



DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL - CALL FOR WRITTEN EVIDENCE

Issued 18 March 2019

ICAEW welcomes the opportunity to comment on the call for written evidence on the draft registration of overseas entities bill published by the Joint Select Committee on 1 March 2018, a copy of which is available from this [link](#).

Given the consultation period is less than 12 weeks, the Joint Select Committee should be aware of the resulting limitation in respondents' processes for preparing a response and the ability of the Joint Select Committee to draw valid conclusions from the consultation exercise. We refer to government guidance regarding consultations

<https://www.gov.uk/government/publications/consultation-principles-guidance>

This ICAEW response of 18 March 2019 reflects consultation with the Money Laundering Sub-Committee; a sub-committee of the Business Law Committee. The Business Law Committee includes representatives from public practice and the business community, and is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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KEY POINTS

1. We are making this response on the basis of very limited consultation with our members, reflecting the short timeframe allowed for responses.

Will the public register as established by the draft Bill effectively deliver the policy aim of preventing and combatting the use of land in the UK for the purpose of money laundering or investing illicit funds?

2. We note the policy objectives of the bill are preventing and combatting the use of land in the UK for the purpose of money laundering or investing illicit funds. We believe that the establishment of the proposed register may have some deterrent effect on these activities. We would caution however that serious criminals intent on using the UK property market for these purposes are likely to provide false information in relation to the beneficial ownership of the properties they acquire. There would be challenges in verification of the information provided, especially when it relates to ownership vehicles in unfamiliar foreign jurisdictions.
3. We would suggest that the effectiveness of the existing UK company register of persons with significant control is evaluated before the extension to a register of overseas companies. In particular, the evaluation should consider whether there is evidence that the UK company register has significantly prevented or deterred the use of UK companies for money laundering.

Will the proposed register have a dampening effect on overseas investment into the UK property market? Is this a necessary consequence of increased transparency?

4. To minimise the dampening of overseas investment in the UK property market by overseas investors, the registration process needs to be simple, efficient and low cost. We are concerned that the potential criminal sanctions proposed for administrative oversights may be too heavy handed.
5. Of concern to legitimate investors is the public disclosure element of the register, which we consider is unnecessary. By way of just one example, many high net worth individuals that our members have advised are extremely concerned about personal security, both on their own behalf and also for family members. Law enforcement access to the register would be a proportionate use of the data, but we would query the both the necessity and the value in making such registers public.

Are the conditions for “registrable beneficial owners” appropriate? Are they sufficiently clear (i) for overseas entities with different ownership structures to be able to determine which individuals or legal entities are registrable, and (ii) to capture different types of legal entity?

6. While the conditions for “registrable beneficial owners” are appropriate for UK entities, we question how easily these conditions can be transposed for some overseas entities with different ownership structures, and subject to different legislative systems. This may lead to uncertainty in foreign jurisdictions as to who should be registered, and clarifying guidance may be required for a number of types of overseas corporate vehicle.

Should other types of entity (such as trusts) be included in the scope of the draft Bill?

7. We note that a trust register already exists for UK trusts. We would suggest that any extension of the Overseas Entities Bill to trusts should follow a review of the effectiveness of the UK trust register. In particular, whether evidence suggests that the inclusion of trusts within the scope of beneficial ownership registers significantly prevents or deters the use of trusts in money laundering.

Are the proposed powers allowing the Secretary of State to exempt or modify application requirements for certain types of entities appropriate? Under what circumstances should these powers be exercised?

8. The need for the Secretary of State to exempt or modify application requirements is likely to derive from the complexity of overseas entity ownership structures. It should be anticipated that many types of entities potentially in scope of the draft bill will need modifications to their applications.

Are the information requirements sufficiently comprehensive? Are there other types of information that it would be useful to include? Conversely do the requirements place an undue burden on entities?

9. We consider that the information requirements are sufficiently comprehensive, but the proportionality of collecting this information should not be overlooked. It may be proportionate for law enforcement agencies, government agencies and relevant professionals with a clear and legitimate interest to have access to this level of detail. However we would question the legitimate need for public access, and the consequential impact on the privacy of those registered.

What controls should be in place to verify the information provided to the register?

10. For the information held on the register to be of any value, some form of verification of the information gathered will be necessary. To achieve this, Companies House would need to perform some due diligence on the information provided. We note that very limited due diligence is currently carried out on the UK company register of persons with significant control, and suggest that this should be brought in line also. If Companies House were to conduct due diligence on the information they receive, this could in turn be used by those in the regulated sector as a source to rely on for their own client due diligence.

Does Companies House have sufficient capacity or resources to administer and monitor the register?

11. If Companies House has insufficient resources to perform due diligence on the registration information, then we strongly recommend that their resources are enhanced to enable them to do so. In particular, an understanding of the different corporate entities in overseas jurisdictions will be paramount to allow effective verification to be performed. Furthermore, ongoing reviews of the accuracy of information held on the register will be difficult since changes in ownership of foreign companies cannot be effectively monitored on a unilateral basis.

Does the draft Bill provide sufficient protection for individuals who could be put at risk by having information about them made publicly accessible?

12. As detailed above, we are concerned about the impact this register would have on the privacy of those registered.

Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences a comprehensive and practical way to ensure compliance?

13. The proposed statutory restrictions on registering property are a reasonably proportionate sanction for non-compliance. However, to issue criminal sanctions for administrative breaches will serve only to penalise predominantly legitimate investors.