

SRA response

Joint committee on the draft Registration of Overseas Entities Bill

Published on 27 March 2019

Introduction

The SRA is the regulator of solicitors and law firms in England and Wales. We work to protect consumers and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

We are the largest regulator in legal services in England and Wales, covering around 80% of the regulated market. We oversee around 192,000 solicitors and more than 10,400 law firms.

Our submission is focused on the areas where we are able to comment. We are very supportive of the drive for greater transparency in the ownership of property and assets held in the UK. We believe that the Bill is helpful in seeking to prevent the investment of laundered money in UK property, however it could go further. We take our responsibilities as an AML supervisor very seriously and are fully committed to playing our part in tackling money laundering. Legislation to help increase transparency in ownership is an essential step in deterring money laundering.

Our position on the objectives and scope of the Bill

We strongly support the drive for increased transparency in the holding of UK property and assets to combat money laundering and corruption. The draft Bill, in and of itself, will not deliver the policy aim of preventing the use of land in the UK for the purposes of laundering money or investing illicit funds, but it is a useful tool in combination with other measures. The requirement for beneficial owners of entities to be registered is a useful starting point, but we are concerned that the definition of entities appears to exclude trusts and other similar arrangements from the requirement. This could drive the holding of UK land into trusts. Therefore those attempting to conceal ownership arrangements in order to facilitate their ability to launder money will be able to continue to do so, limiting the extent of the Bill's ability to achieve those aims.

We recommend that the requirement to register beneficial owners should be equivalent across trusts and entities.

We believe that enforcing the requirement to update information will be challenging, as this is placed on the entity itself to register its beneficial owners. The penalty for failure to update information is limited to a fine (clause 8) which may be an insufficient deterrent, and may simply be considered a cost of doing business by those wishing to launder money.

The introduction of the proposals may initially see some flight from overseas investment into the UK property market, as those with holdings in property bought with money from questionable sources may seek to move assets. We believe it will largely act as a deterrent to those seeking to invest questionable sources of wealth - the desired outcome from the Bill.

Operation of the register

We believe that Companies House would require significant additional resources to administer and monitor the register. The information held at Companies House is held on a self-declaration basis and we would be concerned that the proposed model would include unverified information.

We would instead suggest that the information should be submitted or held in a manner where it can be verified, for example by Land Registry. It would also be more logical for information about entities and beneficial owners to be held by Land Registry, alongside existing information about property ownership.

The Bill provides sufficient protections for those individuals who could be put at risk by having information about them made publicly accessible. However we would expect the provisions that exempt an individual's information from publication to be used sparingly and kept under review to make sure they are being used appropriately. There should be a right of appeal against the decision not to publish information, exercisable by the person or applicant who had made the original application, or their representative.

Compliance and enforcement

There would need to be a significant exercise during the transitional period by Companies House in order to create the register, and an ongoing investment to keep it up-to-date. Although the Bill makes provisions to ensure that non-compliant entities would be restricted from buying land in the UK, this does not apply to land already held. A restriction on selling land would be difficult to enforce unless the beneficial owners had been registered and a restriction placed on the title by Land Registry.