JOINT COMMITTEE ON THE DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL

COLLATED WRITTEN EVIDENCE VOLUME

Contents

City of London Police – Written evidence (ROE0016)

There is concern over the reporting of structures when trying to align foreign structures to UK ones. So where the trust and entity structure is different abroad, how will registration cope with this?

The question of the inclusion of Trusts in this is an absolute yes or the process will be fairly pointless.

Who's responsibility will it be to check the entries and submissions? This will be a very complex task but without a clear and thorough system of confirmation it will be pointless as any false entries, shells companies and entities etc won't be identified.

If wrongdoing is identified, who will be the investigating and prosecuting agencies? Demand already outstrips capacity across the entire enforcement community and unless new resource is allocated to the policing of this legislation it will be fairly ineffective.

Joanne Ferguson

22 March 2019

Companies House – Supplementary written evidence (ROE0013)

I would like to thank the Joint Select Committee for the opportunity to provide evidence on this matter. As requested please find below the information that I offered to follow up in writing.

I have answered each of the questions you set out, but I have also included additional information in order to provide the Committee with the broader context.

Committee's questions during oral evidence session

The Committee asked what fines are issued as a result of false information being provided. The delivery of false or misleading information does not incur a civil penalty, but it is an offence and may result in a fine or imprisonment upon conviction. When we become aware of inaccuracies in company or People with Significant Control (PSC) information, a letter is sent requesting that information is reviewed and corrected. Many companies comply immediately or will do so following a subsequent letter. If not, we will refer such cases to a relevant prosecutor, mainly in the Insolvency Service, when all other avenues have been exhausted. The overall framework has seen 1,231 directors disqualified in 2017/2018.

The UK's People of Significant Control Register is one of the first to be publicly available for searching worldwide, and the first in the G20. Already it has more than 4.6 million names of people with significant control over UK registered companies. Companies House have also issued some 100,000 letters to firms where the register does not contain a name.

Alison Thewliss MP asked how many fines had been issued to Scottish Limited Partnerships (SLPs) for not filing information with Companies House. No SLPs have been fined since the requirement to provide PSC information came into force. However, we have contacted all active SLPs to seek compliance with filing requirements and the number of non-compliant SLPs has continued to fall. Our focus is on ensuring compliance, and in general, the great majority of companies and partnerships do correct their filings following a first intervention from us. In the meantime, we are working closely with the Crown Office and Procurator Fiscal Service to prepare the ground for prosecutions.

Turning to Lord Garnier's question, he asked how many times untruthful or incorrect company or PSC information has been highlighted to us in the past year. Unfortunately, we do not collate the statistics in that way. However, to put this into context the UK has one of the world's most open registers, and it was viewed more than 5 billion times in the last year by both UK and international users. The UK strongly advocates the use of public scrutiny to improve data accuracy and with so many eyes viewing the data, any inaccuracies can be identified, and these can be reported in several ways.

To make it easier to report inaccuracies or to raise concerns about information held on the register, we have introduced a 'Report it Now' function. The feature is a useful source of insight and an improvement that helps with the integrity of the

register. This allows those inspecting the companies register to quickly and easily report back any discrepancies or anomalies they spot. Since the facility was introduced in July 2017, over 126,000 "report it now" queries had been received by January 2019.

A large number of these queries can be answered by the Companies House Contact Centre or do not need any reply because they are made up of spam, adverts, sales pitches or are not relevant for us. However, generally more than 10% are forwarded to teams within Companies House to either reply or to initiate some sort of compliance action with the company. The type of queries being reported to us fall into several categories including information incorrect, alleged fraudulent activity and general queries and complaints. At this stage we do not have the statistical information to show how many relate to PSCs specifically. The high and increasing levels of access and low level of error reporting supports the evidence that the information at Companies House is adequate accurate and up to date.

To further demonstrate how we focus on data integrity, we have set a public Ministerial target for 2018/19 to respond to 95% of PSC complaints within 10 days. Between April 2018 to Feb 2019 we received 160 complaints. As of March this year, criminal proceedings have been issued to 331 directors under the PSC regime. 58 convictions have been obtained.

Companies House's collaborative working with law enforcement and other agencies

In addition, I would like to take the opportunity to provide further information which the Committee might find helpful. We work very closely with law enforcement agencies analysing data and patterns to identify suspicious behaviour and are constantly looking with partners at ways of improving intelligence sharing. Companies House has actively sought to increase awareness in enforcement agencies on how the register information can assist them. This has seen enquiries for help in investigations increase from an average of 11 requests per month to approximately 200 per month. We currently employ typically around 80 people who are dedicated to maintaining the integrity of the register.

Companies House are part of the UK Government Agency Intelligence Network (GAIN) since 2014. GAIN falls under the remit of the Home Office and is a national initiative. Its aim is to solve issues by adopting a multi-agency approach under a more formal umbrella of joint partnering and information sharing when taking enforcement action. Companies House share information with competent authorities either in bulk, with subsequent updates, or via individual requests. We have a dedicated team that meet and liaise with these bodies and monitors their information needs.

The Committee will be familiar with the work Global Witness and other transparency groups have done to highlight issues with the PSC data. This feedback has led us to make improvements in our services, for example we have made a number of system changes to improve nationality and date of birth information in respect of company officers and PSCs.

Additionally, we have proactively engaged with Global Witness, Transparency International and Open Corporates over the last 6-9 months. For example, one of

the issues raised in the Global Witness report related to cases where a company had reported PSC loops, which are circular control structures and not legal. Circular registrations can be a result of a misunderstanding of the PSC requirements. While we had already created prototype algorithms to identify PSC loops before their article was published we have also replicated the analysis they did, layering in our back-office data and comparing the findings. This has led to us embedding more sophisticated analysis techniques within the PSC team, leading to integrity improvements. Companies House are carrying out further analysis on more complex structures that appear deliberate, and reports are run monthly to identify clusters to monitor and pursue prosecutions.

Closing

We will apply the lessons we have learnt from the issues that have arisen with PSC information as we develop systems and processes for the register of overseas entities. We will also aim to provide similar routes to those described above to flag suspicious or incorrect information. We will not stop there. This year the PSC regime will be reviewed for its effectiveness, the outcomes will be considered in relation to the new register. Furthermore, we are working with law enforcement agencies such as NCA and HMRC to identify how we can work together to effectively enforce the regime.

And finally, I would like to explain that following the Financial Action Task Force (FATF) assessment of the UK anti money laundering regime last year, and as subsequently announced, Companies House is working with the Department for Business, Energy and Industrial Strategy on a package of reforms to the register. The intention is to consult publicly on any proposals for reform later this year.

Thank you again for the opportunity to provide evidence to the Committee.

Martin Swain

20 March 2019

Delegated Powers and Regulatory Reform Committee – Written evidence (ROE0019)

Thank you for your recent invitation to the Delegated Powers and Regulatory Reform Committee (DPRRC) to submit a memorandum on the draft Registration of Overseas Entities Bill.

Unusually, and it is a testament to the Department for Business, Energy and Industrial Strategy, the DPRRC has nothing which it wishes to draw to the attention of the Joint Committee. In the view of the DPRRC, the delegated powers are proportionate and the mix of the affirmative and negative procedures (seven of each) strikes a good balance. Furthermore, the delegated powers memorandum offers a good justification for the powers sought and the level of parliamentary scrutiny applied to them. We found particularly helpful the use of statutory precedents to support the justification for the various powers.

The Rt. Hon. Lord Blencathra
11 April 2019

Department for Business, Energy and Industrial Strategy – Written evidence (ROE0011)

Summary

- The Government welcomes the Joint Committee's scrutiny of the draft Registration of Overseas Entities Bill ("the draft Bill") and looks forward to receiving the Committee's report.
- The 2017 National Risk Assessment of Money Laundering and Terrorist Financing identifies a specific risk to the UK from the use of 'anonymous corporate structures' to invest in UK property. It also highlights the fact that "property continues to be an attractive vehicle for criminal investment, in particular for high end money laundering" and "the risks relating to abuse of property are most acute where property is owned anonymously through corporate structures or trusts"[1].
- The Registration of Overseas Entities Bill seeks to address this risk by identifying the beneficial owners of overseas entities that own or plan to own UK property. This information is presently not available and primary legislation is required to achieve this, by way of a public register.

Objectives & scope

1. The registration of overseas entities regime is based on the UK's People with Significant Control ("PSC") regime introduced in 2016 and administered by Companies House. The PSC regime requires certain UK entities to disclose information on their beneficial owners, and keep this information updated. It was introduced in order to increase transparency and reduce the risk of UK companies being used for illicit purposes. Over 99% of UK companies have now complied with the PSC regime. The draft Bill 'mirrors' the PSC regime in a number of ways, including:

    a. The same conditions for "registrable beneficial owners" (paragraph 17);

    b. Similar information requirements: we have been careful to ensure that as far as possible, UK companies and overseas entities are subject to an equal level of transparency (more details in paragraphs 16-20);

    c. Similar power to modify application requirements (more details in paragraphs 10-11); and

    d. A similar protection regime for innocent individuals at risk from public disclosure: the PSC register has a protection regime which allows a

[1] https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-andterrorist-financing-2017

company or individual to apply to have information about an individual with significant control suppressed if the individual is at risk of violence or intimidation as a result of that information being made public (more details in paragraphs 23-25).

Impact of the register on overseas investment

2. The Department for Business, Energy and Industrial Strategy (BEIS) has continued to engage with industry, civil society and others to understand the impact of this policy. We received over 50 responses to our 2017 consultation, and around 30 responses to the overview document published in July 2018 alongside the draft Bill. The Government also commissioned independent research to understand the potential impact of the register on the UK property market. 30 qualitative surveys were undertaken supplemented by findings from a further 32 indicative, but not representative, quantitative surveys. Given the lack of transparency in the market, it proved difficult to trace and interview people involved with the sale and purchase of properties that would be covered by the proposed register; this on its own arguably confirmed the need for the new register. The research was published online, alongside the draft Bill in July 2018[2].

3. The outcome of the research and consultations indicates that stakeholders think that the introduction of the register will not have a significant adverse impact on overseas investment into UK property. Those anticipating a negative impact said the requirements would be perceived as an additional burden; others thought it could strengthen the UK's image and show "good housekeeping". Most stakeholders thought it would not have such an impact as to outweigh the advantages of investing in the UK property market. The register will be designed to improve transparency without harming legitimate investment, and be informed by evidence from our consultations.

Scope, including exemptions

4. The Government has given careful consideration to the important question of scope – seeking to ensure the register captures as much information as possible within the bounds of what is both reasonable and practicable. There are several types of legal entity that can own land in the UK, and jurisdictions around the world provide a number of routes for individuals to create these entities. As one of the aims of the regime is for it to be workable, we have therefore kept the definition of "overseas entity" fairly broad, ensuring that we do not exclude from scope of the requirements any types of entity that we would wish to capture.

5. On publication of the draft Bill, the Government also published an overview document which sought views on technical issues, including whether there are any types of overseas entities that do not have beneficial owners and/or

[2] https://www.gov.uk/government/publications/a-register-of-beneficial-owners-of-overseas-companiesand-other-legal-entities-potential-impacts

managing officers, who are in scope of the regime but would not have a route to be able to comply. Overall, there were so few responses to this question it is reasonable to consider that the scope is appropriately wide.

6. The draft Bill includes a power to exempt certain types of overseas entities (clause 30), and views were sought about the use of this power, for example, where it is not possible to "look through" an overseas entity to identify a beneficial owner. We consider it appropriate to include this power to keep the regime relevant and workable, in the event there is a legal entity overseas in scope of the requirements but without a route to comply. There are other reasons it may not be appropriate for some entities to be subject to the requirements. Respondents generally agreed with this rationale, and that it may be appropriate for foreign governments to be exempt from the regime (as they may struggle to identify a person that meets the definition of a "registrable beneficial owner").

7. The Government is considering if there are other types of entity, such as international organisations (e.g. the United Nations) that it may be appropriate to exempt from the regime. BEIS is working closely with colleagues in the Foreign and Commonwealth Office (FCO) to ensure that the proposals are workable and have no unintended consequences. BEIS will continue to engage with the FCO as we move towards the drafting of secondary legislation.

8. Secondary legislation will outline further details, including any types of entity that are exempt and any evidence required to demonstrate that an overseas entity is or was exempt (e.g. a conveyancer's certificate).

Trusts

9. Most trusts are not legal entities that can hold property and are therefore not in scope of the draft Bill. If a trust is holding land via an overseas entity, the entity must register with Companies House and in this scenario we would expect to see the trustees recorded as the beneficial owners (schedule 2, paragraph 6, condition 5). The Government has already taken action to ensure that information about the beneficial owners of trusts is available to law enforcement. There are existing measures requiring trusts with a UK tax consequence to provide information about themselves and their beneficial owners to HMRC and these measures are set to be widened with the expected transposition by the UK of the 5th EU Anti-Money Laundering Directive. For these reasons the Government considers that the scope of the draft Bill is appropriate. The decision not to include trusts within the register of overseas entities is also consistent with the PSC regime.

The power to modify application requirements (clause 15)

10. The draft Bill includes a power to modify the application or update requirements of overseas entities. Stakeholders told us that we should ensure

that entities already providing information to an equivalent public register should not have to provide the information again. The Government agrees and wishes to avoid duplication and placing additional burdens on overseas entities that are already providing an appropriate level of information and transparency publicly elsewhere (e.g. in a register in their own country). In this scenario, we would consider changing or reducing the information overseas entities have to provide in order to become registered.

11. The 5th EU Anti-Money Laundering Directive requires all EU Member States to make public their registers of beneficial ownership of companies incorporated in their territory. The transposition deadline for this Directive is January 2020. The UK is already compliant with this requirement. If the power to modify the application requirement is used in relation to EU companies, in practice it will mean that EU companies will not have to provide full details of their registrable beneficial owners to Companies House and can instead point Companies House towards the register where that information is held.

Operation of the register

12. The register will be held at Companies House, which was selected as it is the Government agency with the most relevant operational expertise. The register will be stand-alone, unlike the PSC register which is integrated within the broader register of UK companies. But it will be accessible through the Companies House web-pages in a similar fashion as existing information held by that agency.

13. Companies House will have a statutory duty to register the overseas entity in the register of overseas entities and allocate an ID upon completion of a valid application form. This mirrors the current statutory duty of Companies House in relation to the registration of UK companies. Information on applications to register by overseas entities will be subject to the same level of scrutiny as applications by UK companies. The same level of scrutiny will apply whilst the overseas entity continues to be a “registered overseas entity”. Currently Companies House undertake a number of checks and validations on all information received and act on intelligence received on possible false filings.

14. The Government has already indicated that it intends to consult on a package of reforms to enhance the role of Companies House to ensure it is fit for the future and continues to contribute to the UK’s business environment. This consultation will include consideration of possible reforms to improve accuracy and searchability of the information held at Companies House, and give them greater powers to query and check the information submitted to it.

15. The Government would consider whether any such reform would be appropriate for the forthcoming register of overseas entities.

Information on the register

16. The draft Bill is designed to deliver a register that ensures that for the first time, natural persons, as opposed to a corporate entity, associated with legal entities owning UK property are known and can be contacted. Information requirements have been modelled on the PSC register, as have the associated offences for non-provision of the required information.

17. Schedule 1 of the draft Bill sets out the information required about an overseas entity, its beneficial owners, and where required, its managing officers. The draft Bill contains a Henry VIII power (Schedule 1, Part 5) to change the information requirements via secondary legislation. This power is subject to the affirmative resolution procedure. This is to futureproof the draft Bill so that the lists can be reviewed, and amended as necessary, ensuring that flexibility is retained to deliver the policy objectives whatever the external developments may be.

18. It is important that information held about an overseas entity and its beneficial owners is accurate and up to date. Overseas entities are required to confirm information with their beneficial owners before registering at Companies House (this is also the process for the PSC regime).

19. There are a number of sanctions in the draft Bill that mirror existing filing-related offences in the Companies Act 2006 and promote the accuracy of information on the register. For example, it is a criminal offence to provide a false statement (clause 28); and if the overseas entity fails to resolve inconsistencies in the register that have been detected by Companies House (clause 23).

20. Making the register public means the information can be accessed by many users, who can report any errors, omissions or anomalies in the data (although certain sensitive information will be protected, and not publicly available on the register; this is discussed in paragraphs 23-25).

Beneficial owners

21. The draft Bill strikes a balance between allowing for legitimate situations where no beneficial owner exists or can be identified, whilst ensuring that some contact details are provided for all entities. It allows an overseas entity to register if, despite taking reasonable steps to identify its beneficial owners, it has been unable to do so, or, it has been able to identify them but has incomplete information about them. In these circumstances, the entity must provide any information it has about its beneficial owners and provide information about its managing officer(s): that is, a person holding the general powers of a director of the entity.

22. On publication of the draft Bill, we asked if overseas entities unable to identify their beneficial owners should be able to register (if they provide

information about their managing officers), as currently provided for in the draft Bill. Many respondents considered this should be possible in fairly defined circumstances, such as an overseas partnership that is a legal entity, which would be set out in secondary legislation. We are working with stakeholders to determine whether it might be appropriate to mandate that where managing officer details are provided, they must be those of a natural person rather than, e.g. a company.

Protection regime

23. As is the case with the PSC regime, the Government is seeking to strike an appropriate balance between greater transparency whilst not putting innocent individuals at risk from disclosure. Stakeholders have drawn attention to the particular risks faced by wealthy and/or famous people.

24. Some details about beneficial owners will not be publicly available: for example, only the month and year of a beneficial owner's date of birth will be public, not the day of the month and their usual residential address. This is outlined in clause 20 of the draft Bill.

25. The draft Bill includes a power for the Secretary of State to make, by secondary legislation, provisions requiring Companies House to, on application, make information about an individual unavailable on the public register (clause 22). Exactly how this power might be used and in what circumstances will be set out in secondary legislation. We propose that it will include protection for those who might be at risk of serious harm should their information be publicly available (as with the PSC regime). We are currently considering whether there are other circumstances in which protection might be appropriate, for example, where the risk of harm to an individual or others may be increased by the individual's association with the property being known. It is our view that such circumstances will need to be tightly defined to prevent the provisions from abuse.

