1). To the extent that the entities are not similar to companies, SEs or LLPs, the PSC definition of beneficial owner may not be appropriate.

We would welcome clarity in relation to trust relationships, for example for discretionary beneficiaries of trusts which hold shares in offshore companies and whether the beneficial ownership is to be considered at the beneficiary and/or the trustee level. Since the beneficiary only has a potential interest (which may never crystallise), it would not appear to be correct to include them on a register of actual interests. However, recording trustee information alone would not show any ultimate beneficial interest.

**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? [Para 34-35]**

Subject to further detail being made available, we agree that the adaptations in the form proposed would appear to be appropriate and necessary.

However, as referred to in our response to question (4), the PSC provisions may not be appropriate for entities which are not similar to companies, SEs or LLPs, in which case we suggest that further consideration of the provisions in respect of these entities may be required.

**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? [Para 34-35]**

As noted above, it will be important that the proposed guidance gives clarity for trust relationships, for example for discretionary beneficiaries of trusts which hold shares in overseas companies, and in particular whether beneficial ownership is considered at the beneficiary and/or the trustee level.

As referred to in our responses to questions (4) and (5), the PSC provisions may not be appropriate for entities which are not similar to companies, SEs or LLPs, in which case we recommend that further consideration of the provisions in respect of these entities may be required.

## **Awareness and impacts:**

### **7. What methods of raising awareness would be most effective? [Para 39-41]**

It will be particularly important to raise awareness among existing overseas owners of UK property, since the proposals apply to existing properties and owners may anticipate that only new acquisitions will be impacted. Since such owners may not have previously had contact with the UK authorities, we suggest that consideration should be given to developing an awareness programme through existing intermediary organisations, such as property developers and estate agents.

### **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? [Para 42]**

We have no comments to make in relation to this 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. [Para 42]**

Overseas entrepreneurs and investors acquiring UK property have already been subject to a number of legislative changes in recent years, including additional stamp duty land tax charges, the introduction of non-resident capital gains tax, the introduction of the annual tax on enveloped dwellings regime, and the proposed imposition of inheritance tax on UK properties held in offshore structures. Despite many of these changes requiring additional reporting and administration, as well as an additional tax liability, overseas investment continues in the UK property market. However, confidentiality is often important to these investors, especially where properties will be wholly or partly a private residence. Provision of information to a publicly accessible (as opposed to merely publicly managed) register may deter investment in UK property. We suggest that consideration should be given to addressing these issues in the impact assessment research. Based on our practical experience, we are aware of situations where clients are very concerned about the possibility of their children being named in a public register by virtue of being a beneficiary of a trust that holds UK property.

## **Registering information - property:**

### **10. Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year? [Para 45]**

In this section paragraph 46 sets out the consequences of non-compliance, and states that transfer of the title of the property is prohibited “*unless the entity is fully compliant*”. On the presumption that the purpose of the measure is to encourage compliance, we suggest that the prohibition be lifted if the entity subsequently became compliant, so that the wording could be amended to “*unless or until the entity is fully compliant*”.

**11. Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance? [Para 47-49]**

We would expect that registration alone is unlikely to ensure full compliance since, as currently exists in such areas as money-laundering, the determinedly and criminally non-compliant would attempt to hide their activities. Information supplied would need to be verified and, in particular, cross-checked by Companies House to other sources. While we appreciate that this may be constrained by limited resources, a failure to verify could limit the value of the register. Although it is proposed to make inaccurate provision a criminal offence, we believe that it would carry more weight if there is a credible verification procedure.

**Overseas entities buying properties after the law comes into force:**

**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? [Para 51-56]**

Generally we agree, subject to it being possible to effect registration on a timely basis in order to not cause undue delay to normal commercial transactions.

**13. Do you agree that the most appropriate way to do this would be to void the transfer document? [Para 51-56]**

We agree that this would achieve the objective of preventing the beneficial interest in passing although this is a fairly severe consequence, particularly if a seller has entered into a transfer in good faith. It could also lead to the possibility, prior to registration of the transfer of a legal title, that a completed transfer document that appeared to be entirely legitimate would in fact be void. We suggest that consideration should be given to addressing these issues in the impact assessment research and further due diligence would be required to determine the validity of unregistered transfer deeds.

**14. Is there another way that we could achieve this result? [Para 51-56]**

We have no further comments to make.

