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Transparency & Integrity Team
Department for Business, Energy & Industrial Strategy,
1st Floor Victoria 1
1 Victoria Street,
London, SW1H 0ET

17 September 2018

Dear Sirs,

Draft Registration of Overseas Entities Bill

The Association of Real Estate Funds (**AREF**) welcomes the opportunity to respond to the July 2018 Overview and Questions paper issued in relation to the Draft Registration of Overseas Entities Bill.

We respond to each of the questions posed in the paper before touching below on some areas of general concern:

1. Types of overseas entities that may not have beneficial owners or managing officers (page 12)

Question 1.1: Are there 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? Please provide evidence.

Response: None of which AREF is aware.

2. Power to exempt types of overseas entities from the requirement to register (pages 12-13)

Question 2.1: Is it reasonable to keep the current requirements (described at paragraphs 18 and 19) applicable as they relate to foreign governments and public authorities as beneficial owners? If not, how can the regime be modified to keep with the intent of the policy?

Response: Yes, but care may need to be taken in the context of those foreign governments or public authorities which are, for example, subject to UK and other international anti-corruption sanctions. There should be a clear prohibition (whether in this legislation or elsewhere) on those entities being capable of being registered and acquiring UK property in the first place.

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Question 2.2: Do you consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register? Please provide evidence as to why this should or should not be the case.

Response: see 2.1 above.

Question 2.3: Are there other types of overseas entities that you consider should be exempt from the regime? If so, please explain why and provide evidence.

Response: See 3.1 below in the context of certain overseas fund vehicles and fund holding entities which could be (wholly or partially) exempt from the full application requirements to encourage and facilitate transactions undertaken by the regulated UK asset management industry and UK foreign direct investment. Query whether full exemption might be appropriate?

Question 2.4: How should the power described at paragraph 18 be exercised to apply in a coherent and workable way in relation to these types of entities (referred to at Questions 2.2 and 2.3 above)?

Response: The exemption regulations produced by the Secretary of State could exempt (a) overseas fund entities which are managed, advised or administered by regulated investment managers, advisers or administrators in the UK or other AML-equivalent jurisdictions; and/or (b) overseas holding entities which are owned by (and are holding entities for) UK or overseas fund entities of the type referred to at (a) (on the basis that investor AML requirements would already be applied by the relevant regulated service providers to the relevant fund.)

3. Power to modify the application of the regime for types of overseas entities (pages 13-14)

Question 3.1: Are there other types of overseas entities that you consider should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty? If so, please explain why and provide evidence.

Response: See above – if full exemption is not considered appropriate for (a) overseas fund vehicles which are managed, advised or administered by regulated investment managers, advisers or administrators in the UK or other AML-equivalent jurisdictions; and (b) overseas holding entities which are owned by (and are holding entities for) UK or overseas fund entities of the type referred to at (a), partial exemption should be made available such they may be required to register but should not have to provide beneficial ownership or managing officer information (which would be held by the regulated service providers).

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Question 3.2: Do you consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified? Please provide evidence as to why this should or should not be the case.

Response: Yes. Given the many diverging beneficial ownership tests which are already being applied across Europe and globally (whether, for example, under the UK's PSC requirements, the EU Anti-Money Laundering Directive or under other global standards (eg FATF/MONEYVAL) applied in third countries), to avoid the new UK requirements being seen as an unhelpful additional and divergent (UK-specific) burden on foreign investors in UK property, we strongly support the proposition that those overseas entities that have already declared their beneficial ownership information on a public register overseas, or on a non-public but central register overseas swiftly accessible to UK law enforcement agencies, should have reduced application requirements.

Question 3.3: How should this power be exercised to apply in a coherent and workable way in relation to the types of entities described at Questions 3.1 and 3.2 above? For example, what criteria should be used to determine which registers may be considered “equivalent”?

Response: Equivalence for this purpose should be tested against the relevant overseas jurisdiction's ability to capture and, upon UK agency request, promptly share entity beneficial ownership and management information, such that the core aims of the new legislation can be met, namely: to deter and disrupt crime, by making it more difficult to use corporate vehicles in pursuit of crime; to deter criminals from money laundering in the UK; to preserve the integrity of the financial system; to increase the efficiency of law enforcement investigations, particularly in relation to identifying and tracing proceeds of crime; and to require the same transparency of the relevant overseas entities as UK companies. Those jurisdictions meeting EU Anti-Money Laundering Directive or FATF/MONEYVAL AML information gathering standards and which give UK agencies swift access to relevant entity ownership and management information should be regarded as equivalent.

