



## **BPF Briefing:**

### **Economic Crime & Corporate Transparency Bill - Treatment of Overseas Entities**

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £107bn to the economy and supported 2.3 million jobs in 2020. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.

#### **Key points**

- **The BPF supports the aims of the Economic Crime & Corporate Transparency Bill – to ensure investors can have confidence in the security and legality of investment, and where the proceeds of criminal activity cannot be laundered**
- **We also support the granting of additional powers to Companies House to investigate information supplied to it, and the associated compliance regime**
- **However, clause 139 of the Bill proposes a sanctions regime that is disproportionate to its stated aims and threatens legitimate commercial activity in the development industry, and should be removed or amended**

#### **Background**

- Clause 139 of the Bill seeks to amend the law so that any overseas entity (OE) that fails to respond to a request for information by Companies House (in exercising its compliance functions under the Bill) would be considered as not 'registered' within the same Bill
- The effect of this would be in turn to automatically restrict that OE from selling, otherwise disposing of or placing a charge against any property that it holds
- We understand that the Law Society and the Law Society of the City of London has raised concern over this clause with the Bill Committee, and we agree with their analysis and recommendations for removal or amendment of the clause

#### **The Threat to Commercial Activity**

- While the BPF wants to see a robust system of transparency and propriety for commercial property ownership and transactions, the effect of clause 139 would be disproportionate to its aims, and would send a 'chill' through the UK commercial property market
- This is worrying investors and is potentially significant given the extent to which commercial property is owned entirely legitimately by companies based overseas
- Development funded or undertaken by companies registered overseas has generated a huge amount of economic activity in the UK, supported inward investment, job creation and new housing and other developments; for example the consortium of Malaysian investors



who have regenerated Battersea Power Station, or the Chinese-owned Knight Dragon company that is building 17,000 new homes on the Greenwich Peninsula

- Because Companies House can exercise its compliance functions as Registrar at any time, and require information to be submitted to it over any time period, the Bill as currently drafted provides no certainty that any property-related transaction would ever not be potentially caught by clause 139
- This will create a huge degree of uncertainty for any UK-registered company seeking to undertake land or property-related transactions with any OE, as there would always be a risk that any property could not be transacted where an OE was in breach of an information request. To be clear, the BPF's concern is that *any and all* commercial transactions involving property held by an OE will be subject to a large and unnecessary degree of risk due to clause 139, which would significantly adversely affect UK economic activity

#### ***Proposed changes to the Bill***

- Given widespread concern from property owners and investors at this measure, we support the recommendation made by the Law Society to remove clause 139 from the Bill. The existence of criminal sanctions for non-compliance with notices for information made by Companies House should be sufficient deterrent to ensure compliance. Restrictions on being able to dispose of land would therefore be an unnecessary further sanction that would have a much wider reach and impact than just the type of OE that the Government have in mind as targets for this legislation
- Alternatively, if Government wants to ensure additional incentives for compliance beyond criminal sanctions, it could amend clause 139 to ensure the following:
  - Rather than restrictions on an OE's disposing of land being generated at the point when a s1092A notice (i.e. a demand for further information) becomes outstanding, the restrictions would apply only at the point when the OE has to make its annual update on the Register of Overseas Entities
  - This would provide certainty to any third parties involved in property transactions that, until the date of the annual update, the transaction could be legally completed
  - It would also provide certainty for third parties that they could check the Register of Overseas Entities in advance of commercial dealings with an OE to determine whether that OE was in breach of its obligations
- The BPF is happy to provide further detail or evidence to the Committee to support the above