Compliance & enforcement

26. It is important that the legislation includes the right incentives to drive compliance, coupled with proportionate sanctions for those who do not comply.

27. In order to deliver the policy aims, a two-pronged enforcement mechanism was devised through (i) land registration restrictions for non-compliant entities in England and Wales, Scotland and Northern Ireland (taking into account differences in land registration laws in each jurisdiction), to discourage transactions in land involving non-compliant overseas entities, and (ii) criminal sanctions

28. The main enforcement mechanism will be the restrictions on non-compliant overseas entities and third parties from registering legal title to the land after certain transactions (see (i) above); this will be a strong incentive for overseas

entities to comply. In practice we expect third parties to be reluctant to transact with the overseas entity unless it is compliant.

29. The draft Bill also contains criminal sanctions for those that do not comply with the regime's requirements. The Insolvency Service will have responsibility for taking forward prosecutions.

Consistency across the UK

30. The Government intends the regime to work as consistently as possible across the UK via existing land registration frameworks, subject to certain differences in those frameworks between England and Wales, Scotland and Northern Ireland.

31. The length of registrable leases caught by the draft Bill's provisions differs between each of the jurisdictions because of existing land registration law, which outlines which leases must be registered at the different land registries. We consider that although there are differences in the registrable leases within scope of the regime, the register is workable across the UK.

32. On publication of the draft Bill, we asked stakeholders if the scope of the prohibitions on land was appropriate, and apart from some technical suggestions on the drafting of the provisions for Scotland, no respondents considered that the scope was unfair.

Exceptions and Third Parties

33. The Government is conscious of the potential impact that the land restrictions might have on third parties. Where an innocent third party has suffered detriment, it may be unfair, given the potential costs and time required, to expect them to have to go to court to try to remedy the situation. We asked in our overview document whether we should include within the Bill a power to disapply the effect of the prohibitions placed on land that could be used in certain defined circumstances. Respondents overwhelmingly believed that there should be such a power, and we are considering whether to include this new power to protect third parties, with stringent guidelines as to when it would apply. Such a power will need to be limited to the effect on innocent third parties to ensure that it is not open to abuse.

34. On publication of the draft Bill, we also asked if there were any other exceptions to the prohibitions on land that result from non-compliance that should be included within the draft Bill. The draft Bill currently includes exceptions to the prohibitions on land in three main scenarios: (i) where there is a statutory duty or court order; (ii) where a contract was entered into before the land restrictions were put into place, and (iii) where the holder of a loan or mortgage secured on the land seeks to exercise its power of sale or lease. A number of respondents suggested that the exception allowing a sale of land by a receiver acting on behalf of the holder of a registered charge should be

widened to include other insolvency practitioners. We are considering whether and how to appropriately widen this exception.

Raising awareness of the new register and requirements

35. It is important to ensure that awareness of the regime is communicated effectively. BEIS is already engaging with stakeholders to raise awareness of the new register and its requirements. BEIS intends to work with Companies House, the land registries and relevant sectors to assist them in providing guidance, and will undertake comprehensive communications about the regime ahead of the register becoming operational. Following the call for evidence published April 2017, BEIS received a number of suggestions of methods of raising awareness that would be most effective, which are being considered.

Delegated powers

36. The draft Bill includes 15 delegated powers. Most of these powers are based on existing powers in the Companies Act 2006 relating to UK companies, with seven the powers based on the PSC regime. We consider the powers to be reasonable and proportionate in order to implement the finer detail of the register of overseas entities and having the additional benefit of allowing a faster response to changing circumstances and on-going monitoring.

37. Seven of the delegated powers require affirmative resolution, and seven are subject to the negative resolution (plus one standard commencement power). All three of the Henry VIII powers are subject to affirmative resolution. We consider that each power is subject to a suitable level of scrutiny. The Government will consult on the secondary legislation following Royal Assent of the Bill.

Conclusion

38. The Government welcomes the Committee's scrutiny, which will help ensure the draft Bill delivers an effective register. People come to the UK confident in our high corporate standards, including market transparency, which fosters confidence and trust. The primary objective of this draft Bill is to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK. We believe that this Bill will play an important part in the UK's efforts to tackle the use of UK property in this way and the scrutiny it is currently undergoing will help us to ensure that it is robust and comprehensive. This novel and complex Bill is a worldfirst, and will cement the UK's reputation as a world leader in corporate transparency.

20 March 2019

Department for Business, Energy and Industrial Strategy –Supplementary written evidence (ROE0015)

Schedule of minor and drafting issues

№	Location	Issue	Department response
1	Cl 2(2)	"Legal entity" might include individuals. They are also "legal persons". Might it be helpful to exclude individuals expressly – as does, for example, Sched 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012?	In our view it is already clear that the definition of "legal entity" does not catch individuals. The word "entity" connotes an organisation, body or institution. In ordinary usage it would be unusual to refer to a natural person as an "entity". The context also makes it clear that we do not intend to catch individuals because individuals do not have beneficial owners. Moreover, Schedule 2 clearly draws a distinction between legal entities and individuals.
2	Cl 7(5)	The Explanatory Notes (ENs) suggest the intention to be that an update period can be shortened by early delivery of an updating statement (and information) coupled with a notice that the new period is to run from the following day.	The answers to these questions are worked through below. 1. An update period is defined in clause 7(4). It is either: - (a) the period of 12 months beginning with the date of the overseas entity's registration; and then subsequently – (b) each period of 12 months beginning with the day after the end of the previous update period. 2. The update period, defined above, can be shortened. This is made clear by clause 7(5).

		(1) How does the Bill operate to cause the update period to end on the day the information is provided? (2) Does cl 7(5)(b), coupled with cl 7(1), in fact allow the entity to specify the end of the period to be any of the 14 days <u>preceding</u> the giving of the information?	3. In order to shorten the update period, the overseas entity needs to deliver the statements and information specified in clause 7(1) and notify the registrar of the shortened update period. 4. When these steps are completed the current update period ends automatically. In practice, this will be the day the overseas entity notifies Companies House about the shortened update period and sends the statements and information specified in clause 7(1). 5. The new update period commences the next day after the completion of the aforementioned steps. 6. It is not the intention to afford an overseas entity the option of specifying the end of the update period in the 14 days preceding the completion of the steps specified in clause 7(5). This is because it is only the completion of the steps in clause 7(5) which terminates an existing update period. In the question posed, the overseas entity would effectively terminate an existing update period *before* complying with the steps in clause 7(5) which is not the intention.
3	Cll 11, 12 and 14	Is it intended that an entity should be liable for any loss suffered by a person upon whom the entity incorrectly serves a notice? The recipient might, for example, reasonably and foreseeably incur cost	The bill does not provide for recovery of damages following the service of a notice. In the example given in the question, the rights of an individual to recover money for legal advice obtained following service of a notice sent by an overseas entity will depend on the law of the country in question.

		through obtaining legal advice.	
4	Cl 15(1)	The clause has “description” as the object of the phrase “in relation to”. The “requirements” do not relate to “a description”. Should the clause read: “… requirements in relation to overseas entities of a description specified in the regulations”?	We agree with this suggestion and the legislation will be amended accordingly.
5	Cl 21(2)	Why does “or body” appear in cl 21(2), despite Interpretation Act 1978, Sched 1?	We agree with this suggestion and the legislation will be amended accordingly.
6	Cl 26(1)	As the Court must direct removal (see subsections (2) and (3)), the words “and that the court directs should be removed from the register” should appear underneath paragraph (b). Subsection (1) then takes on the form of a “sandwich”.	We agree with this suggestion and the legislation will be amended accordingly.

7	Sched 1, para 3(1)	Why does the required information about a beneficial owner, in contrast to a managing officer (or a director: see CA 2006, s 163), not include any former name? The ENs relating to s 790K of the CA 2006 say former name and business occupation “are not thought relevant in the context of people with significant control” (ENs to the Small Business, Enterprise and Employment Act 2015, para 426). Why is this the case?	Taking the second point first: for directors in the UK, it is considered desirable to have the ability to link names to previous or former activity and any former names in order to assist in identifying if someone appointed a director is disqualified or otherwise barred from becoming a director (for example, where being appointed as a director might be subject to them not being a former or discharged bankrupt). It is therefore considered proportionate and necessary to require former names for directors. With respect to the first point, within this Bill we have included a requirement for managing officers to provide former names because we believe that it is desirable to have the ability to link names in a similar way: within the context of this Bill, the definition of a managing officer of an overseas entity includes director, manager or secretary (Clause 36). We do not believe that the same points hold true for beneficial owners and therefore do not require it of them.
8	Sched 1, paras 3(1)(d), 4(e) and 5(f)	How should an entity determine the date on which an individual became a registrable beneficial owner by virtue of their actual exercise of significant control over the entity? That is, when does	The date the threshold conditions are met, as set out in schedule 2.

		actual exercise of significant control begin?	
9	Sched 2, para 7(1)(f)	The Secretary of State may prescribe a description of legal entity as "subject to, its own disclosure requirements", the effect of which is that it will become a registrable beneficial owner if it is a beneficial owner and not exempt. This is broadly similar to the power (itself referred to at para 7(1)(c)) in section 790C(7)(d) of the Companies Act 2006). But that power is circumscribed by requiring the Secretary of State to "have regard to the extent to which entities of that description are bound by disclosure and transparency rules … equivalent to" those applying to entities falling within other paragraphs of s 790C(7). Why is this	We have not replicated this limitation in order to provide flexibility and to future proof the bill because we want to ensure that we have maximum flexibility to add to the definition of 'subject to its own disclosure requirements' if circumstances change. An example might be where the information that an overseas entity is required to provide is available on a public register elsewhere but this is not a 'free to access' register: we may make a decision to specify that a company subject to these sorts of requirements is 'subject to its own disclosure requirements'. This would be by secondary legislation subject to the affirmative procedure.

		limitation not carried through to regulations under paragraph 7(1)(f)?	
10	Sched 2, para 22, ENs para 157	Are the ENs accurate? They describe the conditions in Sched 2, para 22 as cumulative. If either condition (a) or (b) in para 22 is satisfied, the rights attached to shares held by way of security are treated as held by the person who granted the security (the borrower).	The policy intention is for paragraphs (a) and (b) to be alternative cases and that in both cases the shares held by way of security provided by the person are to be treated as held by that person. The clause provides for two separate scenarios in subparagraphs (a) and (b). The wording reflects paragraph 23 of Schedule 1A to the Companies Act 2006 and other similar provisions of that Act. We will consider changing the explanatory notes before the bill is introduced.

11	Explanatory Notes, generally	There are minor and/or typographical errors in the ENs, in particular: (1) para 42(a) omits "registrable" before "beneficial" (2) para 67, "to" after "sends" (3) para 81 refers to clauses 21 and 22 as 20 and 21 (4) para 89 refers at the end of line 4 to a notice period: it should be "notice to be given of an application" (5) para 128 is divided into sub-paragraphs numbered differently to other subdivisions (6) para 128(i) omits "and" after "regime" (7) para 182 refers to a disposition being un-	We are grateful for these comments.

		registrable “under paragraphs 3 and 4” (8) paras 185 and 186 refer to an offence “under paragraphs 4 or 5”, and “4 and 5”. There is no offence under paragraph 4 (9) para 221, “od” [sic] and lower case reference to “schedule 4A” (which occurs elsewhere)	

22 March 2019

Department for Business, Energy and Industrial Strategy – Supplementary written evidence (ROE0018)

Thank you for your letter of 15 March requesting a written submission from my department about the exclusion of trusts from the requirements of the draft Registration of Overseas Entities bill. It is right that the Committee conducts proper scrutiny on this issue as it considers this bill. I hope that my letter explains the current UK framework in relation to trust registration, the work that is in train to extend this, and clarifies why the bill's requirements do not therefore extend to trusts.

The Government has set an ambitious agenda that places reforms around beneficial ownership at the heart of its response to tackling economic crime. This was recognised in last year's evaluation of the UK's anti-money laundering and counter-terrorist financing (AML/CTF) regime by the Financial Action Task Force (FATF). FATF – which sets global AML/CTF standards – found that the UK has the strongest AML/CTF regime of the 60+ countries assessed to date. In particular, FATF concluded that the UK is only the second jurisdiction to date to be fully compliant with the FATF expectations on trust beneficial ownership. FATF additionally found that "the UK is a global leader in promoting corporate transparency and has a good understanding of the ML/TF risks posed by legal persons and legal arrangements".

This conclusion reflects the UK's existing approach to registering trusts. In July 2017, HMRC established the Trust Registration Service (TRS) through transposition of the Fourth EU Anti-Money Laundering Directive. The TRS – which is accessible to UK law enforcement authorities – captures full beneficial ownership information of the trustees, settlors, beneficiaries and other beneficial owners of trusts which generate a tax consequence in the UK. This register includes beneficial ownership information of offshore trusts when they generate a UK tax consequence – which would normally be the case with trusts which purchase land in the UK - and currently has 108,870 trusts registered on it. The TRS complements additional mechanisms which law enforcement have for obtaining beneficial ownership information on UK trusts, including through powers provided through Part 5 of the Money Laundering, etc, Regulations 2017 which require trustees to share this information with law enforcement on request.

The Government intends to expand the existing TRS during the envisaged Implementation Period through transposing the 5AMLD. During negotiations over 5AMLD, the Government supported expanding the scope of trust registration requirements to include non-EU administered trusts which acquire real estate within the EU. As such, 5AMLD does require the expansion of the scope of national registers of trusts to include:

- non-EEA trusts which acquire real estate within the EU, as well as bringing into scope:
    - all domestically-administered express trusts whether or not they incur a tax consequence, and

- non-EEA trusts which conduct a business relationship with regulated entities based in the UK.

This will constitute a significant extension of the UK's already world-leading framework for combatting illicit financial flows through trusts; HMRC estimate that the number of trusts on the register will be increased to over 2 million as a result of this extension. HM Treasury expects to consult on the Government's approach to transposition of 5AMLD shortly, and to transpose 5AMLD by January 2020. The expanded TRS should then be functional from March 2020, ahead of the envisaged implementation of the Registration of Overseas Entities Bill.

In the event of the UK leaving the EU without an Implementation Period, the Government still intends to expand the existing TRS, including to require non-UK trusts which acquire UK real estate to register their beneficial ownership information in the UK. The legal mechanism for that expansion would be a subject for discussion at that point.

5AMLD will also broaden the scope of access to the expanded TRS. Information on the register will be accessible to law enforcement authorities, and those who can demonstrate a 'legitimate interest' in access to data on this register. This means that anyone with a legitimate interest in tackling money laundering may benefit from data on the register in doing so, while ensuring that we do not infringe the privacy rights of trust beneficial owners, many of whom will be using trusts for ordinary family purposes such as providing for grandchildren or maintaining family property, and who will often be children or vulnerable individuals. Trustees will be obliged to provide evidence of registration to regulated firms for due diligence purposes. Further, there will be a general right of access to any member of the public in instances where the trust holds a controlling interest in a non-EEA company, so as to particularly improve transparency associated with opaque and complex corporate structures. These measures – which the UK took a leading role in negotiating at EU level – are aimed at ensuring that the legitimate privacy rights of individuals are protected, while ensuring that law enforcement agencies have access to a broad range of information and that opaque structures are made more transparent.

The expansion of the TRS will facilitate this proportionate approach to data sharing, which has been designed with the nature of trusts and their users in mind. Dividing the UK's framework for trust registration between the TRS and the Registration of Overseas Entities Bill would place additional administrative burdens on both trustees and government. This risk would be exacerbated as trusts will often become liable to tax only some years after they were first set up, for example at the point at which they purchase property.

You refer to two instances in which it has been suggested that trusts could be used to conceal the ultimate beneficial owners of property. I can clarify that in both these instances, the trusts in question and their beneficial ownership will be recorded on the TRS.

Where a trust is established outside of the EEA for the purposes of 5AMLD, Member States are still required to register a trust where the trustees enter into a business relationship or acquire real estate in that Member State. Further, when a trust holds a controlling interest in a non-EEA company these details will also be recorded on the TRS, with the public being able to access beneficial ownership information for trusts of this type.

In setting out the separate and comprehensive measures being taken through the UK's anti-money laundering regime to register the details of beneficial owners of trusts (including non-EU trusts which acquire EU real estate), I hope to have clarified why trusts are out of scope of the Bill's requirements.

Kelly Tolhurst MP

4 April 2019

Department for Business, Energy & Industrial Strategy - Supplementary written evidence (ROE0022)

When I gave evidence before the Committee on 25th March, I referred to the Government's plans to consult on a wider reform to Companies House. I am pleased to inform you that this consultation was issued today to seek views on a series of reforms to limit the risk of misuse of UK corporate entities.

We are seeking views on a series of reforms:

- Knowing who is setting up, managing and controlling companies: Those who have a key role in companies will have their identity verified
- Improving the accuracy and usability of data on the register: Companies House will now be able to query and corroborate information before it is entered on the register. This will also mean it is easier and quicker to remove inaccurate information from the register
- Protecting personal information on the register: In a minority of cases the register can be misused to identify personal information, which can then be used for criminal purposes. Under these proposals Directors will be given additional rights over their information, for example personal home addresses, while ensuring this information is still available in a transparent manner to public authorities where appropriate.
- Improving the detection of possible criminal behaviour: Better information sharing by Companies House, other Government bodies and financial institutions will better protect businesses and ensure faster and more sophisticated identification of possible criminal activity – benefitting businesses and consumers.

Certain of the proposed changes would also be relevant to those entities that will fall within the provisions on the draft Registration of Overseas Entities Bill. For example, we would expect the People with Significant Control (and in some cases managing officers) of such entities to undergo identity verification.

These reforms will support our modern Industrial Strategy in making sure the UK is the best place to start and grow a business.

