



Beneficial Ownership Transparency

ICAEW welcomes the opportunity to comment on the *Beneficial Ownership Transparency* paper published by BIS on 4 March 2016, a copy of which is available from this [link](#).

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MAJOR POINTS

1. We are making this response on the basis of very limited consultation with our members reflecting the short timeframe allowed for responses.
2. ICAEW have previously responded to Government consultations on beneficial ownership transparency (regarding beneficial ownership registers for UK Companies). These were submitted on 17 September 2013 and 17 July 2015. We queried both the necessity and the value of making such registers public and these considerations are also relevant to the proposals in this consultation, as are concerns around the operational practicalities and the quality control over submitted information. However, The Small Business Enterprise and Employment Act 2015 has created an uneven playing field for UK Companies and we are therefore supportive of measures to address this, including the proposed registries, and it is difficult to see that these registers could reasonably be kept private when those of UK companies are required to be made public.
3. The relative usefulness of beneficial ownership information for a company purchasing UK property is questionable. It is perhaps less likely that a person engaged in corrupt practices will set themselves up as the beneficial owner of a company that purchases land or property in the UK. It may therefore be much more helpful to establish the credibility of the sources of funds used for the purchase.
4. We believe that the Land Registry would be best placed to gather and hold such information, and that this would be the most efficient approach to achieving the goals outlined. However, in the interests of transparency and reliability we would urge the Government to ensure that adequate due diligence is carried out on the information at point of submission, and to bring the UK company register of Persons with Significant Control in line with such an approach. This would go some way to mitigate the significant duplication of time and effort (and therefore costs) inherent within the Anti Money Laundering regime.

RESPONSES TO SPECIFIC QUESTIONS

Q1: UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?

5. We are supportive of the desire to seek a level playing field as far as possible, and to address what is currently a major gap in the UK Company PSC register. Accordingly, if such a registry were to exist it would need to be public.

Q2: Do you have any views on the options for holding information set out above?

6. There is a strong argument for this information to be collected and stored by the Land Registry given the nature of the information currently required to be submitted to it on sale/transfer of property. The Land Registry will also currently hold existing information on the at least part of the chain of ownership such that new supplementary can be added rather than establishing an entirely new database (and new level of bureaucracy) in another government department.

Q3: Are there any additional considerations for where and how the information is stored that we should consider at this stage?

7. We understand that no quality assurance is to be undertaken on the information submitted to Companies House under the PSC regime. We would urge that a similar approach is not adopted here but would suggest that ongoing reviews of the quality of information held on such a registry will be difficult since changes in ownership of foreign companies cannot be effectively monitored on a unilateral basis.

Q4: What information about their beneficial ownership should foreign companies be asked to provide?

8. We see no reason why the information requested should differ from that under the UK Company PSC regime, although the regime is so complex that it can be supposed that foreign investors would need to seek advice on its application and this would add to the costs of investment. The UK Company PSC regime permits enquiry to be made of third parties, such as professional advisors and failure to respond is a criminal offence. It is not clear to us how this aspect of the regime could be made to work in respect of overseas third parties.

Q5: Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?

9. It would be illogical to apply such requirements only to new purchasers however there will be practical difficulties in gathering beneficial ownership information for property already held. Particularly as many of these properties may well have been purchased prior to the introduction of Anti Money Laundering regulations. One solution would be to extend the requirement to “before sale” as well as to “before purchase”, thus creating a transactional trigger at a time where a potential seller would be motivated to provide the information. However, it would appear that a submitter of information simply needs to declare that there are no beneficial owners and the keeper of the register would not be expected to question this. Adequate safeguards need to be built in to ensure that the assets frozen are corrupt. As far as we can see the best that can be expected is that assets are frozen simply because formal requirements are not met, even in the absence of corruption.
10. It is likely that if the need to register is not extended to existing owners, the market price of holding entities will increase, thus benefitting corrupt owners who will instead sell the equity in their holding companies as a means of laundering whilst refraining from purchasing new properties.
11. As indicated in paragraph 7 the success of extending the requirements to foreign companies that already own UK property will depend largely on the sanctions for not obtaining beneficial ownership information. See our response to Question 9.

