

UK property and public procurement: A register of beneficial owners of overseas entities

Proposals would see overseas entities required to disclose or dispose in relation to UK property.

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Contact	Lisa Black

Overview

Following on from the introduction of the register of people with significant control ([PSC register](#)) for UK companies and LLPs last year, the Government notes that the "UK is leading the world on improving corporate transparency". In this vein the Department for Business, Energy and Industrial Strategy (DBEIS) has issued a [call for evidence](#) seeking views on the proposal to introduce a free to view register hosted by Companies House of beneficial ownership information for overseas companies and other legal entities that:

- own or buy UK property, or
- participate in UK central government procurement.

(the Register)

The call for evidence notes that the Register will be the first of its kind in the world. Key themes which emerge for the reasons behind the Register are tackling corruption and ensuring that the UK is an open and transparent place to do business. Stated aims in relation to the Register are that it: contains useful information; is publically and easily accessible; protects those who are at risk of harm as a result of information about them being public and avoids disproportionate burdens or putting off legitimate investors.

In more detail

Some points of note from the proposals are set out below:

Who will be caught?

- All overseas legal entities that can hold properties or bid on central government procurement contracts will be in the scope of the new Register. The call for evidence asks whether there should be any exemptions and why.
- The definition of beneficial owners will reflect the approach in the [People with Significant Control regime](#) as will the information required about those beneficial owners. Entities will be required to check the information provided with the beneficial owners before it is disclosed. The call for evidence notes that this could create an unsatisfactory situation whereby, in light of the proposals set out below, a beneficial owner has in effect a "veto" over dealings with a property should they refuse to disclose their information and place that entity in a position of non-compliance in relation to property it already owns. Guidance will be provided about the reasonable steps an entity would need to take to find out about its beneficial owners. Where an overseas entity is unable to provide information about beneficial owners they will be asked to provide information about their managing officers instead. It is proposed that entities would be able to remove themselves from the Register if they no longer have a need to be on it. In addition there will be an option for individuals to apply to have their information suppressed based on risk of violence or intimidation or lack of capacity.
- If a beneficial owner who has significant control of an overseas entity is itself a legal entity which is required to provide information about its beneficial owners to a publicly accessible register, then the controlling entity's details can be provided for the purpose of the Register and there is no need to go further up the ownership chain.
- Overseas entities will also be required to provide certain basic information about themselves as well as their beneficial owners (name, legal form, incorporation details and basic contact details). Overseas entities who are required to be on the Register are likely to be charged a fee.
- In relation to property ownership, to avoid double reporting it is proposed that entities will be exempt who are incorporated in countries with equivalent disclosure requirements. The European Fourth Money Laundering Directive will require EU members to have beneficial ownership registers in place by June 2017.
- Research will be commissioned to look at the likely impact of these proposals on the UK economy.

How will the proposals affect property ownership in the UK?

- The intention is that there will be a statutory restriction preventing overseas entities from dealing with property in the UK unless they have provided information about their beneficial owners in the new Register, for which they will receive a registration number. The dealings which look to be caught are buying, selling, long term lettings and using the property as security for a loan. For those overseas entities that already own UK property there will be a 12 month transitional period during which they can choose whether to disclose or dispose.
- The Register will apply to those who own leasehold property where the lease is required to be registered and the original term is for more than 21 years.
- After any transitional period for overseas entities which already own property, the call for evidence proposes that a note will be entered on the title to the property which will prevent a dealing with the property unless the overseas entity is fully compliant with the new regime.
- For those overseas entities wishing to buy property once the Register is in force, once successfully on the Register, as noted above, they will receive a registration number from Companies House which will enable registration of the transaction and again a note will be placed on the title to the property reflecting the restrictions on dealing if the entity is not fully compliant with the new Register's requirements.
- In addition to the statutory restrictions and a note on the title to a property, the Government is also considering whether to make it a criminal offence to fail to provide or maintain information. This is to avoid the risk of those

overseas companies who already own UK property but who do not intend to deal with it failing to comply with the new regime.

- Land Registry forms across England and Wales, Scotland and Northern Ireland will be updated to require the buyer entity's registration number and the call for evidence states applications will be cancelled if they do not include this. The call for evidence states that the Land Registry will be able to use the registration number both to check the overseas entity has provided the required information and that it is up to date (it is proposed that the information on the Register should be updated at least once every two years). It is acknowledged that by linking this safeguard to registration the beneficial ownership of the property will still pass to the overseas entity and the seller would be left holding the property on trust. The Government notes that it wishes to explore ways to ensure neither legal nor beneficial ownership passes and one option suggested is that the transfer document is void if the overseas entity does not have a valid registration number.
- The Government also proposes that a transfer by an overseas seller would be void if the overseas entity is not compliant with the Register requirements at the time the contract completes.
- The call for evidence requests views on the length of transitional period and the proposals to ensure compliance.
- In relation to banks and other lenders, the Government notes that it is keen to ensure they are not affected should they provide or have provided a loan to an overseas entity who then fails to comply with the new requirements. The call for evidence seeks views on how the government best ensures only legitimate lenders are able to dispose of property with a restriction against it. In relation to new loans lenders will of course need to ensure that the overseas entity has complied before advancing funds.

How will the proposals affect procurement?

In short, all overseas entities wishing to enter into a government contract valued at over £10m will need to be on the Register before that contract can be finalised. The call for evidence notes that the Government is looking at options for entities incorporated in countries with equivalent disclosure requirements. The scheme will be mandatory for central government contracts and voluntary for wider public sector contracts. There are three options on the table:

- requiring the preferred supplier to provide its beneficial ownership information as a condition of being awarded the contract
- excluding bids from entities that have not provided beneficial ownership information. (Under procurement rules this could result in a three year exclusion from bidding for that contracting authority's contracts), and
- treating bids without specified beneficial ownership information as incomplete or non-compliant and rejecting them on these grounds. (This exclusion would apply only to the procurement exercise in question and would not result in a three year exclusion).

The call for evidence asks for preferred options with reasons. The call for evidence also looks at building in optional termination provisions into a contract should false or inaccurate beneficial information have been provided or if it is not maintained.

Comment

The Government's response to this call for evidence will be eagerly anticipated. Margot James the Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility notes in the ministerial foreword:

"We need to make sure the new requirements are workable and proportionate, such that the UK remains an attractive place for foreign investment. This call for evidence will help us test and refine our proposals to strike the right balance."

The proposals in relation to property could cause uncertainty for those looking to enter into contracts with an overseas entity, in particular if a contract was likely to be in place for longer than two years, when continued compliance by the overseas entity could not be guaranteed.

The call for evidence is open until 5pm on 15 May 2017.

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elexica Limited, CityPoint, One Ropemaker Street, London EC2Y 9SS