**Registration - procurement:**

**15. Which is your preferred option for procurement and why? [Para 62-76]**

As noted in our covering letter, we are not commenting on the questions relating to government procurement.

**Required information:**

**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? [Para 77]**

As noted previously, it seems sensible for the two systems to have as many points in common as possible as a consistent approach will simplify the administration of, and adherence to, the different regulations.

**17. Do you agree that entities unable to give information about beneficial ownership should be asked to provide information about their managing officers? [Para 84-90]**

We agree although, in our opinion, this does not remove the problem of not being able to identify beneficial owners. We refer to our response to question 1 which queries whether it is proposed that funds will fall within the scope of the provisions, and if so, how to address the potential difficulty of the fund managers not having the information needed to establish the extent to which investors hold beneficial ownership. In these cases, we suggest that it is reasonable that they should provide information about their managing officers, and should not be obliged to seek to identify beneficial ownership in advance as envisaged at paragraph 85.

**18. Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners? [Para 84-90]**

We have no comments in relation to this question.

**19. Is a requirement for an update every two years appropriate? [Para 91-94]**

We have no comments in relation to this question.

**20. Would a criminal offence be an appropriate way of enforcing the requirement to update information? [Para 91-94]**

We have no comments in relation to this question.

**Compliance:**

**21. Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets? [Para 98-103]**

The paper acknowledges the potential overlap between this new regime and other registration programmes (such as PSC, AML or the Overseas Companies Regulations 2009). We recommend that, as an alternative approach to creating an additional register, consideration could be given to enhancing one of the other registers in order to target any perceived 'gap'.

Exemptions should be available where overseas entities are incorporated in jurisdictions which already have a comprehensive and effective beneficial ownership identification regime (e.g. Jersey and Guernsey).

**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? [Para 104-111]**

We have no comments in relation to this question.

## Protection regime:

### **23. Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?** [Para 112-115]

We note that the aim is to create a register that “*is publicly and easily accessible*”.<sup>2</sup> However, we also note from the summary of responses to previous stages of consultation that, whilst most respondents were “... *in favour of a publicly managed register*”<sup>3</sup>, only nine respondents felt that it should be publicly accessible, compared with 15 who felt that it should not. The fact that a protection regime is considered necessary at all is recognition that unrestricted public access not only facilitates the well-intentioned civil society group or enforcement agency, but also those who are less well-intentioned. We consider that there are strong grounds for the submission of information to a publicly managed register with controlled levels of public access.

While the PSC register requirements note that a beneficial owner’s usual residential address is reported, but is not publicly accessible<sup>4</sup>, protection criteria 3 acknowledges that one outcome of the register is “*publicly linking the property ... to the individual*”. Where that property is a personal residence of that individual, they are likely to wish to retain an element of privacy over their ownership of the property and publication is likely to cause concerns regarding personal safety, property security or identity theft. We recommend that consideration be given to an additional criteria being added to allow for an application for suppression from the public register wherever the property is used as a personal residence by that individual (albeit that information would be required and available for access by designated bodies under appropriate provisions governing use and security of the data).

### **24. Are there additional situations we should consider where protections should be granted?** [Para 112-115]

Please see comments made in response to question 23 regarding security concerns.

We recommend that consideration should also be given to a protection where there are strong commercial reasons for keeping beneficial ownership private where confidentiality of ownership would ordinarily be necessary; for example to prevent an organisation being compromised on the formation of development sites (‘ransom strips’) or in potential enfranchisement situations.

There are also a number of practical implications of the protections process which need to be clarified, as follows.

- There is no discussion in the paper of any appeals process where a suppression application is refused (where the right to suppression is not automatic). We suggest

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<sup>2</sup> Paragraph 21 of the call for evidence paper

<sup>3</sup> Comments on question 2 from the summary of responses

<sup>4</sup> Paragraph 77 of the Call for Evidence document



that there is a need for a clearly outlined process, including the option of an application to court if necessary.

- It will be important that the application (and appeals) process can be undertaken in a timely manner so as to avoid delays to the property completion process.

**25. Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement? [Para 116]**

We have no comments in relation to this question.

**Third party protections:**

**26. How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it? [Para 117-120]**

We have no comments in relation to this question.

**27. We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime. [Para 117-120]**

We have no comments in relation to this question.

**28. Are there additional third party impacts that should also be addressed? [Para 121]**

We have no comments in relation to this question.