4. Registration of entities unable to identify their beneficial owners (page 14-15)

Question 4.1: Should it be possible for an entity to register without providing full details of its beneficial owners in the circumstances explained in paragraph 25?

Response: Only in limited circumstances – ie where failed attempts to ascertain altered ownership information have a bona fide cause. There could be significant danger of circumvention of the core aims of the new legislation (and the creation of an un-level playing field between different overseas jurisdictions, benefitting those with more lax regulations) if bearer share-issuing entities were to avoid registration and/or application requirements. The issuance of bearer shares is incompatible with modern "know your client" requirements which are at the heart of the government's policy here. Any

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relaxation in this area should be restricted to pre-existing overseas entities, and ideally only those already holding UK land (ie already established for that purpose). This would avoid the inevitable proliferation of newly incorporated bearer share issuing entities established overseas to hold UK property by those parties wanting to cloak their ownership of UK property. People should be dis-incentivised from using such entities.

Question 4.2: If so, should this be the case only in specified circumstances, and, if so, what should these be (for example, for those entities that already own land in the UK when the provisions commence)? Please provide examples.

Response: Yes. See 4.1 above.

5. Scope of the prohibitions to certain dispositions relating to land (pages 15-17)

Question 5.1: Do you agree that the inhibition in Northern Ireland shouldn't capture the granting of leases for less than 21 years without occupation (noting the inhibition also currently doesn't capture leases for less than 21 years with occupation)? If not, please provide evidence of why.

Response: Yes. On the topic of dispositions generally, although not subject of a specific question under this consultation, we remain wary of the proposal to prohibit the registration of the creation of a charge over land where the proprietor of the charge may not have been registered. In our view, control through the register over a mortgage transaction should only be applied at the point in time that the security is to be enforced and the relevant property is to be transferred to the name of the proprietor of the charge – in order to complete their enforcement, they should register at that point in time. Forcing pe-registration on the proprietor of the charge upon its creation creates an additional transactional burden on financing arrangement and can place additional doubt over the valid creation of the charge, as well as a regular updating obligation on the proprietor, even if the charge is never enforced.

Question 5.2: Are there any unintended consequences if applications for registration as a proprietor by a "prescriptive claimant" in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not a "registered overseas entity" within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a "registered overseas entity"? Please provide evidence

Response: None identified by the AREF Public Policy Committee.

6. Power to disapply the effect of the prohibitions placed on land (pages 17-18)

Question 6.1: Do you consider the Bill should include provisions to allow an "appeal" of the effect of the prohibitions placed on the property, and/or a power by the Secretary of State to "disapply" the effect on a case-by-case basis? If so, in what scenarios should this be used, and what evidence should be required? Given the concept of owner's

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powers is unique to England and Wales, should any such provisions only apply in England and Wales?

Response: Yes. There are likely to be a number of unintended consequences of the new legislation, and particularly in the context of legislation aimed at regulating the activities of overseas entities who will not be as aware of this new UK legislation and this consultation process as UK market participants, and such powers and an appeal processes will allow the legislation to "settle" whilst limiting unfortunate and egregious outcomes.

7. Exceptions to prohibitions placed on land (pages 18)

Question 7.1: Are there other exceptions, in respect of England and Wales, Scotland or Northern Ireland that you consider should be included in the Bill? If so, please explain why and provide evidence. What type of evidence could be provided to demonstrate exception?

Response: See comments at 5.1 above about the registration of proprietors of charges – query whether it is better to place the registration burden on proprietors upon enforcement of their security rather than upon the creation of their security.

Additional comments made by AREF Committee members:

Costs:

In relation to the costs of the proposals, could there be a better way to fund the exercise then just implementing a registration/ annual disclosure fee? For example a small admin fee for searches on the register (similar to land registry charge) to recoup costs and share the financial burden across those who benefit from the information?

Penalties:

What incentive/penalty is there would be for an overseas entity to keep up with annual disclosures? If none, is there any value in these periodic self-declarations?

Concern for the rights of individuals:

The necessity to register and thereby potentially disclose publicly the dates of birth and residential addresses (ie rather than business or service addresses) of individuals who are beneficial owners and/or managing officers creates personal exposure of those individuals to criminality (eg fraud, identity theft and extortion risk). We suggest that those elements, although filed and maintained by the registry, should be kept out of the public domain to ensure the security of individuals and their information.

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Thank you once again for the opportunity to respond to the consultation and we hope to continue to be able to continue our contribution. If you have any queries or require further information, please do not hesitate to contact me.

Yours sincerely,

Ben Robins
Committee Member of Public Policy Committee