I am copying this letter to members of the Committee.

Kelly Tolhurst MP
5 May 2019

Faculty of Advocates – Written evidence (ROE0009)

The questions raised in the Call for Evidence relate very largely to matters on which we cannot comment.

A question is asked, under Compliance & Enforcement, as to whether the draft Bill's objectives will be achieved in a consistent manner throughout the UK.

We are not in a position to comment on the provisions in the Bill applying to England & Wales and Northern Ireland in so far as they relate to the different systems of land tenure, registration and transfer of interests in land in these jurisdictions. The provisions in Schedules 3, 4 and 5 relating to the different jurisdictions employ terminology appropriate to the system in question. Accordingly, we are not competent to comment on whether the proposal will achieve consistency on a UK wide basis.

It is to be noted that whereas the provisions in Schedule 3 relating to land transactions involving overseas entities in England & Wales do contain a definition of "qualifying estate" to which the provisions therein apply, there is no equivalent definition in Schedule 4 applying to Scotland. The provisions in the latter Schedule relating to land transactions in Scotland (proposed Schedule 1A to the Land Registration etc. (Scotland) Act 2012) are drafted so as to impose a requirement that the Registrar reject applications for registration of certain "qualifying registrable" deeds involving unregistered overseas entities (paras 1-6). Nevertheless, it appears that the English provisions also effect a prohibition on certain dispositions involving such entities. Accordingly, the absence of a Scottish definition does not create a problem.

18 March 2019

Global Witness – Written evidence (ROE0007)

Executive summary:

1. The public register proposed under the draft Bill (***Property Register***) will help deter the corrupt from using the UK as a safe haven to invest their criminal proceeds, so long as the following amendments are considered:

1.1 The 25% ownership and voting thresholds that apply for "registrable beneficial owners" should be reduced (ideally removing the threshold or at least lowering it to 10%; and ensuring it is reported in exact percentages), and the disclosable information required of trusts and partnerships should be expanded (to include the settlor, trustee, protector, beneficiary or class of beneficiaries, and anyone who receives income from the trust).

1.2 The grounds for exemption under the draft Bill should mirror the grounds that apply under the UK's register of people with significant control (***PSC Register***).

1.3 The updating duty that applies under the draft Bill (which currently requires only an annual update) should mirror the duty under the PSC Register and follow trigger events.

1.4 Amendments should urgently be made to the 2006 *Companies Act* to give Companies House additional capacity to verify the information contained in and sanction non-compliance with the Property Register. The government should allocate more staff and funding to Companies House to carry out thorough checks, identify suspicious activity, and pursue prosecutions.

1.5 UK-based regulated professionals should be obligated under law to verify the beneficial ownership information submitted to the Property Register, and should face sanctions if found to be complicit in submitting inaccurate information.

1.6 The draft Bill should be amended to establish the enforcement procedure in the event that certain of its sanctions are not complied with – e.g. where significant fines have accrued, a more severe penalty (such a freezing / seizing of the property) should apply.

Full submission:

2. Will the public register as established by the draft Bill effectively deliver its policy aim?

2.1 Global Witness' latest research shows that (as of 1 January 2019), the number of freeholds and leaseholds in England & Wales owned by companies incorporated in secrecy jurisdictions is just shy of 90,000, with a significant proportion of those secretly owned properties (over 40,000) being located in London. The value of these properties is at least £56 billion according to Land Registry data - and likely to be in excess of £100 billion when

accounting for inflation and missing price data.[1] Within London, the borough with the biggest share of secret owners (with more than a quarter of the total London properties) is the City of Westminster.[2] While some of these property-owners will be using offshore companies for lawful purposes, we know that 75% of properties whose owners are under investigation for corruption made use of this kind of secrecy,[3] and so the move towards more transparency should be applauded.

3. Are the conditions for "registrable beneficial owners" appropriate?

3.1 The conditions contained in Schedule 2, Part 2 are problematic and should be amended.

3.2 First, the 25% ownership and voting thresholds that apply (Conditions 1 and 2) create a risk that significant interests in a company will not appear in the Property Register, and that money launderers will simply be able to structure company ownership so that no shareholding meets the threshold. Indeed, people who are currently using the property market to launder money can simply use the transitional period to disperse their ownership to fall below the threshold. This is a significant loophole.

3.3 Global Witness has in previous submissions on the draft Bill identified numerous case studies which show that owning as little as 5% of a company can raise serious red flags.[4] The European Commission itself has said that the 25% threshold "is fairly easy to circumvent",[5] and the Nigerian Ministry of Justice has stated "[the 25% threshold] is being exploited by some businesses to avoid full compliance with the reporting rules."[6]

3.4 Removing the ownership and voting threshold in both the Property and PSC Registers would ensure that the UK continues to lead global standards on beneficial ownership transparency.

3.5 One of the main arguments made against lowering the threshold is that companies will find it difficult to identify their beneficial owners. However, Global Witness' previous analysis has shown that this has not been a problem for the majority of companies complying in the PSC Register

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[1] Global Witness Press Release '£100bn of property in England and Wales is secretly owned, estimates show', 17 March 2019. Available at: https://www.globalwitness.org/en-gb/press-releases/100bn-of-property-in-england-and-wales-is-secretly-owned-estimates-show/

[2] Global Witness analysis of the most recent data contained in the HM Land Registry: Overseas Companies Ownership Data. Available online: https://www.gov.uk/guidance/hm-land-registry-overseas-companies-ownership-data

[3] Transparency International UK, UK property gives global corrupt a home, March 2015. Available at: https://www.transparency.org/news/pressrelease/uk_property_gives_global_corrupt_a_home

[4] See our September 2018 Submission, which outlines six relevant case studies.

[5] European Commission, Impact Assessment accompanying the 4th Money Laundering Directive, July 2016. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0223&from=EN

[6] Nigerian Federal Ministry of Justice, Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief, February 2017; p.12. Available at: https://irp cdn.multiscreensite.com/e0b6c17a/files/uploaded/Policy%20Brief%20on%20Beneficial%20Ownership%20FMOJ%20and%20IBLF%20Global%20Final.pdf

(indeed, in only 2% of cases did companies say they were struggling to identify a beneficial owner or collect the right information).[7]

3.6 Not only is the current threshold too high, but there are also challenges resulting from the banding of ownership stakes. This will always result in an imprecise figure and can make it difficult to compare data across jurisdictions. Ideally, there should be no ownership threshold and companies should be required to report their beneficial owners' holdings of shares or voting rights in exact percentages. At the very least, the UK government should make a public commitment (set down in legislation) that the proportionality of lowering the thresholds that apply in both the Property and PSC Registers will form part of the Summer 2019 review of the UK PSC regime.

3.7 Secondly, the disclosable information required of trusts and partnerships (Condition 5) is also problematic. Although the draft Bill requires the disclosure of the identity of the trustee and anyone with the "right to exercise… significant influence or control over the activities of that trust or entity", this is not sufficient. To effectively deliver its policy aim, the Property Register must require *all* parties to a trust to disclose their identities, including the settlor, trustee, protector, beneficiary or class of beneficiaries, and anyone who receives income from the trust. See further our response to Question 4, below.

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

4.1 Yes. Parties owning UK properties who wish to remain hidden from the public can simply transfer the ownership of their property into a trust during the transitional period, presenting another major loophole.

4.2 As we have explained in previous responses to consultations on the draft Bill,[8] trusts offer an unparalleled degree of secrecy and are often used as the final step in complex corporate chains to disguise a property's true ownership. We believe that the paucity of published examples detailing the role of trusts in the purchase of UK property is due to the difficulty of tracing property ownership in the UK via trusts (even more so than with regard to offshore companies) and because – until the advent of the draft Bill – offshore companies have traditionally been a simpler and cheaper way of structuring property ownership in the UK.

4.3 However, there are some published examples of trusts having been used to disguise ownership in suspicious circumstances, as we have cited in previous submissions to the draft Bill.[9] Recently, a UK court found that a discretionary

[7] Global Witness, What does the UK Beneficial Ownership Data show us?, November 2016. Available at: https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/

[8] See our June 2017 and September 2018 submissions.

[9] For previously-published examples of trusts being used to disguise UK property ownership in suspicious circumstances, see Global Witness' report, Don't Take it on Trust, February 2017 (pp.6-7) (available at: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/dont-take-it-trust/) and Transparency International's

trust was used by the recipient of the UK's first Unexplained Wealth Order (***UWO*** – Zamira Hajiyeva, the wife of the former chairman of a state-owned bank in Azerbaijan who has been imprisoned on fraud charges) to disguise ownership of UK property.[10] In this case, Mrs Hajiyeva may not have met the limited and ambiguous circumstances requiring disclosure under the draft Bill, and so the conditions for trusts should be expanded to reflect the categories set out in paragraph 3.7, above.

4.4 The UK government therefore needs to either bring trusts fully within the scope of the draft Bill or make a public commitment (set down in legislation) that it will ensure that the UK's upcoming ***Trusts Register*** as required by the 5AMLD - and building on HMRC's existing register of trusts with UK tax liabilities - will be made public.

5. Are the proposed powers allowing the Secretary of State to exempt, or modify application requirements for, certain types of entities appropriate? Does the draft Bill provide sufficient protections for individuals? Should it be possible to appeal the suppression of information from public disclosure?

5.1 On its face, it is not clear under the draft Bill whether the Secretary of State will use the same standard as applied under the PSC regime to allow exemptions (that is, only in the case of serious risk of violence or intimidation).[11]

5.2 The grounds on which an exemption can be granted under the draft Bill should therefore:

- be articulated expressly in the Bill or in its guidance;
- not go beyond the grounds allowed under the PSC regime;
- be granted only on a case-by-case basis; and
- be subject to the same reporting requirements as under the PSC regime (i.e. with the number of successful applications published annually by Companies House as will be required by the 5AMLD).[12]

5.3 If it comes to light that information has been suppressed from public disclosure in relation to a particular entity, there should be an avenue for appeal and direct reporting to the relevant crime authorities, if appropriate.

6. Are the information requirements sufficiently comprehensive?

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coverage of the UK's first Unexplained Wealth Orders, July 2018 (available at: https://www.transparency.org.uk/identities-revealed-first-uwo-case/).

[10] *NCA v Mrs Zamira Hajiyeva* [2018] EWHC 2534 (Admin), at paras. 98-103. Available at: https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/2534.html&query=(Hajiyeva)

[11] Reg. 36 the *Register of People with Significant Control Regulations 2016*, p.17. Available online: http://www.legislation.gov.uk/ukdsi/2016/9780111143018/pdfs/ukdsi_9780111143018_en.pdf

[12] As required by 5AMLD (Art 30, para 9). For further detail of what the exemptions regime should look like, see Global Witness' submissions dated June 2017 and September 2018. Also see Global Witness' July 2018 report, The Companies We Keep, where we found that of over 4 million companies covered in the UK PSC register, only 199 individuals had applied and been granted an exemption on security grounds. Available at: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/

6.1 We applaud the government's decision to mirror the information requirements between the PSC and Property Registers, and in addition to require registered entities under the draft Bill to obtain a unique identification number (clause 5) and – where applicable – their company registration number (Schedule 1, Part 2, clause 2(1)(g)), as this will allow for comparison between entities within the Property Register and across other data sets. However both the PSC and Property Registers as currently foreseen fail to require unique identification numbers for individuals listed as beneficial owners, which makes it difficult to see when several records refer to the same person.

6.2 However, the updating duty in relation to these information requirements should be modified to be in line with the PSC regime and follow trigger events. It currently requires registered entities to update the register annually (clause 7), providing only a "snapshot" of the entity's beneficial ownership information at the date of registration and on the date of each annual update thereafter, meaning that any changes throughout the year (including any aimed at concealing the owner's identity) would not be caught.

6.3 In previous submissions, several respondents (including Global Witness) have argued that event-driven updates are the best approach. However, the government has said in response that there should be an element of predictability in the update process so that it was clear to an overseas entity and any third party doing business with the overseas entity when the next update is due.[13] This is not acceptable. Overseas entities should be required to update or confirm their beneficial ownership information on an annual basis *as well as* listing all the changes to beneficial ownership that have occurred in that year.

6.4 Global Witness has – in a previous briefing – showed that the move away from annual and towards event-driven reporting gave a major boost to proactive compliance with the PSC Register and helped the UK authorities to follow-up with companies failing to report or taking too long to identify their beneficial owners.[14] It therefore made the process more effective and efficient. It does not make sense for a lesser requirement to be placed on overseas companies. The obligation should mirror that placed on UK companies (which requires changes to be filed within 28 days).[15] Otherwise, the government is placing UK companies at a competitive disadvantage, as it will encourage property-owners to favour the use of overseas companies in their ownership structures.

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[13] A Register of Beneficial Owners of Overseas Companies and other Legal Entities: The Government response to the call for evidence, March 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681844/ROEBO_Gov_Response_to_Call_for_Evidence.pdf

[14] Global Witness, Learning the Lessons of the UK Beneficial Ownership Register, October 2017. Available at: https://www.globalwitness.org/documents/19250/Learning_the_Lessons_from_the_UKs_public_Beneficial_Ownership_register.pdf

[15] See Chapter 3 of the 2006 *Companies Act*. Available at https://www.legislation.gov.uk/ukpga/2006/46/part/21A/chapter/3

6.5 The Financial Action Task Force (***FATF***) explicitly recommends that beneficial ownership information should be updated as changes occur,[16] as previous FATF reports have shown that criminals use frequent changes of ownership as a way to obstruct law enforcement investigations.[17] The burden that would be placed on overseas companies and third parties during a transaction does not outweigh the public policy benefit of having a Register that is better complied with and more easily monitored.

7. What controls should be in place to verify the information provided to the Register?

7.1 The effectiveness of the Property Register is undermined by the fact that the self-reported information collected by Companies House is not subject to systematic verification or scrutiny. It is critical to the success of both the PSC and Property Registers that beneficial ownership data is verified and non-compliance is acted upon.

7.2 In a July 2018 report, we analysed the data contained in the PSC Register to identify loopholes, information gaps and suspicious activity. As a result of that analysis, we made a number of recommendations that should also be applied to the Property Register:[18]

- The UK government should clearly mandate and resource Companies House to verify beneficial ownership data submitted to both the PSC and Property Registers and sanction non-compliance.
- Companies House should develop a capability to identify and investigate suspicious activity revealed in the data, in coordination with other relevant government departments.
- Loopholes for suppressing beneficial ownership information need to be closed, including by making it more difficult to file statements saying there is no beneficial owner and checking up on companies that are listed as the controlling entity.

7.3 In particular, Companies House's current statutory powers under the 2006 *Companies Act* should be amended to give it both the function to scrutinize information submitted and the powers to take enforcement action, which could include more options to sanction non-compliant companies, increasing the civil sanctions available for administrative breaches, and greater cooperation with law enforcement agencies if there is evidence of a criminal offence.[19]

7.4 The type of controls that can be used to verify the data include:

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[16] See the FATF's Guidance on Transparency and Beneficial Ownership, para 34(a) of p. 16. Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

[17] See p. 46 of FATF's report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf

[18] The Companies We Keep, pp 2-3; 12-34.

[19] See the *Companies Act*, Parts 31 and 35. Available at: https://www.legislation.gov.uk/ukpga/2006/46/

- Identification documents (e.g. a passport) should be submitted along with company documents, which can then be cross-checked against UK governmental datasets including: the Driver and Vehicle Licensing Agency database; National Insurance data; credit reference databases; and risk intelligence databases, to ensure persons behind an entity are real and free from red flags.
- Those unable to be verified through these processes could be referred to a regulated professional to carry out necessary AML checks and verification. Registered professionals should provide proof of their AML registration on documents submitted to Companies House; e.g., proof or registration with an AML supervisor.
- UK companies listed as corporate PSCs should be checked against the company numbers they supply. There should be extra validation on the data entered for corporate PSCs to ensure they are indeed a UK relevant legal entity (***RLE*** – e.g. that they are actually registered with Companies House).
- Foreign corporate PSCs should provide their company numbers (which can be checked e.g., through third-party aggregators such as OpenCorporates), and their ticker symbols (an identification code for a stock – if listed on a relevant stock exchange), to verify that they are RLEs. However, foreign corporate PSCs should only be allowed to be listed as beneficial owners where they are registered in jurisdictions that are deemed to be absolutely equivalent to the UK.[20]

7.5 The UK government is under an obligation to implement verification of UK company beneficial ownership data as part of the transposition of 5AMLD by January 2020.[21] The government should ensure the Property Register also meets these new verification requirements.

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

8.1 As set out above, amendments should be urgently made to the *Companies Act* to give Companies House additional capacity to verify information and sanction non-compliance. However, it is impossible for Companies House to take on more responsibility without being given adequate resources. The government should allocate more staff and funding to Companies House to carry out thorough verification, identify suspicious activity, and pursue prosecutions. So far, the government has been reluctant to do so, despite

[20] In our September 2018 submission, we argued that, to be deemed equivalent, registers in other jurisdictions must: be public and open to all, not just those who have a 'legitimate interest'; be free to access; provide beneficial ownership information as open, structured data; require that beneficial ownership information is updated as changes occur; require the same information of beneficial owners as the Property Register; and provide a unique identifier for the companies it registers. The Property Register should only allow users to input the name of an equivalent register by using a "drop-down" menu that is limited to the names of the countries on a list deemed to be equivalent. Companies House should require, as proof of registration in an equivalent register, a link, screenshot or extract from that register showing that the registration has been made and is current.

[21] See Article 4 – Transposition. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0843&from=EN

this having been highlighted as an important area of weakness in the recent FATF review of the UK's fight against financial crime.[22] This year presents an important opportunity to make these changes, with a statutory review of the register due this Summer.

8.2 Anti-corruption NGOs are not the only ones calling for this change. In addition to backing from major UK banks, a recent YouGov poll found that business leaders back related measures to toughen up the UK's defences against money laundering:[23]

- 84% would pay an additional fee (around £2) for more robust checking procedures by Companies House.
- 67% want tougher penalties for those behind shell companies.
- 64% believe more robust checking procedures at Companies House would reduce money laundering in the UK.

