The Law Society of Northern Ireland – Written evidence (ROE0012)

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor’s profession in Northern Ireland and to represent solicitors’ interests.

The Society represents over 2,800 solicitors working in approximately 500 firms, based in around 65 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor’s profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

Introduction

1. The Law Society of Northern Ireland (‘the Society’) welcomes the approach from the Joint Select Committee to ascertain our views on the provisions of the Draft Overseas Entities Bill (‘the Draft Bill’). The Draft Bill is seeking to implement a register (the Register) that would require overseas companies and other legal entities that own property (i.e. real estate) in the UK to identify their ultimate principal beneficial owners.

2. The Society continues to support the policy objective of ensuring that the UK is a clean and safe place to do business. The Society welcomed the recent positive Financial Action Task Force Mutual Evaluation Report (MER) of the United Kingdom’s AML/CTF regime, recognising the UK’s AML/CTF regime as the strongest of any country assessed to date. It is noted that the proposed Register was cited in the MER (paragraph 441).

Policy Issues

3. The Society is interested in the question as to what interested parties will do with the information available on the Register and/or provided to the Registrar. For example, the information required to be provided as per
the Draft Bill does not appear to include details of criminal convictions (unlike, e.g., Regulation 26 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (‘the Money Laundering Regulations 2017’). Publication of beneficial owners’ details alone may not be a sufficient deterrent to prospective/actual overseas money launderers. This raises the issue of whether prohibition of those with relevant convictions being permitted on the Register might better achieve the aims of the legislation. Also, there is a risk that registration on the Register may imply legitimacy of the entity to the detriment of further consideration/investigation of a proposed transaction. It will be important to consider the impact of the Register in the round as part of a comprehensive AML/CTF approach.

4. The Society notes that it is important to consider who will be responsible for checking/verification of the information provided by the overseas entities to the Registrar. In particular, it should be determined whether Companies House has the resources and capacity to undertake this or will the Register be largely based on self-declaration by an applicant. The operational effectiveness of the Register in achieving its purpose should be scrutinised closely at an early stage.

5. It is not clear whether overseas ‘individuals’ are intended to be within the scope of the Draft Bill and how this would be implemented. The definition of “legal entity” (Section 2 (2) of the draft Bill) is arguably unclear on this point – “a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed” (emphasis added). If overseas individuals are not intended to be within scope, this could create a potential gap in the protection provided by the Draft Bill.

6. The Society understands that trusts may not be intended to be within scope. However, it is noted by way of comparison that registration of UK Trusts is under consideration in relation to implementation of 5MLD. On that basis, it may be timely to consider whether these should be captured by the Draft Bill.

7. Ultimately, policing the Draft Bill may in practical terms rest with conveyancing solicitors, who will have to determine if their client is an overseas entity as defined in the Draft Bill. This continues to increase the burden and responsibility on the conveyancing solicitor and it will be important to clarify the scope of the responsibilities in this respect and to ensure clear and comprehensive guidance is available on the operation of the legislation.

8. The Society notes there is a risk that the Draft Bill may give rise to dilution of the current AML/CTF regime and the client due diligence
requirements therein (CDD). For example, will persons presently subject to the Money Laundering Regulations 2017 still be required and/or in effect carry out CDD on registered overseas entities or will they simply rely on the registration in the Register of overseas entities as sufficient assurance? Again, this point goes to the importance of ensuring the Draft Bill complements and reinforces existing protections and does not give rise to unintended effects.

**Specific Provisions within the Draft Bill**

9. The Society notes that the ‘qualifying estate’ does not include obtaining a charge on the land. This could create a potential gap in protection in the short term. For example, where (a complicit) UK entity/individual acquires the freehold/leasehold estate in land by way of loan from an overseas entity and then the UK entity/individual charges the land in favour of that overseas entity. Consequently, the overseas entity has invested money and acquired an interest in land without having to become a registered overseas entity (albeit, it may ultimately need to become so registered to enforce its charge if the UK entity/individual were to default).

10. Free cancellation in the Land Registry of the inhibition envisaged in the Draft Bill could also be considered as a means of improving the operation of the legislation.

**Considerations for Northern Ireland**

11. It is worth considering whether the difference in lease terms as per the Draft Bill (any lease in Scotland, more than 7 years in England and more than 21 years in Northern Ireland, which reflect jurisdictional differences in land law) and the absence of any retrospective application in Northern Ireland increases the risk of ML/TF in the Northern Ireland property market in the period leading up to enactment of the Draft Bill.

12. A related issue is the extent to which Land Registry in Northern Ireland has the capacity/resources to fulfil its obligations under the Draft Bill or whether Land Registry NI will in practice seek to pass these obligations onto the conveyancing solicitor. For example, they may require the conveyancing solicitor to include the inhibition in their application and/or certify all required details for the applicant, shifting the burden of compliance. Clarification on the parameters of this responsibility for the various interested parties in this legislation would be welcome.

13. It is clear that Republic of Ireland entities will be within scope of the Draft Bill. It may be appropriate to consider distinguishing between those
overseas entities from countries who have equivalent AML/CTF regimes such as the US or those in the EU and those from countries who do not. This distinction would be objectively justifiable on the basis of partnerships between nations with similarly robust AML/CTF regimes and again serve to clarify roles and responsibilities in respect of the legislation.

Conclusion

14. The Society welcomes the opportunity to submit a response to the Joint Committee in respect of this matter. Our commentary has been directed towards ensuring the legislation is effective, efficient and can be implemented smoothly and with due regard to its place within the existing AML/CTF architecture. The Society trusts our contribution is constructive and is happy to discuss any of the issues raised.

20 March 2019