Department for Business, Energy and Industrial Strategy – Written evidence (ROE0011)

Summary

• The Government welcomes the Joint Committee’s scrutiny of the draft Registration of Overseas Entities Bill ("the draft Bill") and looks forward to receiving the Committee’s report.

• The 2017 National Risk Assessment of Money Laundering and Terrorist Financing identifies a specific risk to the UK from the use of ‘anonymous corporate structures’ to invest in UK property. It also highlights the fact that “property continues to be an attractive vehicle for criminal investment, in particular for high end money laundering” and “the risks relating to abuse of property are most acute where property is owned anonymously through corporate structures or trusts”.

• The Registration of Overseas Entities Bill seeks to address this risk by identifying the beneficial owners of overseas entities that own or plan to own UK property. This information is presently not available and primary legislation is required to achieve this, by way of a public register.

Objectives & scope

1. The registration of overseas entities regime is based on the UK’s People with Significant Control ("PSC") regime introduced in 2016 and administered by Companies House. The PSC regime requires certain UK entities to disclose information on their beneficial owners, and keep this information updated. It was introduced in order to increase transparency and reduce the risk of UK companies being used for illicit purposes. Over 99% of UK companies have now complied with the PSC regime. The draft Bill ‘mirrors’ the PSC regime in a number of ways, including:
   a. The same conditions for “registrable beneficial owners” (paragraph 17);
   b. Similar information requirements: we have been careful to ensure that as far as possible, UK companies and overseas entities are subject to an equal level of transparency (more details in paragraphs 16-20);
   c. Similar power to modify application requirements (more details in paragraphs 10-11); and
   d. A similar protection regime for innocent individuals at risk from public disclosure: the PSC register has a protection regime which allows a company or individual to apply to have information about an individual with significant control suppressed if the individual is at risk of violence.

or intimidation as a result of that information being made public (more details in paragraphs 23-25).

Impact of the register on overseas investment

2. The Department for Business, Energy and Industrial Strategy (BEIS) has continued to engage with industry, civil society and others to understand the impact of this policy. We received over 50 responses to our 2017 consultation, and around 30 responses to the overview document published in July 2018 alongside the draft Bill. The Government also commissioned independent research to understand the potential impact of the register on the UK property market. 30 qualitative surveys were undertaken supplemented by findings from a further 32 indicative, but not representative, quantitative surveys. Given the lack of transparency in the market, it proved difficult to trace and interview people involved with the sale and purchase of properties that would be covered by the proposed register; this on its own arguably confirmed the need for the new register. The research was published online, alongside the draft Bill in July 2018².

3. The outcome of the research and consultations indicates that stakeholders think that the introduction of the register will not have a significant adverse impact on overseas investment into UK property. Those anticipating a negative impact said the requirements would be perceived as an additional burden; others thought it could strengthen the UK’s image and show “good housekeeping”. Most stakeholders thought it would not have such an impact as to outweigh the advantages of investing in the UK property market. The register will be designed to improve transparency without harming legitimate investment, and be informed by evidence from our consultations.

Scope, including exemptions

4. The Government has given careful consideration to the important question of scope – seeking to ensure the register captures as much information as possible within the bounds of what is both reasonable and practicable. There are several types of legal entity that can own land in the UK, and jurisdictions around the world provide a number of routes for individuals to create these entities. As one of the aims of the regime is for it to be workable, we have therefore kept the definition of “overseas entity” fairly broad, ensuring that we do not exclude from scope of the requirements any types of entity that we would wish to capture.

5. On publication of the draft Bill, the Government also published an overview document which sought views on technical issues, including whether there are any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route

to be able to comply. Overall, there were so few responses to this question it is reasonable to consider that the scope is appropriately wide.

6. The draft Bill includes a power to exempt certain types of overseas entities (clause 30), and views were sought about the use of this power, for example, where it is not possible to “look through” an overseas entity to identify a beneficial owner. We consider it appropriate to include this power to keep the regime relevant and workable, in the event there is a legal entity overseas in scope of the requirements but without a route to comply. There are other reasons it may not be appropriate for some entities to be subject to the requirements. Respondents generally agreed with this rationale, and that it may be appropriate for foreign governments to be exempt from the regime (as they may struggle to identify a person that meets the definition of a “registrable beneficial owner”).

7. The Government is considering if there are other types of entity, such as international organisations (e.g. the United Nations) that it may be appropriate to exempt from the regime. BEIS is working closely with colleagues in the Foreign and Commonwealth Office (FCO) to ensure that the proposals are workable and have no unintended consequences. BEIS will continue to engage with the FCO as we move towards the drafting of secondary legislation.

8. Secondary legislation will outline further details, including any types of entity that are exempt and any evidence required to demonstrate that an overseas entity is or was exempt (e.g. a conveyancer’s certificate).