8.3 In January 2018, the UK government confirmed that there are 20 staff employed to deal with PSC compliance activities,[24] and in July 2018, it confirmed that 80 staff at Companies House work on "integrity issues" across all the records they hold.[25] This is clearly not enough staff to deal with the volume of checks and investigations required. One possible source for funding for further resources could be the future income generated from fines for non-compliance with the rules under the PSC and Property Registers (see our answer to Question 9, below).

9 Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive and practicable way to ensure compliance? Are the sanctions proportionate and enforceable?

9.1 First, as we have explained in previous consultation responses,[26] Global Witness strongly believes that regulated professionals should play a role in the verification of beneficial ownership information. All entities and arrangements wishing to own property in the UK should be required to appoint a UK-based professional such as a solicitor, bank or accountant (or any professional accredited by a supervisory body and covered by the UK's Money Laundering Regulations – ***MLRs***) who will be responsible for verifying the beneficial ownership of that company. The name of that professional should be publicly declared on the Property Register. This will charge professionals with the task of verifying the information that is provided by non-UK companies to the UK government, and will provide a point of contact in the UK that law enforcement can take action against in the event that incorrect or false information has been provided. The current approach

[22] Global Witness press release, Dismay as G7 watchdog gives UK highest ever rating, December 2018. Available at: https://www.globalwitness.org/en/press-releases/dismay-g7-anti-corruption-watchdog-gives-uk-highest-ever-rating-despite-country-laundering-hundreds-billions-pounds/
[23] See Robust survey results. Available at: https://bdgroup.co.uk/robust
[24] See UK Parliament response to written questions, January 2018. Available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-16/123021/
[25] See UK Parliament response to written questions, July 2018. Available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-07-17/165051/
[26] See our June 2017 and September 2018 submissions.

(which asks for a service address – Schedule 1, Part 3) is not sufficient to deter money launderers and the like.

9.2 Both the MLRs and their guidance should be clarified to ensure that a company that seeks to avoid naming its PSC, e.g. by restructuring the company for no discernible reason other than to secure secrecy or by contracting nominees, is deemed to be behaving suspiciously. Should any regulated professional become aware of this behaviour, it would be incumbent on them under the MLRs to submit a Suspicious Activity Report to the UK Financial Intelligence Unit.

9.3 If the relevant UK professional is found to be complicit in submitting inaccurate information, they should face sanctions in addition to those imposed for breach of the MLRs. Penalties could range from being struck off the relevant professional register, to imprisonment and/or a fine. The severity of the sanctions imposed should be dependent on the level of inaccuracy and the degree of knowledge or intention with which the information was submitted to Companies House.

9.4 It is vital that this change is made in the primary legislation proposed in the draft Bill. It will help address the specific difficulty the Property Register will face when it comes to enforcing breaches committed by legal persons who are registered offshore. It will not cost the government money and will result in a more effective Register. It is a mistake not to take the opportunity to create this obligation at this point in time.

9.5 Secondly, the draft Bill should be amended to establish the enforcement procedure in the event that certain of its sanctions are not complied with. E.g., clauses 8 and 23 envisage that a daily fine of £500 will be payable for failure to comply with the updating and notification duties within the Bill. Although this fine should accrue automatically from the date of non-compliance, we have seen that in the case of LLPs and the PSC Register, no fine has ever been levied, which drastically decreases its deterrent effect.[27] The draft Bill should therefore require that after a certain period of non-compliance, a more severe penalty will apply (although one which is still proportionate). E.g., if a company or individual fails to comply with its updating duty for two years, the fines accrued would amount to £365,000. At that point, a freeze should be placed on the property, resulting in the owner not being able to transfer the property until they have provided the required information. The same freeze could operate to prevent the owner from applying for any other changes to the property, including obtaining planning permission. This will encourage non-criminal companies to provide accurate information in a timely manner, and will prevent any criminals from dealing with the asset while law enforcement has had time to investigate. If non-compliance continues after this point, the UK authorities should investigate and – if there is evidence of wrongdoing – seize the property and sell it to a new purchaser. Following the sale to a new purchaser, and

[27] See news reports from Scotland showing that as of 31 January 2018, no fines had been levied against non- compliant SLPs despite up to 17,000 firms not providing PSC information at this point. Available at: https://theferret.scot/scottish-limited-partnerships-crack-down/ and http://www.heraldscotland.com/news/homenews/16110425.Labour__Scottish_shell_firms_owe___2_Billion__in_fines/

once allowances have been made for any mortgages / other rights over the property, the funds should be distributed to:

- UK law enforcement, to cover the costs of the investigation;
- the victim and/or country-of-origin, if it can be shown that the funds are the proceeds of crime and that they can be safely and responsibly returned; and/or
- a fund established to help Companies House resource compliance and enforcement of the Register (see paragraph 8.3, above).

9.6 Companies House should be further empowered and resourced to pass on to law enforcement and the relevant professional regulators information relating to companies and/or individuals that have been non-compliant or purposefully evasive in disclosing suspicious activity.

18 March 2019

Global Witness – Supplementary written evidence (ROE0017)

In response to Lloyd Russell-Moyle MP's question in the oral evidence session on 18 March 2019:

"Lloyd Russell-Moyle MP: *You get that from the tax, but my understanding is that the trust cannot be named in the Land Registry. The Land Registry names the individuals of the trust, or individuals nominated by the trust, so it is an individual's name. Just looking at the Land Registry, you would have no idea if it was an individual with that name owning the trust or if they owned it on behalf of a trust. At the moment there is no link. It just so happens that there is a basis of legal documents that requires that. Are you saying that there should be a way in the Land Registry documents of identifying that a person is holding it on behalf of a trust and therefore the trust needs to be registered, or are you saying that all the names of the beneficial owners should be listed on the registry, because at the moment there is no ability for names of trusts to be on it?"*

This submission is made on behalf of Global Witness.

Moving forward, the Land Registry documents should indicate where named individuals hold property on behalf of a trust. As detailed in our previous written submission (3.7), the Property Register must then require *all* parties to a trust to disclose their identities, including the settlor, trustee, protector, beneficiary or class of beneficiaries, and anyone who receives income from the trust. This will also ensure consistency with the upcoming UK's Trusts register, as required by the 5th EU Anti-Money Laundering Directive by March 2020, under which all categories of beneficial owners of trusts will need to be registered when the trust enters into a business relationship or acquires real estate in the UK (Article 31). We believe the Trusts Register should also be made publicly available and cross-checked with the Land Registry and the Property Register.

The government's decision to require registered entities under the draft Bill to obtain a unique identification number (clause 5) will allow for comparison between other data sets, including the upcoming Trusts Register. The Land Registry should also record these unique identification numbers, so where an individual is marked as holding a property on behalf of a trust the unique identification number can then be used to search the Property Register to find all parties associated with it.

As detailed in our previous submission, the current draft Bill fails to require unique identification numbers for individuals listed as beneficial owners, which makes it difficult to see when several records refer to the same person. This should be rectified, and all beneficial owners should be required to obtain a unique identification number, following a proof of identity check as part of a verification process.

Ava Lee
5 April 2019

ICAEW – Written evidence (ROE0005)

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.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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.

18 March 2019

IFC Forum – Written evidence (ROE0014)

Executive summary

- Where jurisdictions of incorporation do not already systematically and reliably verify beneficial ownership information, verification by professionals in the UK would be necessary. This would be costly and logistically difficult, as it would require professionals in the UK to have a knowledge of the legal systems in the jurisdiction of incorporation. Ordinarily, this would require legal advice being procured locally: doubling or tripling the cost of verification.
- However, in jurisdictions where verification is done systematically, this would not add any value. A professional in the UK being required to do the same again would be duplicative – and indeed inferior to – processes already adopted locally.
- The imposition of additional costs on transacting through jurisdictions from which UK law enforcement and tax authorities already receives unlimited access to corporate beneficial ownership information would incentivise incorporation to move to centres where less information is provided: degrading UK law enforcement.
- The National Crime Agency notes that it already has access to 'quality beneficial ownership information' from the Crown Dependencies and Overseas Territories, under the Exchange of Notes between the UK and those territories in 2016.
- The Crown Dependencies' and Overseas Territories' registers have been independently assessed as containing the highest-quality information in the world, and information from them can be used prima facie in courts in the UK – for example, to procure Unexplained Wealth Orders or Account Freezing Orders.
- The costs of verification would be significantly greater – perhaps a hundred times greater – than the £9.10 per transaction that the Impact Assessment claims. This extra cost will reduce investment through centres that already conduct such verification locally. Where, as with the CDOTs, jurisdictions already provide information to the UK, this will reduce the information available.
- Given the extra imposition of a verification requirement by a professional in the UK would reduce the information accessible to and able to be relied on by UK law enforcement and HMRC, we recommend that entities incorporated in jurisdictions that already provide the UK with this quality information be exempted from the register requirement, just as the draft Bill proposes entities in EU Member States be.

1. Introduction

1.1. The International Financial Centres Forum (**'IFC Forum'**) is a not-for-profit membership organisation composed of professional service firms based in Bermuda, the British Virgin Islands ('**BVI'**), the Cayman Islands, Gibraltar, Guernsey, the Isle of Man, and Jersey. IFC Forum advocates responsible cross-border financial intermediation as a means to support trade and investment and promote economic growth and international development.

1.2. IFC Forum submitted evidence to the April 2017 call for evidence on registers of beneficial owners ('**UBOs**') of overseas companies and other legal entities and to the July 2018 call for evidence on the draft Bill. IFC Forum welcomes further pre-legislative scrutiny of the register proposed by the Bill (the '**proposed register**').

1.3. Throughout, we refer to the Draft Registration of Overseas Entities Bill (the **'draft Bill'**), the accompanying Explanatory Notes to the draft Bill (the **'Explanatory Notes'**), and the accompanying impact assessment of the draft Bill (the **'Impact Assessment'**).

2. Why CDOT-incorporated companies are used to hold UK property

2.1. We note that during the Committee proceedings, one witness stated that 'very little good' happens in overseas jurisdictions, and we therefore wish to explain why property often is held by entities incorporated in the Crown Dependencies and British Overseas Territories (the **'CDOTs'**).

2.2. Tax is rarely a motive to purchase residential properties through overseas companies, as this incurs the Annual Tax on Enveloped Dwellings, introduced in 2013. Both commercial and residential properties are also subject to higher Stamp Duty Land Tax, LBTT in Scotland, or LBT in Wales when acquired by companies.

2.3. Instead, companies in the CDOTs are used to purchase property due to other factors:

2.3.1. **Ownership of diversified international assets portfolios:** UK real estate owned by CDOT companies is often part of a diversified investment portfolio. Companies incorporated in the CDOTs are often used for cross-border asset purchases, including UK real estate, to allow the pooling of investments via a neutral jurisdiction. Removing real estate from the portfolio and holding it in an individual's name would reduce the ability to balance it against assets with other risk profiles. If the holding of UK real estate in such portfolios is discouraged, it will reduce the attractiveness of the UK property market to institutional

investors: reducing the supply of new housing and commercial property.

2.3.2. **Flexibility afforded by English law, e.g. avoiding restrictions on inheritance:** Many investors are based in jurisdictions with Sharia law or other legal systems with limitations on disposal of property that English law does not impose. For example, under Sharia law, two-thirds of an estate must be distributed in a set manner, and female heirs must inherit half as much as male heirs. Forced heirship is also prevalent in Latin America. Investing via a CDOT company allows family affairs to be managed under English law. This promotes British social norms – such as women's rights and religious freedom – globally.

2.3.3. **Familiarity of international banks with lending to, and getting credit support from, CDOT companies:** Lenders will typically prefer to lend to, and take security from, a company, as it can secure a loan over assets other than the property more easily when lending to companies than when lending to individuals. For example, banks that have taken a charge over the shares in a BVI company to support a property financing will have rights that are similar to the rights of secured creditors under English law. That gives the banks a great deal of comfort with the BVI as a creditor-friendly jurisdiction.

2.3.4. **Familiarity with corporate structures:** CDOT companies have standardised and internationally-familiar corporate governance and are often used to invest in China, Latin America, Africa, and other jurisdictions with poor corporate governance and rule of law. International investors are thus familiar with how they operate: making it more cost-effective to invest via a CDOT company.

2.3.5. **Legitimate privacy concerns:** UK residential property is owned by many high-profile people for whom privacy and security is a concern. The fact that information on the ownership of CDOT companies is not publicly available is attractive and valued by high-profile individuals and families, many of whom would not want their personal UK home address to be a matter of public record for safety reasons, including for children and vulnerable persons. For example, UK-resident Emma Watson held her UK home through a BVI company to protect her from stalkers, even though this incurred significant additional UK taxation.

3. Importance of verification

3.1. We note that the Bill's primary objective is "to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK".

3.2. We note that Donald Toon of the National Crime Agency highlighted to the Joint Committee that the key issue for the NCA is securing Unexplained Wealth Orders, which requires the ability to persuade the court of the link between a person and an asset. That requires access to credible and accurate data by law enforcement and HMRC.

3.3. The World Bank's Puppet Masters report outlined the conditions under which a 'company register can be considered a viable option for providing beneficial ownership information' for the purposes of preventing criminality. These conditions are:

i. Upon submission of information to the registry, the Registrar checks the information against available resources. Companies incorporated to conduct sensitive activities are subject to particularly close checks.
ii. Only registered and licensed corporate service providers may incorporate companies where any legal or beneficial owners are located overseas.
iii. Application for registration can only be approved at director level, where beneficial owners will be known.

The World Bank collectively calls these conditions the 'Jersey Model', as all three elements are exemplified by the approach adopted in the CDOTs.

3.4. Verification of information is essential to ensure the register may be relied upon by HMRC, law enforcement, and courts. Law and tax enforcement, and the Financial Action Task Force, view unverified, self-contributed data as being of limited use for this reason.

3.5. Many jurisdictions will not systematically verify the information. To ensure that it is of suitable quality and usable by law enforcement, it should be verified by a UK professional except where it can be demonstrated that verification takes place systematically and by an equivalent or superior system elsewhere.

4. Basis of equivalence

4.1. We note that Clause 15 of the draft Bill permits the Government to exempt jurisdictions with systems that are equivalent to the proposed Register ('equivalent'). A number of differing systems of beneficial ownership disclosure have been adopted globally to meet different objectives. We base our understanding of how systems might be equivalent to the proposed Register with reference to the policy objectives as discussed above.

4.2. As noted at paragraph 3.1 above, the objective of the Bill is law enforcement: deterrence of crime, disruption of crime, pursuit of crime, and improvement of investigative capacity. Thus, systems ought to be deemed equivalent to the UK's system where they provide equivalent access by reliable information law enforcement and tax authorities.

4.3. The UK has an 'open register' in the sense that any individual may incorporate an entity and be responsible for updating it. The UK thus permits companies to file any information on UBOs (which the UK calls 'people with significant control'), whether or not the information is accurate, on either incorporation (form IN01) or later (form PSC04). 250,000 UK companies are created each year without any checks on identity.

4.4. Companies House is required by law to accept the information submitted as accurate, as noted by the Economic Secretary John Glen in March 2018. Companies House has stated that they do not have the resources or power to verify the information. However, the disclaimer on Companies House's website noting that the information is not verified or passed off as accurate is difficult to find and little-understood by users.

4.5. This is a low-security regime that does not afford opportunity for the information to be verified by Companies House or by a third party. This has led to significant concerns being expressed publicly about this self-policed system:

4.5.1. The *Financial Times* reported in September 2018 on the National Crime Agency opening an investigation into Danske Bank after the filing of false information with Companies House facilitated billions in money laundering.

4.5.2. The Evening Standard has reported how criminals openly mock Companies House's register by citing their occupation as 'Fraudster' and address as 'Street of 40 Thieves'.

4.5.3. The Financial Times reported that a campaigner listed politicians as a company's people with significant control as a stunt to highlight the system's flaws. This was only noticed – leading to the first prosecution for incorrect filing – when the person himself contacted Companies House to tell them of his fraud.

4.5.4. False information was filed with Companies House to defraud potential investors in Telegram.

4.5.5. The Times has reported how an 85-year-old was fraudulently listed as a director to facilitate securities scams.

4.6. As a result of the widely-publicised and widely-recognised flaws with the public PSC register, practitioners have already dismissed the register as not trustworthy, and do not put reliance on it: failing to increase trust in the financial system.

5. Systems in the Crown Dependencies and Overseas Territories

5.1. In his oral evidence, the NCA's Donald Toon singled out the CDOTs as already having systems that provided this information to the UK, noting, "At the moment, we are in a situation where we can get quality beneficial ownership information from the Overseas Territories and Crown Dependencies."

5.2. Toon was referring to the arrangements (the 'Exchange of Notes') that the CDOTs agreed with the UK in 2016 to introduce registers of beneficial ownership of entities incorporated in each jurisdiction and to exchange information contained on those registers on request and without limitation.

5.3. Under these Exchange of Notes, the CDOTs' governments maintain centrally-accessible databases of beneficial ownership information. Before entering the registers, the information is verified by licensed and regulated Corporate Service Providers. This ensures the information is more reliable and accurate, enables the information to be used as evidence in investigations and court proceedings, and reduces the administrative costs to the UK of correcting errors.

5.4. This verification takes place on a much wider scale in practice than in other countries that nominally require it to take place. Academic research has found that Cayman Islands, Jersey, Isle of Man, and BVI all feature in the top five jurisdictions globally in compliance with Financial Action Task Force's requirements to verify identity.

5.5. The UK National Crime Agency has access to this information upon request – without having to give a reason for the request or a prima facie case for needing the information – within 24 hours, or 1 hour where the NCA claims that it is urgent. This information may then be used by UK law enforcement for any purpose whatsoever.