Q6: Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?

12. Yes

Q7: What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into public contracts?

13. No comment.

Q8: How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

14. We note remarks in the consultation document around the difficulties in enforcing criminal penalties against overseas owners. This difficulty is exacerbated when considering the sale of overseas companies rather than the assets within them. It would therefore seem that the most appropriate measures would be economic - to block purchases/transfer of title where acquiring companies fail to fulfil the requirements, and to freeze appropriate assets where selling companies do so. Where assets are frozen, this would give the relevant authorities time to establish if corruption has been involved and potentially improve the UK's track record on asset recovery. Fines based on the value of the property and length of delay may also be appropriate where successful enforcement is considered probable.

Q9: What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:

- a) in the case of new foreign companies acquiring land or property in England and Wales; and

- b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

15. See response to Q8.

Q10: Do you agree that knowing the beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straight forward approach towards the procurement?

16. Absolutely, and we are extremely concerned that Government is not already seeking or requiring this information.

Q11: Do you agree this £10 million threshold would be appropriate for the ideas set out below?

17. No comment.

Q12: What are the potential benefits and burdens for contracting authorities and for bidders of the approach in option A? Would it provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?

18. This is difficult to answer in the absence of knowledge about overseas registers, for example their content and availability. As far as we are aware very few EU countries are following the UK in establishing public registries, which may well lead to an increase in UK activity undertaken through EU Companies.

Q13: What are the potential benefits and burdens for contracting authorities and bidders of the approach in option B? Would the 3 year exclusion period be proportionate?

19. One advantage here is that the UK would have all relevant details in a consistent format to justify equality of handling and make it easier to process and publish.

Q14: What are the potential benefits and burdens for contracting authorities and bidders of the approach in option C (procurement)?

20. No comment.

Q15: What are the potential benefits and burdens for contracting authorities and bidders of the suggested variation of option C (procurement)?

21. No comment.

Q16: How does the approach in option D (procurement) compare with options A-C in practical terms? What are the potential benefits and burdens of option D for contracting authorities and bidders?

22. Entities should know at the start of the process whether they are prepared to disclose. There seems a possibility for considerable waste of taxpayers' money if negotiations are undertaken with those who subsequently fail to comply. However, there does appear to be a case for an ongoing obligation to notify of any change in matters that are important to the procurer, in this case a change in beneficial ownership.

Q17: What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?

23. Government contracts should include civil penalties to cover the costs to the taxpayer of the government cancelling a contract (and re-running the bidding process) because of failures to disclose true beneficial ownership.

24. It is unclear what is meant by "contracts awarded in England" (paragraph 75). Will a contract awarded by an English authority always be included? It could theoretically include a contract with an English authority for delivery of services overseas, a contract with a UK authority based in England but for delivery partially in England and partially in Wales, or a contract with a Scottish authority for delivery in England.

Q18: Are there other options potentially available to Government regarding procurement, which would achieve the same aims overall, that have not been set out here? If so, what are the associated likely practical constraints and benefits?

25. Government departments should carry out due diligence on bidders in the same way that the private regulated sectors are required to carry due diligence on their customers under Anti Money Laundering regulations, and we are very concerned if they are not already doing this. Especially since Government contracts involve significant amounts of tax-payers money. If the above proposals are meant as an alternative to that taking place then they will only be effective if any public register established can be relied upon. This would seem unlikely given that the Government have confirmed that obliged entities cannot rely on the already legislated register of beneficial owners of companies for the purposes of client due diligence.

Q19: Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

26. This would appear to be a reasonable assertion however the approach will only be effective if adequate measures are taken to ensure the information is accurate. Additionally, the relative usefulness of beneficial ownership information for a company purchasing UK property is questionable. It is perhaps less likely that a person engaged in corrupt practices will set themselves up as the beneficial owner of a company that purchases land or property in the UK. It may therefore be much more helpful to establish the credibility of the sources of funds used for the purchase.

Q20: What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

27. Nothing if the register were public. If not then there could be reciprocal agreements established for the exchange of such information.