**Trusts**

9. Most trusts are not legal entities that can hold property and are therefore not in scope of the draft Bill. If a trust is holding land via an overseas entity, the entity must register with Companies House and in this scenario we would expect to see the trustees recorded as the beneficial owners (schedule 2, paragraph 6, condition 5). The Government has already taken action to ensure that information about the beneficial owners of trusts is available to law enforcement. There are existing measures requiring trusts with a UK tax consequence to provide information about themselves and their beneficial owners to HMRC and these measures are set to be widened with the expected transposition by the UK of the 5th EU Anti-Money Laundering Directive. For these reasons the Government considers that the scope of the draft Bill is appropriate. The decision not to include trusts within the register of overseas entities is also consistent with the PSC regime.
The power to modify application requirements (clause 15)

10. The draft Bill includes a power to modify the application or update requirements of overseas entities. Stakeholders told us that we should ensure that entities already providing information to an equivalent public register should not have to provide the information again. The Government agrees and wishes to avoid duplication and placing additional burdens on overseas entities that are already providing an appropriate level of information and transparency publicly elsewhere (e.g. in a register in their own country). In this scenario, we would consider changing or reducing the information overseas entities have to provide in order to become registered.

11. The 5th EU Anti-Money Laundering Directive requires all EU Member States to make public their registers of beneficial ownership of companies incorporated in their territory. The transposition deadline for this Directive is January 2020. The UK is already compliant with this requirement. If the power to modify the application requirement is used in relation to EU companies, in practice it will mean that EU companies will not have to provide full details of their registrable beneficial owners to Companies House and can instead point Companies House towards the register where that information is held.

Operation of the register

12. The register will be held at Companies House, which was selected as it is the Government agency with the most relevant operational expertise. The register will be stand-alone, unlike the PSC register which is integrated within the broader register of UK companies. But it will be accessible through the Companies House web-pages in a similar fashion as existing information held by that agency.

13. Companies House will have a statutory duty to register the overseas entity in the register of overseas entities and allocate an ID upon completion of a valid application form. This mirrors the current statutory duty of Companies House in relation to the registration of UK companies. Information on applications to register by overseas entities will be subject to the same level of scrutiny as applications by UK companies. The same level of scrutiny will apply whilst the overseas entity continues to be a “registered overseas entity”. Currently Companies House undertake a number of checks and validations on all information received and act on intelligence received on possible false filings.

14. The Government has already indicated that it intends to consult on a package of reforms to enhance the role of Companies House to ensure it is fit for the future and continues to contribute to the UK’s business environment. This consultation will include consideration of possible reforms to improve accuracy and searchability of the information held at Companies House, and give them greater powers to query and check the information submitted to it.
15. The Government would consider whether any such reform would be appropriate for the forthcoming register of overseas entities.

**Information on the register**

16. The draft Bill is designed to deliver a register that ensures that for the first time, natural persons, as opposed to a corporate entity, associated with legal entities owning UK property are known and can be contacted. Information requirements have been modelled on the PSC register, as have the associated offences for non-provision of the required information.

17. Schedule 1 of the draft Bill sets out the information required about an overseas entity, its beneficial owners, and where required, its managing officers. The draft Bill contains a Henry VIII power (Schedule 1, Part 5) to change the information requirements via secondary legislation. This power is subject to the affirmative resolution procedure. This is to futureproof the draft Bill so that the lists can be reviewed, and amended as necessary, ensuring that flexibility is retained to deliver the policy objectives whatever the external developments may be.

18. It is important that information held about an overseas entity and its beneficial owners is accurate and up to date. Overseas entities are required to confirm information with their beneficial owners before registering at Companies House (this is also the process for the PSC regime).

19. There are a number of sanctions in the draft Bill that mirror existing filing-related offences in the Companies Act 2006 and promote the accuracy of information on the register. For example, it is a criminal offence to provide a false statement (clause 28); and if the overseas entity fails to resolve inconsistencies in the register that have been detected by Companies House (clause 23).

20. Making the register public means the information can be accessed by many users, who can report any errors, omissions or anomalies in the data (although certain sensitive information will be protected, and not publicly available on the register; this is discussed in paragraphs 23-25).

**Beneficial owners**

21. The draft Bill strikes a balance between allowing for legitimate situations where no beneficial owner exists or can be identified, whilst ensuring that some contact details are provided for all entities. It allows an overseas entity to register if, despite taking reasonable steps to identify its beneficial owners, it has been unable to do so, or, it has been able to identify them but has incomplete information about them. In these circumstances, the entity must provide any information it has about its beneficial owners and provide information about its managing officer(s): that is, a person holding the general powers of a director of the entity.
22. On publication of the draft Bill, we asked if overseas entities unable to identify their beneficial owners should be able to register (if they provide information about their managing officers), as currently provided for in the draft Bill. Many respondents considered this should be possible in fairly defined circumstances, such as an overseas partnership that is a legal entity, which would be set out in secondary legislation. We are working with stakeholders to determine whether it might be appropriate to mandate that where managing officer details are provided, they must be those of a natural person rather than, e.g. a company.

Protection regime

23. As is the case with the PSC regime, the Government is seeking to strike an appropriate balance between greater transparency whilst not putting innocent individuals at risk from disclosure. Stakeholders have drawn attention to the particular risks faced by wealthy and/or famous people.