5.6. As a result, the CDOTs already provide the information that it is the objective of the Bill to provide.

6. Policy costs

6.1. We note the agreement of all three professional bodies that have given oral evidence to the Joint Committee that the cost of implementing the policy will be significantly higher than that estimated by the Bill Impact Assessment. The Society of Licensed Conveyancers noted that the forecast cost of £9.10 per transaction 'should have a few noughts added to it', and we agree that the cost of independent verification would add at least hundreds or possibly thousands of pounds to each transaction.

6.2. Conveyancers and other UK professionals involved in real estate transactions are ordinarily not familiar with the legal systems in overseas jurisdictions. They will thus usually not be well-placed to identify who is a beneficial owner as a matter of law. Furthermore, unlike the corporate service provider that performs corporate services for an entity overseas, these professionals will usually not be familiar with the actual operation of the company, and thus will usually not be well-placed to identify who qualifies under any legal definition as a matter of fact. As a result, they will ordinarily have to procure legal advice within the jurisdiction.

6.3. We further note that this additional cost would often have to be incurred by both the buyer and the seller, as both incur liabilities under UK land law that they would wish to transfer along with the title. For example, if a legal title does not transfer, the seller retains the legal responsibilities and rights as competent landlord under the Landlord & Tenant Act 1954. As such, if legal title is prohibited from passing, notices must be served on and by a seller that has – having signed a contract to sell the land – no equitable interest and thus no commercial interest in the land, nor any knowledge of how it is managed. A well-advised buyer and a well-advised seller would thus likely both have to independently performing this due diligence: compounding the costs.

6.4. Due to this additional cost – which would likely amount to many millions of pounds a year – it should only be imposed where there is a tangible law enforcement benefit to the imposition of the requirement.

6.5. The CDOTs' registers are assessed on an ongoing basis by the UK against the commitments in the Exchange of Notes. Independent and impartial examinations of these systems ought to be sufficient to ensure that these commitments are met. Equivalence determinations could change with changes in assessment of the compliance or otherwise with the Exchange of Notes.

6.6. As such, per section 4 above, where the Exchange of Notes are assessed as being implemented fully, the CDOTs have systems that are superior to proposed register. We thus recommend they be considered equivalent and excluded from the requirement.

7. Conclusion

7.1. We accordingly recommend that registers should be considered equivalent as thus entities incorporated in their jurisdictions exempt where:

(a) they are maintained by or directly accessible by governments;

(b) UBO information on the register is required to be verified by licensed corporate service providers abiding by international standards; and

(c) information on those registers is reasonably accessible by the UK Government without explanation or limits on its usage.

21 March 2019

Jersey Finance Limited – Written evidence (ROE0010)

Summary

1. Jersey Finance Limited (**JFL**) is run as a not for profit organisation and was formed in 2001 to represent and promote Jersey as an international finance centre of excellence. JFL is funded by members of the local finance industry and the Government of Jersey. Although JFL is funded in part by the Government of Jersey, the Government has not contributed to this response.

2. We submitted a response to the initial consultation on the Draft Registration of Overseas Entities Bill (the **Draft Legislation**) in September 2018. Our response to the consultation and this further written evidence has been prepared based on discussions and views supplied by our members. In particular, we have consulted on this written evidence with the Jersey branch of STEP (the Society of Trust and Estate Practitioners) and the Jersey Association of Trust Companies, who support the views expressed herein. As a result, while JFL does not represent the Jersey finance industry in its entirety, we are confident that this response is broadly representative of an industry view.

3. Our response to the consultation submitted in September 2018 outlined what we considered the impact of the Draft Legislation would be and, where appropriate, addressed specific questions raised by the consultation. Our conclusions, which remain relevant, can be summarised as follows:

    - Entities registered on Jersey's central register of beneficial ownership information should either be exempt from the need to disclose information in accordance with the Draft Legislation or Jersey should be considered to have an 'equivalent' register as per the Draft Legislation.

    - The information found on Jersey's central register is of superior quality to that contained on many public registers, due to its strict collection and verification regime undertaken by regulated professionals.

    - The information on Jersey's central register is available to law enforcement agencies on request and therefore achieves the aim of fighting financial crime.

    - Enhanced co-operation arrangements are in place between the UK and Jersey which mean that beneficial ownership information is available on request by law enforcement within 24 hours or one hour where the request is urgent. The UK government has confirmed in a statement that these enhanced arrangements are working well to support criminal investigations.

    - It is vital that personal details of directors, including but not limited to residential address, are afforded adequate protection from public disclosure, due to threats to the personal safety of individuals.

- The proposal to charge overseas entities that currently own UK property to register may constitute a restriction on the free movement of capital. This requirement results in overseas entities subject to an additional fee which is not levied on UK companies owning property. JFL would invite the Department for BEIS to reconsider this proposal.

- JFL is in agreement with the proposal to exempt trusts from the need to register.

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. One of the questions now to be considered by the Joint Committee is whether other entities such as trusts should be caught by the draft bill and be required to provide beneficial ownership information which will be held on a pubic register. The Impact Assessment published alongside the consultation stated that:

   "as set out in our response of March 2018 to the call for evidence on the register, and consistent with the commitment made at the 2016 Anti-Corruption Summit, we do not consider that trusts should be included on the register. Trusts do not have legal personality in their own right and so are not capable of entering into contracts. They are also commonly used for reasons including protecting assets for children and vulnerable adults, meaning that legitimate grounds exist for ensuring that information on the beneficial owners of trusts is not made publicly available."

5. JFL strongly endorses this view, trusts are predominantly used to structure family wealth and, in this context, will often be used to hold the families' portfolio of properties in the UK. Furthermore, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 already requires all express trusts (including those administered from outside the UK) which generate a UK tax consequence – such as when property held within the trust is purchased or sold - to register details of their beneficial ownership with HMRC (the **HMRC Register**).

6. It is noted that the French Constitutional Court has recognised that a fully public trusts register is incompatible with privacy rights. The EU acknowledged this decision when implementing AMLD5 as it requires a different test to be met (the legitimate interest test) in order to access beneficial ownership information of trusts. JFL therefore suggests that beneficial ownership information in relation to trusts should not be on a public register for all to access.

7. BEIS research on the impact of the register, found 50% of stakeholders sampled believed the new register would not make the UK a less attractive place for investment. However, 41% thought it would have a negative impact. Our members are firmly of the view that if trusts were in scope of the Bill, then investors would have the same safety concerns as raised in relation to companies, regarding the details of beneficiaries being made public. In some

respects, these risks may be exacerbated in relation to trusts because these are predominantly used to structure family wealth. Such concerns may ultimately lead some investors to withdraw from investing in UK property.

8. The additional administrative burden that having to comply with this registration regime will place on companies, administrators and (as the case may be) trustees should also be considered. Aside from the potential for duplication with other registration requirements such as the HMRC Register, the proposed measures would increase the cost of doing business in the UK. This potentially reduces the attractiveness of UK property as an asset class. Moreover, whilst regulated professionals such as the trust and company service providers in Jersey will be aware of these requirements under UK law and will ensure compliance, the same may not be true for structures managed by individuals and non-professionals.

<u>Does the draft Bill provide sufficient protections for individuals who could be put at risk by having information about them made publicly accessible?</u>

9. We note that Section 22 of the Draft Registration of Overseas Entities Bill provides the Secretary of State with a regulation making power to protect other information submitted to the register from public disclosure. JFL acknowledges that the explanatory notes to the Draft Registration of Overseas Entities Bill recognise that there are circumstances in which all of a beneficial owner's information should be suppressed from public disclosure. An example is provided of where the activities of the overseas entity mean that the public disclosure of information relating to the individual would put that individual at risk of physical harm.

10. JFL notes that the above example corresponds with the position in relation to suppression of information submitted to the PSC Register, however questions whether this is sufficiently broad. As previously stated in JFL responses to consultations and select committee enquires on beneficial ownership registers, there is a very real risk that public registers may lead to increased instances of crimes such as cybercrime, extortion, kidnap and ransom, as personal – and by extension family – information is made publicly available. Professor Jonathan Fisher QC who gave evidence to the Joint Committee on 4 March 2018 noted that "*there are cases where people do have family offices where they want to keep matters private…. the Lloyds market is selling kidnap insurance for a reason*."

11. Further, the PSC Register permits the disclosure of information relating to minors. To put information about children in the public domain could make them vulnerable and more susceptible to criminal activity. JFL would submit that such information should be redacted from public disclosure. However, in the case of the PSC Register, the ability to suppress information on PSCs is generally linked to the activities of a company. This severely limits the scope of the protection this measure offers. There are very real concerns regarding the safety and security of individuals which do not necessarily relate to the activities of the company. We would therefore submit that the exemption criteria should be

broadened so as to allow those at risk of harm due to other reasons to have their details suppressed from public disclosure.

12. In addition, while the residential addresses of directors will be suppressed from the register, the Draft Legislation fails to take into account situations where the property the company owns is the residential address of the beneficial owner. A further exemption should be introduced for such circumstances.

18 March 2019

Joint Committee on Human Rights – Written evidence (ROE0021)

Thank you for your letter dated 28 March. Following your letter, we requested an ECHR Memorandum from the department responsible for the Draft Bill, BEIS, which we received late last week.

The JCHR fully supports efforts to combat money laundering in the UK, including through using the UK property market and understands the need for this legislation. We also appreciate the difficulties in legislating for entities that may not be subject to the jurisdiction of the UK in all respects.

We agree with the BEIS analysis that the Draft Bill potentially engages Article 8 (right to private and family life), Article 1, Protocol 1 to the ECHR (right to peaceful enjoyment of one's possessions) and Article 1, Protocol 1 to the ECHR as read with Article 14 ECHR (non-discrimination in relation to property rights).

Article 1, Protocol 1 (Property) and the potential impact on innocent third parties

Considering the aim of the legislation (combatting money laundering), the means employed (provision of information) and the consequences of non-compliance (limitations on the use of property), the potential interference with the property rights of overseas entities is capable of being justified.

A more pressing concern under the Draft Bill is the protection of the Article 1, Protocol 1 rights of innocent third parties. The reason this concern arises is because of the potentially adverse effects on the rights of such third parties of Schedule 3 to the Bill, in that any purchase by a third party of land in the UK from an overseas entity that has not completed the registration requirements (or annual update) would prevent the (potentially innocent) third party from registering and obtaining legal title and therefore legal recognition of their purchase of property in the UK.

As we understand it, where an overseas entity is registered as proprietor of a qualifying estate, the Schedule requires the Land Registry to "insert a restriction into the title register for the estate. The restriction will prohibit the registration of certain dispositions in respect of the estate unless the entity is a registered overseas entity (or is exempt) at the time of the disposition (or an exception applies). The dispositions are (a) a transfer of the estate (i.e. sale); (b) the grant of a lease of over 7 years out of the estate; and (c) the creation of a charge over the estate" (Explanatory Notes, para. 9).

The Explanatory Notes explain (para. 33) that "[t]he practical effect of the restriction is that where an overseas entity makes a relevant disposition at a time when it is not a registered overseas entity, is not exempt and no exceptions apply, those dispositions cannot be completed by registration" (emphasis added). Clearly, any innocent third-party acquiring rights to property in these circumstances could suffer significant loss by, for instance, having paid for a property, and then not being able to register the transaction in their name.

While the JCHR is aware that there are exceptions aimed at protecting the rights of third parties, these exceptions are rather narrow and would not protect the innocent third party to a contract for the sale of property who sought to register the transaction after the overseas entity was required to be registered. This is particularly concerning given the implications for the property rights on that third party and is especially concerning given that it is not clear how transparent the system will be, so it could unfairly impact upon innocent third parties who then

find themselves in a situation which they are unable to get out of as they have bought and paid for the property but are unable to register it to get the legal title to the property.

While a restriction on the title deed of property owned by an overseas entity might alert an innocent buyer, this will not be the case in Scotland, for instance, where there is no mechanism to place such a restriction on the title deed (EN, para. 33). Furthermore, where there is such a restriction, it is not clear to us how apparent the restriction will be on the title deed of the overseas entity, nor how the innocent third party will know whether the register is up-to-date. It may be that those undertaking the conveyancing will easily be able to cover these issues, but that is not clear from the information we have seen. These are issues which, in our view, require closer explanation or scrutiny.

The reason we think this is problematic is that the Draft Bill provides no mechanism to assist an innocent third party who seeks to register such a transaction: the transfer of property cannot be registered, and it is not clear how, if at all, the situation can be rectified or resolved. Potential criminal sanctions against an unregistered overseas entity who may already have received payment for property which can now not be transferred, would count for little.

In order to protect innocent third parties, the system of registers should ensure that it is very easy to determine whether a seller is an overseas entity and whether they are adequately registered at the time of sale. Moreover, in order to make the interference with property rights justified and proportionate, it would also be better to ensure that there is a method to resolve legal ownership of property where an innocent third party has bought real estate from an overseas entity that was not properly registered.

Article 14: Prohibition of Discrimination (in the enjoyment of other Convention rights) and the impact of "restrictions" in the land register

Given the fact that the provisions will only be applicable to overseas entities (i.e. those legal entities that are governed by the law of a country or territory outside the United Kingdom), a further consideration is whether the scheme under the Bill engages Article 14 (prohibition of discrimination), in conjunction with Article 1 Protocol 1 property rights, on the basis of nationality.

We recognise fully that the scheme under the Draft Bill is intended to mirror, to the extent possible, the People with Significant Control scheme applicable since 2016 to UK entities, and that it is not meant to be any more onerous.

Nevertheless, the differential treatment of UK and overseas entities means it may be necessary to examine aspects of the Bill more closely. In our view, the mere requirement to be a "registered overseas entity" in order to be able to register as proprietor of a "qualifying estate" is not, by itself, problematic.

What does concern the JCHR is the requirement, introduced into the 2002 Act by paragraph 3(1) of Schedule 3 to the Draft Bill, for the registrar to enter a "restriction" in the register in relation to a qualifying estate if an overseas entity is registered as the proprietor of the estate. This is irrespective of whether or not the overseas entity has already registered as such (i.e. as a "registered overseas entity") or not.

The entry of such a "restriction" may have serious adverse effects on the proprietor's property rights, which would not affect a UK entity in a similar way under the PSC scheme; if this were the case, it is possible that this discriminates against overseas entities.

In particular, the potentially "chilling effect" on the ability of overseas entities to deal effectively with their property because of wariness of potential buyers, lenders etc, whenever they were dealing with restricted property could become a serious problem for compliant overseas entities.

Again, the main issue is transparency: how easy it would be for banks and other lenders, potential buyers and tenants to assess whether a particular owner of property is compliant and can be trusted. If the system is not sufficiently transparent and user-friendly, the effect of the scheme could constitute a disproportionate interference with their property rights. Our view is that this is an area which requires further consideration and information from the Department.

Article 8: Right to respect for private and family life

We consider that the Draft Bill engages Article 8 rights. This is because of the requirement to provide personal information to the registrar about the beneficial owners of the overseas entities. For the most part, we believe this interference with privacy rights are justifiable, taking into account the reasonably limited nature of the information, the aims of the Bill and the consequences that follow.

One aspect that causes us some concern is the provision that allows for information of "managing officers" to be provided where the overseas entity has no beneficial owners, or they cannot be found or cannot provide complete information. The ECHR Memorandum summarises the position as follows:

> "20. A condition of registration is that the overseas entity discloses information about its beneficial owners. Where the entity has none, or they cannot provide complete information about them, details about their managing officers (e.g. a director) are required - see clause 4."

While this provision makes sense, it is unclear how much effort an overseas entity would have to make to find its beneficial owners before simply providing information of individuals who could provide a useful front for what might be a corrupt entity. Given the potentially serious consequences that could result for innocent third parties, outlined above, we are a little uneasy with a system that is apparently reasonably easy to circumvent. This aspect requires further clarification.

We also note that the clause 22 of the Draft Bill allows for regulations which will allow an individual to apply for their details to be protected from public disclosure. The ECHR Memorandum suggests that this will be done on the basis that disclosure would put them at risk of "physical harm". We note that although clause 22 does not address the standard to be used (this is to be set out in the regulations), we would have concerns about such a high standard. While that would clearly be a good justification for not disclosing information, it appears to us to be rather too high a threshold, and would not, for instance, allow for such an application to be made if the person's family members could be harmed as a result of disclosure, or if some lesser, yet still serious, level of harassment, threat or harm was likely. We note that this aspect will be dealt with in regulations, and we would recommend that this aspect is revisited at the appropriate time.

We remain willing to provide any further assistance we can.

The Rt Hon Harriet Harman MP
25 April 2019

The Law Society of Northern Ireland – Written evidence (ROE0012)

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 500 firms, based in around 65 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

Introduction

1. The Law Society of Northern Ireland **('the Society'**) welcomes the approach from the Joint Select Committee to ascertain our views on the provisions of the Draft Overseas Entities Bill **('the Draft Bill').** The Draft Bill is seeking to implement a register (**the Register**) that would require overseas companies and other legal entities that own property (i.e. real estate) in the UK to identify their ultimate principal beneficial owners.

2. The Society continues to support the policy objective of ensuring that the UK is a clean and safe place to do business. The Society welcomed the recent positive Financial Action Task Force Mutual Evaluation Report (**MER**) of the United Kingdom's AML/CTF regime, recognising the UK's AML/CTF regime as the strongest of any country assessed to date. It is noted that the proposed Register was cited in the MER (paragraph 441).

Policy Issues

3. The Society is interested in the question as to what interested parties will do with the information available on the Register and/or provided to the Registrar. For example, the information required to be provided as per the

Draft Bill does not appear to include details of criminal convictions (unlike, e.g., Regulation 26 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('**the Money Laundering Regulations 2017'**). Publication of beneficial owners' details alone may not be a sufficient deterrent to prospective/actual overseas money launderers. This raises the issue of whether prohibition of those with relevant convictions being permitted on the Register might better achieve the aims of the legislation. Also, there is a risk that registration on the Register may imply legitimacy of the entity to the detriment of further consideration/investigation of a proposed transaction. It will be important to consider the impact of the Register in the round as part of a comprehensive AML/CTF approach.

4. The Society notes that it is important to consider who will be responsible for checking/verification of the information provided by the overseas entities to the Registrar. In particular, it should be determined whether Companies House has the resources and capacity to undertake this or will the Register be largely based on selfdeclaration by an applicant. The operational effectiveness of the Register in achieving its purpose should be scrutinised closely at an early stage.

5. It is not clear whether overseas 'individuals' are intended to be within the scope of the Draft Bill and how this would be implemented. The definition of "legal entity" (Section 2 (2) of the draft Bill) is arguably unclear on this point – "a body corporate, partnership or other entity that (in each case) ***is a legal person*** under the law by which it is governed" (*emphasis added*). If overseas individuals are not intended to be within scope, this could create a potential gap in the protection provided by the Draft Bill.

6. The Society understands that trusts may not be intended to be within scope. However, it is noted by way of comparison that registration of UK Trusts is under consideration in relation to implementation of 5MLD. On that basis, it may be timely to consider whether these should be captured by the Draft Bill.

7. Ultimately, policing the Draft Bill may in practical terms rest with conveyancing solicitors, who will have to determine if their client is an overseas entity as defined in the Draft Bill. This continues to increase the burden and responsibility on the conveyancing solicitor and it will be important to clarify the scope of the responsibilities in this respect and to ensure clear and comprehensive guidance is available on the operation of the legislation.

8. The Society notes there is a risk that the Draft Bill may give rise to dilution of the current AML/CTF regime and the client due diligence requirements therein (**CDD**). For example, will persons presently subject to the Money

Laundering Regulations 2017 still be required and/or in effect carry out CDD on registered overseas entities or will they simply rely on the registration in the Register of overseas entities as sufficient assurance? Again, this point goes to the importance of ensuring the Draft Bill complements and reinforces existing protections and does not give rise to unintended effects.

Specific Provisions within the Draft Bill

9. The Society notes that the 'qualifying estate' does not include obtaining a charge on the land. This could create a potential gap in protection in the short term. For example, where (a complicit) UK entity/individual acquires the freehold/leasehold estate in land by way of loan from an overseas entity and then the UK entity/individual charges the land in favour of that overseas entity. Consequently, the overseas entity has invested money and acquired an interest in land without having to become a registered overseas entity (albeit, it may ultimately need to become so registered to enforce its charge if the UK entity/individual were to default).

10. Free cancellation in the Land Registry of the inhibition envisaged in the Draft Bill could also be considered as a means of improving the operation of the legislation.

Considerations for Northern Ireland

11. It is worth considering whether the difference in lease terms as per the Draft Bill (any lease in Scotland, more than 7 years in England and more than 21 years in Northern Ireland, which reflect jurisdictional differences in land law) and the absence of any retrospective application in Northern Ireland increases the risk of ML/TF in the Northern Ireland property market in the period leading up to enactment of the Draft Bill.

12. A related issue is the extent to which Land Registry in Northern Ireland has the capacity/resources to fulfil its obligations under the Draft Bill or whether Land Registry NI will in practice seek to pass these obligations onto the conveyancing solicitor. For example, they may require the conveyancing solicitor to include the inhibition in their application and/or certify all required details for the applicant, shifting the burden of compliance. Clarification on the parameters of this responsibility for the various interested parties in this legislation would be welcome.

13. It is clear that Republic of Ireland entities will be within scope of the Draft Bill. It may be appropriate to consider distinguishing between those overseas entities from countries who have equivalent AML/CTF regimes such as the US or those in the EU and those from countries who do not. This distinction would be objectively justifiable on the basis of partnerships

between nations with similarly robust AML/CTF regimes and again serve to clarify roles and responsibilities in respect of the legislation.

Conclusion

14. The Society welcomes the opportunity to submit a response to the Joint Committee in respect of this matter. Our commentary has been directed towards ensuring the legislation is effective, efficient and can be implemented smoothly and with due regard to its place within the existing AML/CTF architecture. The Society trusts our contribution is constructive and is happy to discuss any of the issues raised.

20 March 2019

Law Society of Scotland – Written evidence (ROE0006)

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Banking, Company and Insolvency Law and Property and Land Law Reform sub-committees and Property Law Committee welcome the opportunity to consider and respond to the Joint Bill Committee call for evidence on the Draft Registration of Overseas Entities Bill. Our comments refer to the version of the Bill as published for consultation by the Department for Business, Energy and Industrial Strategy in July 2018.[28] We have the following comments to put forward for consideration.

General remarks

We fully support the aims of the proposal in increasing transparency and in seeking to combat money laundering, corruption and terrorism. Any action that prevents or reduces such activities is strongly to be welcomed.

We do not condone the use of legitimate business structures for criminal intent and purposes and are fully supportive of proportionate, appropriate and targeted measures aimed at preventing this. As the professional body for Scottish solicitors we would take robust disciplinary action against any Scottish solicitor who was involved in facilitating any criminal activity. However, in considering any proposed measures, care should also be taken to avoid introducing measures which may impose a burden on legitimate businesses and commercial activities, but which may not effectively dissuade those businesses or individuals intent on criminal behaviour.

Furthermore, the Scottish legal profession serves clients across the globe. We recognise the benefits which may result from a more transparent economy and welcome measures to encourage investment.

We note that the Scottish Government has recently consulted on draft *Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land)*

[28] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727915/Draft_Registration_of_Overseas_Entities.pdf

(Scotland) Regulations 2021[29] and we responded to that consultation,[30] which has some points of overlap with the Draft Registration of Overseas Entities Bill.

Relationship with Scottish registers

Clarification is needed as to how the UK Government's proposed Register of Overseas Entities will operate alongside the Scottish Government's proposed Register of Persons Holding a Controlled Interest in Land. There is obvious overlap and therefore the two government bodies will need to address the potential for both duplication and conflict in operating two separate systems. At this stage, our comments should therefore be considered with this concern in mind.

The Scottish land registers and the legislation the draft Bill proposes to amend (Schedule 4) are devolved matters and therefore sit within the competence of the Scottish Parliament. We note the Department for Business, Energy & Industrial Strategy "will continue to work with the Devolved Administrations as the proposals are refined."[31] Additional information is needed as to how this will operate and further consultation with Scottish stakeholders may be required.

We are concerned that the proposed registration system as presented in the draft Bill would be likely to add to the delays in the registration procedure already being experienced in Scotland. It will be necessary for the Keeper of the Registers of Scotland to be afforded additional resources to discharge her increased responsibilities and safeguard the integrity of the Scottish property registers and the accuracy of the information recorded.

We also note that this system would create an additional expense in any transaction affecting land in Scotland as the Bill would require those acting for the transaction's parties to establish whether any party is, or should be considered, a registered overseas entity even where this is *prima facie* not the case (for example where a relevant party is a Scottish partnership).

We are concerned that the proposed registration system as presented in the draft Bill would be likely to create additional risks for purchasers in the purchase of property from Overseas Entities.

Finally, we note that the proposed register of overseas entities is to be maintained by the registrar of companies for England and Wales (clause 3), even where the entity has an interest in Scottish land. It is likely that this will require Scottish solicitors to inspect the register in London in every case, albeit we expect that electronic access will be available. There is a question as to whether this would be acceptable from the perspective of Scottish stakeholders as there is a separate Scottish register of companies, and therefore Scottish registrar.

Drafting

We consider that some aspects of the Bill require greater clarification in terms of their drafting.

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[29] https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/
[30] https://www.lawscot.org.uk/media/361338/18-11-08-plc-pllr-consultation-delivering-improved-transparency-in-land-ownership-in-scotland-final.pdf
[31] See page 3

For example, in Schedule 2, paragraph 23(4) and (5), we consider that further clarity is required in relation to the definition of foreign limited partner. It is not clear what "arrangements" means, nor the scope of characteristics which the Secretary of State might provide for in delegated regulations.

We consider that the provisions of the new section 112A (Offence by an overseas entity, found in schedule 4 of the draft Bill) would merit greater clarity. The cross referencing in section 112A(1) to paragraph 2 of the new schedule 1A to the 2012 Act (also found in schedule 4 of the draft Bill) is confusing and we suggest that the requirements of the offence be set out in full in section 112A.

In the new Schedule 1A, it is not clear from the face of the draft Bill as to whether in section 1(1), each of (i) to (iii) qualify both "…a qualifying registrable deed" and "a registrable deed…". We consider that the drafting in this regard could be improved and the relationship between sections 1(1) and 1(2) made clearer.

In addition, we consider there is ambiguity in paragraph 2(1)(a) of the new Schedule 1A. We assume that the qualification "which is a standard security" is intended to apply only to a registrable deed, and that paragraph 2(1) is intended to apply to any qualifying registrable deed, whether or not it is a standard security. However, we consider this is not clear in the current drafting.

We comment on the drafting of paragraph 7(3) of the new Schedule 1A in our answer to question 12.

Dispute resolution

Whether or not an entity has legal personality will be a matter of fact under the law of the relevant jurisdiction. We do note that there is a potential for a dispute to arise if an entity considers it does not meet the requirements for registration and Companies House takes a different view (or even vice versa). We consider that in the first instance it would be appropriate for advice to be sought from an independent expert, competent to advise on the law of the relevant jurisdiction. In the longer term there may be merit in guidance notes or similar being produced by Companies House, including a list of those organisation types which are accepted as being overseas entities and those which are not.

At the same time, we acknowledge that disputes might nevertheless arise and consider that it should be possible to lodge an appeal and go through a dispute resolution process. If the dispute involves determining the application of the Bill in relation to a particular type of entity, we consider it most appropriate that this be resolved by the courts, which would allow Companies House and the relevant party/parties to lead evidence on foreign law as a matter of fact. We note that if no such system was established, the offence mechanisms would apply. We note that there is also a potential for the Keeper of the Land Register to reject an application if there were concerns although there is a question as to the degree to which the Keeper would be under a duty to form a view.

Response to questions

Objectives & scope

1. **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 purposes of laundering money or investing illicit funds?**

As with all legislation of its nature, the answer to this question will depend on the extent to which the Bill is enforced and is practically enforceable.

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

We have no statistical or other research to offer on this point.

However, we anticipate that the proposed register may have a dampening effect if it is seen as unnecessarily cumbersome or complicated to comply with. Certain individuals may be discouraged from investing in the UK property market if they consider that the register would prevent them from maintaining a particular level of privacy. It is important to recognise that a desire to preserve details of individual's economic affairs from public knowledge does not mean that the individual concerned is engaged or attempting to engage in illegal activity.

At the same time, we note there are also costs to the economy generated by crime, terrorism and money laundering activities.

In addition, we note that the costs of compliance with the regime may impact upon overseas investment. We consider that the cost estimates provided by the Government as to the average cost to entities to obtain external advice in relation to the new Bill and costs to identify beneficial owners and collect their information are unrealistically low. For example:

(i) these estimates do not include the cost of registration dues;

(ii) we anticipate that in some circumstances, legal opinions from foreign jurisdictions will be required; and

(iii) the costs appear to refer to the cost of allowing an overseas entity to comply with the legislation. We understand that this does not include costs that may be incurred by purchasers seeking to transact with an overseas organisation in testing whether or not such the overseas organisation should be registered.

If costs of compliance are high, this could impact upon the desire of overseas entities to invest in the UK property market.

3. **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?**

We note that the proposed register will "mirror as far as possible the regime currently in place for UK entities subject to the PSC regime" (that being the requirement to maintain a register of people with significant control over a company under the Companies Act 2006 ss.390C and Schedule 1A).[32] In this regard, there are a number of points, which merit consideration.

Generally, we consider that aligning the definition of beneficial owner to the PSC regime should help to ensure coherence between the PSC regime and the proposed regime for overseas entities.

However, it is important to avoid replicating the issues which have arisen under the PSC regime regarding its application to banks and other lenders who have taken security over shares in Scottish companies. A possible interpretation of paragraph 23 of Schedule 1A to the Companies Act 2006 (which refers to "rights attached to shares", but does not expressly refer to "shares") is that a bank or other lender which has taken fixed security over the shares of a Scottish company could become registrable under the PSC regime. While it is clear that this was not the intention, concerns have been raised that this could nevertheless be a consequence of the wording of that legislation. If the definition under the PSC regime is to be replicated for the proposed regime for overseas entities, it is important that this particular problem is not replicated for the new register. We do not consider that it is appropriate for a bank or other lender to be considered to own or control an overseas entity.

Schedule 2, paragraph 6 of the draft Bill states ('condition 4') that the 'beneficial owner' of an entity includes a person who may exercise 'significant influence or control' over the entity. There is no attempt to define the meaning of this phrase for the purposes of the draft Bill, which is identical to paragraph 5 of Schedule 1A to the Companies Act. Moreover, the draft Bill does not contain provisions equivalent to paragraph 24 of Schedule 1A which requires the Secretary of State to publish "guidance" (which is subject to parliamentary control) about the meaning of "significant interest or control". We do not consider it to be satisfactory that the question of whether a criminal offence has been committed under the draft Bill's proposals should depend on the precise meaning of this undefined phrase. Even if guidance were to be given, this might not be sufficient to give the level of clarity necessary where a person may find themselves guilty of a criminal offence.

Schedule 2 paragraph 18(3)(d) of the Bill provides that a person has a "majority stake" in an entity if that person exercises "dominant influence or control" over that entity. "Dominant influence or control" is not defined (and this term does not appear in the PSC legislation). For the reasons indicated above, we consider that this phrase should also be given further definition.

(i) and (ii) We are not aware of any specific types of overseas entities that would be within the scope of the regime but would not have a route to comply. However, as commented in our previous response, if a company is not sufficiently similar to UK companies limited by shares, there may be practical difficulties in determining how the relevant company ought to comply.

[32] Explanatory Notes, paragraph 23

Furthermore, the Bill only applies to an 'overseas entity' as defined in clause 2, being a 'legal person' governed by the law of a country or territory outside the UK. However, this raises a couple of concerns:

(a) 'Entity' is not defined. However, a statutory definition would be preferable in case there is difficulty particularly with foreign concepts of what exactly constitutes an 'entity' and its 'legal personality'. Practitioners and the registers may have difficulty in applying this to unfamiliar foreign judicial concepts.

(b) No attempt is made to control the use of an individual as, for example, disponee where that person is acting as nominee of an (unregistered) 'overseas entity'. We are concerned that this could leave the system open to abuse. There may be an answer if the relationship between this proposal and the Scottish register noted above is adequately clarified.

Finally, we consider that there may be difficulties faced by those acting for purchasers in assessing whether an overseas entity is a legal person under foreign law. We anticipate that very few Scottish solicitors will be qualified to advise on the foreign law affecting each overseas entity. The example of a partnership as understood in the UK may be instructive here. In Scotland, a partnership has separate legal personality; in England, however, it does not. We anticipate that similar situations will arise in foreign jurisdictions where it will not be clear whether an entity has legal personality. We note that in the event of there being uncertainty, there is the potential for the over-registration of entities, which could lead to further confusion and frustrate the objective of transparency.

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

We consider that this is a policy decision.

We note however that where trustees, which would include executors, are not registered owners of the land held by the trust, they will be subject to individual liability and could face criminal penalties if the registration requirements are not adhered to. This might discourage people from acting as executors and could create unnecessary distress at a time when people may be vulnerable. This does not appear to the be the kind of situation at which the register is aimed, and we consider that an exception to the registration rules might be considered in this context. Given the nature of trusts and the ways in which they can be created or arise, the inclusion of trusts may give rise to additional legal considerations. This is based on an assumption that overseas trusts are analogous to trusts in the UK, however this may not be the case.

5. 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?

We have no comment on this question.

Operation of the register

6. **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?**

It should be sufficient that the beneficial owner's address be that of a contact address at which they are able to be reached, such as a business address. For privacy reasons, we do not consider they should be required to give their home address although we note the terms of clause 20 in respect of residential addresses.

We consider that there may be some merit in also requiring an email address or contact telephone number to be provided but again there should be no requirement that these are private contacts. If the only contact details are personal ones, or the Government has a particular reason for requiring, for example a home address, we consider it appropriate for these to be held by Companies House but not published on the public register.

We note that the date on which the individual became a registrable beneficial owner is part of the information to be provided. While this is likely to be clear and demonstrable in the case of voting rights or ownership of shares, establishing the date on which an individual "…. actually exercises, significant influence or control…." may be hard to demonstrate if the control is demonstrated by a pattern of behaviour over time.

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

We note that as a general rule, information submitted to Companies House is not submitted to verification procedures. Registers of companies in relevant jurisdictions may be of assistance in verifying information provided to the register where these have been made public. However, in practical terms it may be difficult to create processes to verify much of the information without incurring unreasonable costs and potentially delays.

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

As noted above, Companies House does not currently monitor the information submitted to it for domestic company register purposes etc. Companies House will be best placed to determine the answer to this question in terms of administering the register, however, we anticipate that they would require additional resources of some description unless the expected scale of registrations is very small.

We also consider there will need to be a short time limit for processing of the information submitted to Companies House so that it does not unfairly delay the conveyancing process and those inspecting it know that they can rely on the information recorded. A consistent timescale for making entries or amendments would help to ensure that there is the increased transparency which the creation of the register is intended to achieve. We consider that there should be certainty as to the maximum time for processing any application for registration, or for

accepting an annual update (including the shortening of an update period). If it was possible for an application for registration to be held up for any length of time, then there is the potential for a party to a contract involving the transfer of property to be put in breach of their obligations as a result of such delays by Companies House or parties would need to provide for flexibility for the date of settlement. In some cases, where the date of entry is time critical (for example, at the year end, or where settlement is linked to other transactions), the need to provide for flexibility would likely have an adverse impact of parties.

9. Should entities which cannot identify, or provide full details of, their beneficial owners be allowed to register? Is it useful to hold the information of a managing officer in place of a beneficial owner? Is there any additional information that should be required from entities that are unable to give information about their beneficial owners?