24. Some details about beneficial owners will not be publicly available: for example, only the month and year of a beneficial owner’s date of birth will be public, not the day of the month and their usual residential address. This is outlined in clause 20 of the draft Bill.

25. The draft Bill includes a power for the Secretary of State to make, by secondary legislation, provisions requiring Companies House to, on application, make information about an individual unavailable on the public register (clause 22). Exactly how this power might be used and in what circumstances will be set out in secondary legislation. We propose that it will include protection for those who might be at risk of serious harm should their information be publicly available (as with the PSC regime). We are currently considering whether there are other circumstances in which protection might be appropriate, for example, where the risk of harm to an individual or others may be increased by the individual’s association with the property being known. It is our view that such circumstances will need to be tightly defined to prevent the provisions from abuse.

Compliance & enforcement

26. It is important that the legislation includes the right incentives to drive compliance, coupled with proportionate sanctions for those who do not comply.

27. In order to deliver the policy aims, a two-pronged enforcement mechanism was devised through (i) land registration restrictions for non-compliant entities in England and Wales, Scotland and Northern Ireland (taking into account differences in land registration laws in each jurisdiction), to discourage transactions in land involving non-compliant overseas entities, and (ii) criminal sanctions
28. The main enforcement mechanism will be the restrictions on non-compliant overseas entities and third parties from registering legal title to the land after certain transactions (see (i) above); this will be a strong incentive for overseas entities to comply. In practice we expect third parties to be reluctant to transact with the overseas entity unless it is compliant.

29. The draft Bill also contains criminal sanctions for those that do not comply with the regime’s requirements. The Insolvency Service will have responsibility for taking forward prosecutions.

Consistency across the UK

30. The Government intends the regime to work as consistently as possible across the UK via existing land registration frameworks, subject to certain differences in those frameworks between England and Wales, Scotland and Northern Ireland.

31. The length of registrable leases caught by the draft Bill’s provisions differs between each of the jurisdictions because of existing land registration law, which outlines which leases must be registered at the different land registries. We consider that although there are differences in the registrable leases within scope of the regime, the register is workable across the UK.

32. On publication of the draft Bill, we asked stakeholders if the scope of the prohibitions on land was appropriate, and apart from some technical suggestions on the drafting of the provisions for Scotland, no respondents considered that the scope was unfair.

Exceptions and Third Parties

33. The Government is conscious of the potential impact that the land restrictions might have on third parties. Where an innocent third party has suffered detriment, it may be unfair, given the potential costs and time required, to expect them to have to go to court to try to remedy the situation. We asked in our overview document whether we should include within the Bill a power to disapply the effect of the prohibitions placed on land that could be used in certain defined circumstances. Respondents overwhelmingly believed that there should be such a power, and we are considering whether to include this new power to protect third parties, with stringent guidelines as to when it would apply. Such a power will need to be limited to the effect on innocent third parties to ensure that it is not open to abuse.

34. On publication of the draft Bill, we also asked if there were any other exceptions to the prohibitions on land that result from non-compliance that should be included within the draft Bill. The draft Bill currently includes exceptions to the prohibitions on land in three main scenarios: (i) where there is a statutory duty or court order; (ii) where a contract was entered into before the land restrictions were put into place, and (iii) where the
holder of a loan or mortgage secured on the land seeks to exercise its power of sale or lease. A number of respondents suggested that the exception allowing a sale of land by a receiver acting on behalf of the holder of a registered charge should be widened to include other insolvency practitioners. We are considering whether and how to appropriately widen this exception.

Raising awareness of the new register and requirements

35. It is important to ensure that awareness of the regime is communicated effectively. BEIS is already engaging with stakeholders to raise awareness of the new register and its requirements. BEIS intends to work with Companies House, the land registries and relevant sectors to assist them in providing guidance, and will undertake comprehensive communications about the regime ahead of the register becoming operational. Following the call for evidence published April 2017, BEIS received a number of suggestions of methods of raising awareness that would be most effective, which are being considered.

Delegated powers

36. The draft Bill includes 15 delegated powers. Most of these powers are based on existing powers in the Companies Act 2006 relating to UK companies, with seven the powers based on the PSC regime. We consider the powers to be reasonable and proportionate in order to implement the finer detail of the register of overseas entities and having the additional benefit of allowing a faster response to changing circumstances and on-going monitoring.

37. Seven of the delegated powers require affirmative resolution, and seven are subject to the negative resolution (plus one standard commencement power). All three of the Henry VIII powers are subject to affirmative resolution. We consider that each power is subject to a suitable level of scrutiny. The Government will consult on the secondary legislation following Royal Assent of the Bill.

Conclusion

38. The Government welcomes the Committee’s scrutiny, which will help ensure the draft Bill delivers an effective register. People come to the UK confident in our high corporate standards, including market transparency, which fosters confidence and trust. The primary objective of this draft Bill is to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK. We believe that this Bill will play an important part in the UK’s efforts to tackle the use of UK property in this way and the scrutiny it is currently undergoing will help us to
ensure that it is robust and comprehensive. This novel and complex Bill is a worldfirst, and will cement the UK’s reputation as a world leader in corporate transparency.

20 March 2019