In the interests of transparency (and given difficulties that may arise with providing all the information requested, for example see our answer to question 6), it would be preferable to allow such entities to register even where they have not provided full details as the lack of those details would at least be made transparent. It would seem sensible to require entities to provide information about managing officers if all the information on beneficial owners cannot be supplied.

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

We refer to our answer to question 6.

In addition, we note the terms of clause 22 of the draft Bill, being an enabling provision for the Secretary of State to make regulations in relation to the protection of information beyond the date of birth and residential address of is registrable beneficial owner or managing officer in relation to an overseas entity. As the provisions are enabling, it is difficult to assess whether the draft Bill provides sufficient protections.

Given the potential nature of the circumstances in which an individual will wish to apply to have information protected, such applications should be given high priority in the registration process.

As it is likely that the decision as to whether or not to accept an application will be at the discretion of the Registrar, it is important that there is clear and thorough guidelines for this process. We suggest that careful consideration be given as to "the information to be included in and documents to accompany an application" - victims of abuse, intimidation, or threats may find it difficult to obtain certain information or documents, particularly if this is required within a short period of time. It is essential that the registration requirements do not cause harm to individuals at risk.

11. Should it be possible to appeal the suppression of information from public disclosure?

Yes, we consider it appropriate for there to be an appeal process in relation to such matters. Any application for an appeal should be considered on a confidential basis.

Compliance & enforcement

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

As we commented in our response to the BEIS consultation, the question of whether or not to introduce a criminal offence for failure to update information is a matter for policymakers. However, we have significant concerns that this is not a practicable or efficient method to ensure compliance.

In our response to the consultation on improving transparency in land ownership in Scotland, we took the view that, on balance, a failure to comply with registration requirements should not constitute a criminal offence. In particular we highlighted potential difficulties in identifying who in fact is "in control" – which relates to overseas companies as it would to domestic companies. We did not think a criminal sanction would be effective or justified in that context, particularly considering the potential harm involved should there be a failure to comply. The same reasoning applies in the current context.

One possibility might be to introduce a civil penalty if the foreign entity failed to comply with the requirement to update records, which might be a more appropriate response.

There is a further question as to the effectiveness of introducing a criminal offence which applies solely to overseas companies, many of which are likely to be beneficially owned or controlled by individuals over whom the UK cannot easily claim jurisdiction. Without effective enforcement, the creation of such a criminal liability would be of limited purpose. In this context also, a civil penalty may be more effective as it would potentially be easier to ensure enforcement in practical terms, for example a judgement in a UK court setting a particular penalty for failure to comply could be enforced against other assets held in the UK.

At a practical level, we have concerns about the drafting of paragraph 7(2) and (3) of the new Schedule 1A to the 2012 Act (found in schedule 4 of the draft Bill). The provisions would require the Keeper of the Registers of Scotland to refuse to register a disposition if the overseas entity has "failed to comply with the duty in Section 7 of the Registration of Overseas Entities Act 2018…".

In addition to our concerns set out in our response to question 15, we are concerned that this drafting could create uncertainty and increased risks to purchasers. The drafting implies that there is a difference between the submission and acceptance of the annual update (which may or may not be correct) and compliance with the duties to submit an annual update. If the first, wider interpretation is applied, then on any application for registration of a qualifying registrable deed, each applicant and the Keeper of the Registers of Scotland would need to check that an annual update had been submitted to (and we assume

accepted by) Companies House, but also that the annual update complied with the duty in clause 7.

If all that is required is for the annual update to have been submitted to (and if relevant accepted by) Companies House, we consider that Paragraph 7(3) of Schedule 1A should state that. If there is to be a wider test, then we note that this is in effect imposing a duty on the Keeper of the Register of Scotland to investigate the substance of the annual update, which is not a duty imposed on the Keeper in relation to the initial application for registration of the overseas entity.

13. How should the Government ensure that all prospective and existing overseas owners of qualifying estates are made aware of the new register and its requirements by the time the register is operational or before the end of the transition period?

Some overseas owners may be informed of the changes by their legal advisors. Solicitors and other conveyancing professionals should therefore be made aware of the changes. We expect that in many cases they would take the initiative and inform overseas clients of the new obligations. Many professional bodies, membership organisations and individual businesses would be likely to circulate information on legal changes such as this in any case but BEIS could contact relevant stakeholders to ensure such information is communicated if it was felt that a special approach might be needed for this particular measure. The creation of the register could be also publicised in materials relating to investment in the UK.

14. Will the draft Bill's objectives be achieved in a consistent manner throughout the UK despite differences in how property is bought and sold – and in the draft Bill's definitions of 'qualifying estates – in the different jurisdictions? Will there be a level playing field across the UK?

We have not identified any particular problems in relation to achievement of the draft Bill's objectives.

However, we consider that there is potential for some differences in the manner in which this will be achieved in the different jurisdictions. As different to England, Wales, and Northern Ireland, there will not on the face of the Land Register be a "red flag" showing that a title is currently held by an unregistered overseas entity. The reform of the Scottish Land Register by virtue of the Land Registration etc. (Scotland) Act 2012 incorporated as a principle that the title sheet should deal only with title matters. To include details of any registration of an overseas entity on the title sheet would therefore derogate from this principle.

We have previously stated that information in relation to the Register of Controlled Interest in Land should not be shown on the title sheet. However, we consider that if the title sheet was to contain details of either the Register of Controlled Interests or the Register of Overseas Entities, then it would be appropriate for it to contain both.
We consider that there is scope for additional delay in the conveyancing process where it is clear that a seller or a purchaser is governed by a foreign jurisdiction, but has not been registered as an overseas entity. In such circumstances, it will

be necessary to establish that the seller or purchaser is not a registrable overseas entity. As mentioned above, that analysis is likely to depend upon a composite analysis of the effect of the UK Act, as interpreted under UK legislation; and the nature of the seller or purchaser in terms of the jurisdiction under which it was incorporated. This would almost certainly require input from lawyers in two different jurisdictions, which may create difficulties in reconciling two separate pieces of advice. In this scenario we would anticipate that there may be further delays if the Keeper were to carry out separate checks.

15. Are the exceptions to the restrictions on disposal sufficient to protect the rights of third parties? Should any other exceptions be included in the draft Bill?

We consider it necessary for there to be protection for those purchasing in good faith.

For example, we consider there is potential for difficulty for a purchaser in particular circumstances. In Scotland, the process of the registration of land can take a number of months. Within that period there is always a risk that the application is rejected and a purchaser has to re-present the application to the Keeper. While a solicitor may undertake all the necessary diligence at the time of purchase to establish that the seller is duly registered and its records are up-to-date, if the entity ceases to update or removes itself from the register after the date of settlement and the application is thereafter rejected, a purchaser may not be able to obtain valid title.

Such circumstances have the potential to result in the overseas entity both retaining the property and having the proceeds from the sale of that property: this seems counterintuitive. We therefore consider that there should be general measures to protect a good-faith purchaser.

16. Are the sanctions for non-compliance with information requirements proportionate and enforceable?

As referred to in our answer to question 12 above, we do not consider it appropriate for failure to provide an annual update timeously to result in criminal liability. It appears to be inappropriate for failure to provide an update to automatically trigger the same sanctions as providing false information. Careful drafting could mitigate against the chances of this distinction being open to abuse.

Delegated powers

17. Are the proposed delegated powers in the draft Bill appropriate?

As a matter of principle, we consider that where the Secretary of State is making regulations, these should be made following consultation with relevant stakeholders. We consider that clause 35 should be amended to reflect this.
Under clause 30(6) as currently drafted, the Secretary of State would have power to make regulations to determine the meaning of “exempt overseas entity”. We are concerned that this could raise key policy considerations and is not appropriate for the negative resolution procedure or indeed regulations. This goes to the heart

of the issues the legislation is seeking to address and should be set out in the Bill itself.

Furthermore, as commented in the introductory section outlining our concerns around drafting, in Schedule 2, paragraph 23(4) and (5), we consider that further clarity is required in relation to the definition of foreign limited partner. It is not clear what "arrangements" means, nor the scope of characteristics which the Secretary of State might provide for in delegated regulations. It is therefore unclear if the proposed delegated powers could be considered appropriate.

18. Do the procedures selected (affirmative/negative resolution) for each power provide for sufficient levels of parliamentary scrutiny?

See response to question 17.

18 March 2019

NAEA Propertymark – Written evidence (ROE0001)

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.

2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

Executive Summary

- The draft Bill in its current form will not achieve in its aims, this is largely due to it being self-certified, and Companies House not having the capacity or resource to administer it.
- The Government should seek to ensure that the Register is not self-certified. This will create poor and inconsistent data.
- Companies House will need to be adequately resourced to effectively administer and monitor the Register, as well as to avoid high-risk individuals 'slipping through the net.'
- Information provided by the Register should accompany Customer Due Diligence checks as required by the UK Money Laundering Regulations. This data should be available to cross-reference by professional parties involved in property and land sales.
- Where a beneficial owner cannot be identified, these overseas entities should be allowed to register, but not to enter into property or land transactions.
- A communications campaign needs to be undertaken to inform involved parties of the requirements of the Register.
- Beneficial owners of overseas entities should be required to supply annual updates to the Register.
- The UK Register should be complemented by comparable registers for British Overseas Territories, as is now required by the Sanctions and Anti-Money Laundering Act 2018.

Objectives and scope

3. The public Register as established by the draft Bill will not effectively deliver the policy aim of preventing and combatting the use of land in the UK for the purposes of laundering money or investing illicit funds. NAEA Propertymark is concerned that information held by the Register may not

be entirely reliable, which is further exacerbated by the intention for the scheme to be self-certified and Companies House not having adequate capacity to administer and monitor the Register. Whilst NAEA Propertymark has long called for a public register of overseas companies owning property in the UK, the draft Bill in its current form is not fit for purpose. In our response to the Treasury Committee's Economic Crime Inquiry in May 2018[33], we made it clear that a public register of overseas companies owning property in the UK will be vital in maintaining the integrity of the property market. Whilst this needs to be acted on efficiently and in a timely manner, without adequate measures in place, the Register will not be effective in its aims.

Operation of the Register

Self-certification

4. The Government must ensure that the Register does not operate on the basis of being self-certified. NAEA Propertymark is concerned that self-certification of data leaves the Register open to abuse with the submission of false information. The Register of Overseas Entities regime has been modelled on the existing People with Significant Control (PSC)[34] for UK companies. However, a major weakness of the PSC Register is that the data submitted is not verified and relies entirely on self-reported data from companies.

5. If this procedure is replicated in the operation of the Register, we are concerned that the information will be compromised and therefore questioning how useful the Register will be. This is likely to result in three outcomes. Firstly, less confidence in the Register. Secondly, poor quality data. Thirdly, property agents will be unable to meet their Customer Due Diligence requirements under the Money Laundering Regulations 2017. The Government must look at simple ways of guaranteeing that information is accurate and consistent. For instance, not being able to submit data unless all fields are completed, ensuring that postal address validation is integrated and through the inclusion of a pre-populated list of recognised countries, which would reduce discrepancies on spelling or shortened names. It is imperative that the Government consider validation from when data is inputted to reduce the number of blank documents and varied responses. If there is no independent verification and the Register relies upon self-reporting, this is likely to mean that only law-abiding companies will comply.

Administration

[33] https://www.naea.co.uk/media/1047081/uk-parliament-treasury-committee-economic-crime-inquiry.pdf

[34] https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships

6. NAEA Propertymark does not believe that Companies House has the sufficient capacity or resources to administer and monitor the Register. With this brings concern over the reliability of the information held. Without being adequately resourced, the Register will not be effective in recording information on beneficial ownership, nor will it facilitate the right level of access and detail on overseas entities. This will have a significant impact on law enforcement agencies investigating illegal activities that have been masked by complex off-shore structures. We are concerned that without sufficient resource, Companies House will relax standards for certifying information, and there could be a repeat of issues that arose in 2008. In 2008 data management firm, Datanomic, cross referenced Companies House data with information on high-risk individuals and found that 1,504 disqualified directors were being allowed to run other UK companies.[35] Through the Register, Companies House must be able to make checks, as well as cross reference and ensure documents are legitimate. To this end, Companies House must be adequately resourced to ensure that it can verify information that is provided, and that the Register is accurate.

Anti-money laundering

7. The Government must ensure that information provided by overseas entities concurs with the Customer Due Diligence checks administered by property agents, the financial sector and legal professionals as required by the Money Laundering Regulations 2017.[36] This is important as not only will it improve the verification of data through the allowance of cross-referencing, but will also provide equivalence to overcome criminal property transactions.

8. Through data cross-referencing, property agents, finance professionals and solicitors will have the ability to report discrepancies in Customer Due Diligence findings. For property agents, Customer Due Diligence means taking steps to identify their customers and checking they are who they say they are. It is a cumulative process and means obtaining the customer's: Full name; Official documentation which confirms their identity (preferably a form of photo ID); Residential address and date of birth; Details of any resulting beneficial owners. The level of due diligence depends on the agent's risk assessment of each customer. Under the Money Laundering Regulations 2017, estate agents must be able to prove the identity of both the buyer and seller, and any beneficial owner of the customer, to the property sale.[37] Whilst the beneficial owner is likely to own or control the customer, it may also be the person on whose behalf a transaction or activity is carried out. If the agent has any doubts about a customer's identity, they must cease activities with them until this is resolved. Therefore, unless the

[35] https://www.computerweekly.com/news/2240085116/UK-Companies-House-register-contains-3994-high-risk-individuals-Datanomic-finds
[36] http://www.legislation.gov.uk/uksi/2017/692/made
[37] http://www.naea.co.uk/lobbying/money-laundering-regulations/

information on the Register can be verified, strengthening existing rules for property agents, it will become a box ticking and futile political exercise that does not contribute to the fight against money laundering and terrorist financing.

9. To limit property transactions enabled through criminal activity there must be equivalence. To this end, it is imperative that the Register adds to the current anti-money laundering regime in the UK and does not work in isolation. For instance, the Bill could require proof of identity or proof of ownership/control by requiring a scanned copy of a passport or national ID, which would be in line with action agents take to identify customers. To this end, the Government must do three things. Firstly, work with professional bodies and Anti-money laundering supervisors to understand the requirements of the Money Laundering Regulations 2017. Secondly, liaise directly with HM Revenue and Customs regarding the implications on regulated sectors. Thirdly, refer to *HM Revenue & Customs Estate agency guidance for money laundering supervision*[38] to ensure that the information on the Register mirrors the Customer Due Diligence requirements of property agents.

Technicalities

10. NAEA Propertymark believes that an overseas entity should be able to register, but unable to enter into a transaction to sell or purchase property or land unless the beneficial owner can be identified. Despite taking all reasonable steps to identify a beneficial owner, sometimes this may not be possible, or in other instances all the data may not be available. For example, certain data is not held due to differing registered company structures outside of the UK. To this end, the managing agent that applies for the overseas entity ID should also be responsible for the entity where it has been unable to confirm beneficial owners. In addition to this, we think that it should be possible to appeal the suppression of information from public disclosure. Without this power, overseas entities will have the ability to block requests for information, which could result in obstruction for investigating enforcement authorities, journalists and the wider public.

Compliance and enforcement

Compliance

11. NAEA Propertymark believes that to encourage compliance with the Register, the Government must do two things. Firstly, a communications campaign must be undertaken to inform all relevant parties of the requirements of the Register. Secondly, by requiring all on the Register to provide annual updates, beneficial owners will have to proactively comply

[38] https://www.gov.uk/government/publications/money-laundering-regulations-2007-supervision-of-estate-agency-businesses

with the new rules, and Companies House will have a clear route to monitoring progress.

12. To raise awareness of the compliance requirements of the new Register, the Government should work with HM Land Registry, British Chambers of Commerce and Companies Houses to ensure that a full communications campaign to stakeholders and interested parties is undertaken before the Register becomes fully operational (including the transition period). To complement the campaign, a guidance document must be provided. This should contain the date from which overseas entities will be required to register by, a list of information they must include and details about enforcement of the Register.

13. To ensure the longevity of the Register's accuracy, NAEA Propertymark believes that entities should be required to provide annual updates or clarification of no change to the company's structure. This replicates the current requirement to update the PSC on an annual basis. Annual updates will require overseas entities to be proactive in compliance and will allow UK authorities to check progress. We believe that any measures to increase the timeframe for mandatory updates are likely to give rise to criminal offences, limit the accuracy and reduce public confidence in the Register.

Delegated powers

Devolved Administrations

14. We do not see any issue in consistency across the UK, despite differences in how property is brought and sold in England, Wales, Scotland and Northern Ireland. The proposed delegated powers in the draft Bill are appropriate. The UK Government should continue working with the Devolved Administrations to ensure a consistent and single approach across the UK to create a level playing field.

British Overseas Territories

15. To further the work of the UK Government and the Devolved Administrations, the British Overseas Territories must also open their registers. This would provide property agents, law enforcement and the wider public with the ability to identify individuals or groups hiding illicit activities behind companies registered in the British Overseas Territories, and ultimately act as deterrent. It is known that many owners of high-value property, typically located in London, hide the true identity of the owner through registering ownership with HM Land Registry through offshore trusts that can be pinpointed to places such as Jersey, the Cayman Islands and the British Virgin Islands. To this end, we supported the amendment to the Sanctions and Anti-Money Laundering Act 2018[39] that requires British

[39] http://www.legislation.gov.uk/ukpga/2018/13/pdfs/ukpga_20180013_en.pdf

Overseas Territories to put in place a publicly accessible register of beneficial owners. As with the UK's Register, this will require adequate resources to ensure its operability. Furthermore, it will require policing to ensure the accuracy of data provided, with tough sanctions where false information has been supplied.

Further clarification

SPV (Special Purpose Vehicle)

16. The Government must clarify how the Register will deal with the sale of an SPV (Special Purpose Vehicle). An SPV is a type of limited company that mortgage lenders will accept. They are set up, under which an application for mortgages as a limited company can be applied for, to hold a property. Individual real estate assets are often directly owned by a SPV. This allows flexibility when selling an asset, such as the ability to sell a proportion of rather than its entirety. It also allows for specific borrowing at the level of the asset if required. To this end, it is it is not uncommon for SPVs to be incorporated days in advance of a transaction. Consequently, the Register will need to be online and fully automated to allow for real time application. If real time registration is not feasible, HM Land Registry and Companies House will need the capacity to offer a fast-track service. This must be clarified in order to ensure that the transactions are not delayed unduly.

Sovereign wealth funds and companies

17. Further clarity is required on sovereign wealth funds and companies within these structures, such as when the beneficial owner of a company is a government. A sovereign wealth fund is a state-owned pool of money that is invested in various financial assets. The money typically comes from a nation's budgetary surplus. To this end, the Government must clarify whether sovereign wealth funds will be exempt, or will they be required to sign up to the Register.

14 March 2019

Opencorporates – Written evidence (ROE0020)

The ability to hide and spend suspect funds overseas is a large part of what makes serious corruption and organised crime possible – criminals use the international financial system to launder illicit income and locate it in stable jurisdictions. London's high-end property market has become one of the go-to destinations to give questionable funds a fresh start. At least £170bn worth of property in England and Wales is owned by companies registered offshore, and while some of these transactions may be lawful, 75% of properties whose owners are under investigation for corruption made use of this kind of secrecy.

A public register showing who owns and controls the overseas companies that own UK property will deter the corrupt from using London as a safe haven to invest their criminal proceeds. This in turn will not only impede the actions of the criminals and corrupt, but will improve trust in the UK, increase its reputation, and remove distortions to the London property market.

Over the past three years the UK has taken significant and meaningful steps towards tackling corruption, most notably by creating the register of Persons of Significant Control of UK companies (the PSC Register) and enacting clause 51 of the Sanctions and Anti-Money Laundering Act 2018, which requires the creation of public beneficial ownership registers of companies registered in the British Overseas Territories. OpenCorporates therefore welcomes the Draft Registration of Overseas Entities Bill (the Draft Bill), as it strengthens this government's goal of ending the use of the UK as a safe haven for the world's criminal and corrupt.

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 purposes of laundering money or investing illicit funds?

On the whole, we think the Draft Bill is a fairly robust and comprehensive attempt to increase transparency in the UK property market and stop the overseas entities involved from using that market to conceal the proceeds of crime and corruption.

There are definitely improvements that need to be made – some in the bill, and some in the powers and resources for Companies House to police and verify the data. However, we would strongly urge that we do not delay the bill or its implementation until the resource issues have been fixed for a number of reasons:

- We should not make perfect the enemy of the good – as we have learned from the implementation of the PSC register, getting such a register right will be an iterative process, as secondary legislation and revisions builds on lessons learned and addresses attempts to get around the legislation.
- Some of the problems will only become apparent when the register starts being populated with data
- Even unverified data is useful, both as a deterrent (the massive reduction in use of SLPs following the increased reporting requirements shows that) and because once on the record it can be useful for investigations, and as proof of intent in law enforcement prosecutions.

Will the proposed register have a dampening effect on overseas investment into the UK property market? Is this a necessary consequence of increased transparency?
We believe this will only deter those beneficial owners of companies for whom the scrutiny is problematic – principally money launderers and those using UK property as a store of illegal and stolen assets. This deterrent factor should be strongly welcomed, as such income artificially inflates and distorts the housing market, with damaging consequences, and has other negative societal impacts (empty properties etc).

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?
No. There are two significant issues here: the high thresholds and low granularity of the data that will be submitted to the register; and the exemption for listed companies.

Thresholds/Granularity
The threshold of 25% for voting or ownership rights provides a significant loophole for those trying to evade disclosure. This 25% threshold, together with the vague bands of ownership (25-50% etc) and the lack of information about shareholders, makes it much easier for ownership and control to be obfuscated. The more granular the information, the harder it is to lie without detection. It's important to note that improving the threshold and granularity would not affect the vast majority of companies (nor, if applied to the PSC, which we strongly believe it should be, would it affect anything more than a tiny proportion of companies).

Under the current PSC disclosure requirements, companies are required to declare ownership of shares and voting rights within thresholds of over 25%-50%, 50%-75%, or greater than 75%. First, this adds ambiguity to the register, making it difficult to compare the register with shareholder data, or beneficial ownership data from other jurisdictions. Second, the current threshold makes it too easy to avoid detection by slipping under the threshold (with, for example, 5 members of the same family owning 20%, but without any agreement between them); Third, in cases of grand corruption, for example in major infrastructure projects or extractives licences, having even a 10% right to the profits would be enough to provide a sufficient incentive to act corruptly.

The thresholds also make calculations of control through ownership chains problematic. For example, imagine the following scenario:

Person A controls company B by 50-75% of the shares, and company B controls company C by 25-50%. This means that person A controls company C by 12.5-37.5% of the shares, i.e. from well below 25% to considerably above it.

The ownership structure outlined above both creates loopholes, and makes the information less useful for businesses who are vetting partners – if a company has 25% control threshold internally for beneficial owners of suppliers, should they consider person A to fall within it, or not?

Would A in fact be considered a Beneficial Owner under the proposed regulations? Who would determine that: person A, a government procurement officer; a lawyer looking for loopholes? This also highlights a potential difference between UK and overseas companies: if both B and C are UK companies then the data still allows users to make the calculation, and to consider person A to be a Beneficial Owner of C. However, if these companies are overseas companies the information about A controlling B might not even be reported.

This weakness in the PSC register has come to international attention. The European Commission stated in its own 2017 impact assessment that the "25% threshold is fairly easy to circumvent, leading to [the] obscuring of [...] beneficial ownership [information]".[40]
In February 2017 the Nigerian Ministry of Justice identified the 25% threshold as one of the key challenges in the UK register, stating that "there is a strong argument for reduction of the threshold as it is suspected that this is being exploited by some businesses to avoid full compliance with the reporting rules."[41]
We would therefore recommend a threshold of 5% of shares or voting rights, or ideally no threshold at all. We would also recommend aligning PSC register definitions with this in the future.

Exclusion of listed companies
We believe the exemptions for listed companies are neither reasonable nor in the public interest, and creates a perverse situation where control of listed companies is less available than that of small companies.

As with the PSC register the overseas entities register will provide a central statutory location where this information can be accessed both as web pages, and as machine-readable data. Users wanting to know the beneficial owners of listed companies, however, some of which list as little as 10% of their shares, will have to find and search not a central register but a variety of regulatory filings for the information.

In addition the information available on listed companies falls far short of that for companies on the overseas entities register, including: no identifying details for the beneficial owner (date of birth /contact information), and often no details of the mechanism of control. Neither would the proposed sanctions regime be applicable for such companies/PSCs.

Furthermore, this information is often only available from sites such as the London Stock Exchange that apply proprietary and/or restrictive licences on the use of the data, which both impedes innovation, and is contrary to the Government's policy of open data by default enshrined in the G8 Open Data Charter.

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[40] European Commission, *Impact Assessment accompanying the 4th Money Laundering Directive*, July 2016. Available online: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0223&from=EN.

[41] Nigerian Federal Ministry of Justice, *Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief*, February 2017; p12. Available at: https://irp-cdn.multiscreensite.com/e0b6c17a/files/uploaded/Policy%20Brief%20on%20Beneficial%20Ownership%20FMOJ%20and%20IBLF%20Global%20Final.pdf.

No such exemption is granted UK listed companies for the requirement to list subsidiaries in Companies House filings, or file accounts at Companies House, and we believe the long-standing principle that larger companies, including listed ones, should have stricter reporting requirements than smaller ones should be maintained.

In the case of companies that have voting shares admitted to trading on a regulated market in any EEA state, not only do the above issues apply, but access to such information is in practice highly problematic in a number of additional ways:

- It is not easily discoverable – the lack of a single central register makes it difficult to find, and given Companies House does not record such listings (for example the ticker codes or ISIN codes), the users will need to first discover the market on which the voting shares are listed, and then discover the voting shares listings.
- It is not easily understandable – having found the correct listing, users will then have to find the appropriate filings, and make sense of them. Given that both the website and the filings are likely to be in a language other than English, this is a considerable task.
- It is not easily usable – in contrast to the Central Register, where the data will be collected in standardised form and will be stored and available as machine-readable data, many such filings will be in the form of PDFs, or image-based filings that cannot be easily converted to data, and thus analysed and understood using technological tools.

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

In order for the Overseas Entities register to be effective and comprehensive, it is essential that the register covers all type of entity that own properties in the UK, including trusts, charities, associations and even churches (all of which are beginning to be identified as a vector for money-laundering[42]), as well as certain types of financial structures such as mutual funds and the 'cells' in a protected cell company[43]. It's not clear that these would necessarily fall within the scope of the law, and clearly this forms an incentive for criminals to increase their use of such vehicles. Rather than specify the entities that this legislation includes (effectively

[42] See for example:

- https://www.researchgate.net/publication/227599616_CHURCHES_AND_PRIVATE_EDUCATIONAL_INSTITUTIONS_AS_FACILITATOR_OF_MONEY_LAUNDERING_THE_CASE_OF_NIGERIA
- https://www.thetimes.co.uk/article/millionaire-preacher-shepherd-bushiri-faces-fraud-charges-over-miracle-money-tk65gmr6k
- https://www.telegraph.co.uk/news/worldnews/europe/1345868/Criminals-cashing-in-on-Orthodox-Church-business-empire.html
- https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a007-0
- https://www.gov.uk/government/news/be-aware-of-suspect-donations-advice-for-charities

[43] See https://www.investopedia.com/terms/p/protected-cell-company-pcc.asp and https://www.gov.uk/hmrc-internal-manuals/international-manual/intm236500

a ‘whitelist’) it may be better to specify which types of entity are excluded (a ‘blacklist’ approach), possibly consisting solely of individual persons.

As far as trusts that own property in the UK, this has already been identified as an issue in money laundering and terrorist financing[44]. The UK’s first unexplained wealth order was served on Zamira Hajiyeva, the wife of the former chairman of a state-owned bank in Azerbaijan, who has been found by a UK court to have used a discretionary trust to disguise ownership of UK property.

Without the inclusion of trusts, those currently using the London property market for money laundering will take advantage of the lengthy transition period in the draft bill to avoid disclosure by attempting to erase any evidence of their connections, either by creating new entities (for example, trusts) to obscure the trail, or by selling the property; not including trusts would therefore severely reduce the utility and effectiveness of the register overall.

The use of entities not covered by legislation was demonstrated by the situation with Scottish Limited Partnerships, and the subsequent significant decline in their use following the requirement they declare Persons of Significant Control in June 2017. Until the introduction of the PSC regime, there was no information (or structured data) on the beneficial owners of SLPs via Companies House; since the loophole was closed, rates of incorporation of SLPs have plummeted to their lowest level for 7 years, 80% lower in the last quarter of 2017 than its peak at the end of 2015.[45]

This demonstrates both the impact that beneficial ownership transparency can have in driving down the abuse of corporate vehicles, and the need to ensure declaration in the register cannot be obscured by using alternative legal entities (including types of legal entities that have not been created yet).

We also recommend that law enforcement should work with the Land Registry to analyse the data on sales during the transition period, for example investigating high-value properties sold below market rate.

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?

We have grave concerns about these powers, particularly given this paragraph from the explanatory notes (para 69):

“An example of where this power might be exercised is in relation to overseas entities that are already providing beneficial ownership information to a register in their own country of formation and the UK Government considers that register to be equivalent to the overseas entities register. In such circumstances, the regulations may require that the overseas entity only provide”

[44] See for example the FATF report *Money Laundering & Terrorist Financing Through the Real Estate Sector* (2007)

[45] Global Witness, *The Companies We Keep*, July 2018, pp 29-30. Available at: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-1/section-1

Anonymous ownership of property is a global problem that ultimately requires global solutions – but without leadership a race to the bottom is likely. The UK has provided this by publishing company and beneficial ownership information as standardised open data, which in turn has brought a number of benefits, including:

- Easy and efficient access for law enforcement, civil society, journalists and lawyers;
- The many eyes principle: widening the number and type of users provides feedback loops and increases quality overall;
- Easy to combine with other datasets (for example sanctions and Politically Exposed Persons lists, or data from other company registers);
- Reproducible analysis, enabling research that may take months or even years of manual effort to be conducted (and repeated) in days, hours or minutes;
- Information that is not just freely available, but also published under an open licence (allowing both commercial and non-commercial reuse) and as structured data that can be combined with other datasets, is the only way to ensure the register achieves its intended objectives. Open data enables service providers to build tools without paying large overheads for data, significantly reducing the cost for end users, and lowering the bar to entry to innovators. It also reduces the net burden of filing for companies, by ensuring that information will be used (and reused) to its maximum extent , rather than remaining siloed.
- Removal of language barriers. Having access to foreign language information as structured data – particularly if made available in a standardised form such as the Beneficial Ownership Data Standard[46] – is actually much easier that trying to understand complete foreign language documents

For example, if an entity declares its beneficial ownership in Germany, at present (under AMLD 4) only public authorities will have access to the full register, while contractors can only gain access to individual records, and only a small subset of users (journalists, and NGOs and civil society) will have any sort of access and even then will need to demonstrate “legitimate interest” on a case-by-case basis, and pay for each record. Other companies, employees, individuals will have no access, and no one will have access as free open data.

Even under AMLD5, users in Germany will likely have access only on a paid record-by-record basis, thus undermining many of the key requirements of the bill. Finally, it is by no means certain that such registers will include the attributes this bill rightly requires, providing an incentive for using overseas entities in such jurisdictions to own property.

The UK government has recognized this by supporting OpenOwnership, a civil society organisation backed by the world’s leading transparency NGOs (including Opencorporates). As part of its work, supported by DfID, OpenOwnership is creating a global beneficial ownership data standard, and advocating for countries

[46] https://www.openownership.org/news/the-beneficial-ownership-data-standard-is-now-in-beta/

around the world to publish beneficial ownership as open data. We believe that it would be inconsistent, and would materially undermine this legislation, if overseas registers are allowed unless they are at least absolute equivalence to the UK register meaning they:

- Must contain the same level of detail as the UK register, including unique identifiers
- Must publicly accessible
- Must be freely available
- Must be available as open data
- Must be updated at least as frequently as the UK register

Additionally, the overseas registers should only be an option if there is a clear and unique link to the entry in the register. Companies House could also require, as proof of registration in an equivalent register, a link, screenshot or extract from that register showing that the registration has been made and is current.

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?

There are a number of areas in the bill, as currently written, which expose obvious loopholes to be exploited by criminals. The most obvious is the choice to have only annual updates to the register.

Even today – with the current largely manual system of incorporating companies – this is a significant loophole, as it provides only a "snapshot" of the entity's beneficial ownership information at the date of registration and on the date of each annual update thereafter. There are three significant issues with this:

1. Changes that occur throughout the year would not be caught
2. Changes will not be picked up until the next update, meaning the loss of valuable signals that law enforcement, civil society and professional investigators can use to identify issues
3. It provides an obvious opportunity for temporary ownership structures, one that are in place only while filing.

However, company incorporation is changing rapidly, as we move towards a world where companies are routinely created by computer programs[47]. In this new world, of so-called Firefly companies, existing just for a brief moment, and dynamic corporate structures that constantly change, annual refreshes are clearly unfit for purpose, and we see no good reason why there should not be contemporaneous event-driven updates, as with the PSC register.

As far as identification of entities are concerned, we have a number of recommendations.

- If an entity is listed on multiple registers it is important that the bill requires disclosure of **all** public register entries the entity appears in. For example, charities that are Limited By Guarantee companies are registered with both Companies House and the Charity Register. Similar situations can be found

[47] https://medium.com/@opencorporates/fireflies-and-algorithms-the-coming-explosion-of-companies-9d53cdb8738f

outside the UK – US charities are incorporated in both Business Registers and State Charity registers, and with the IRS too. In order to avoid creating 'false negatives' (providing different registers for different registrations), we believe it is essential that every appearance of the entity on a public register is disclosed.

- Entities that do not appear on publicly available registers (for example, trusts, partnerships) should be required to register for a Global Legal Entity Identifier (LEI)[48], which has the effect of creating a globally unique ID and of validating the underlying data (entities that participate in financial market transactions in the EU must have an LEI under MIFID II regulations).
- In the case of government entities we do not think it is sufficient for the "name" in this instance to only refer to the name of the government concerned, rather than the name of a person, as it will prove very difficult for a member of the public to use that information to ascertain details about the property and its owners. At a minimum, the legislation should require the identification of a role within that government that is relevant to the property (e.g. "Embassy Administrator") and provide contact details for that position (e.g. the Embassy's general access enquiry line). In essence, there should be some clear way of contacting a real person who is employed by the government concerned in relation to the relevant property.

What controls should be in place to verify the information provided to the register? Does Companies House have sufficient capacity or resources to administer and monitor the Register?

Verification of beneficial ownership is a complex subject (as a series of in-depth articles, co-authored by OpenCorporates and OpenOwnership made clear[49]), and this complexity, and the loopholes it creates, enables criminals and the corrupt to carry out their activities, largely undetected, particularly when the data is hidden from scrutiny, as in the case of Overseas Territories and Crown Dependencies.

As the articles describe, there are in fact three distinct parts to verification:

1. Ensuring that the person making a statement about beneficial ownership is who they say they are, and that they have the right to make the claim (authentication and authorization);
2. Ensuring that the data submitted is a legitimate possible value (validation);

[48] The Global Legal Entity Identifier (LEI) System was set up by the Financial Stability Board, under the request from the G20 to provide clear and unique identification of legal entities participating in financial transactions using the ISO ISO 17442 standard. More information https://www.gleif.org/

[49] Please see the four-part series:

- What we really mean when we talk about verification: https://www.openownership.org/news/what-we-really-mean-when-we-talk-about-verification-part-1-of-4/
- Authentication & authorization: https://www.openownership.org/news/what-we-really-mean-when-we-talk-about-verification-authentication-and-authorization-part-2-of-4/
- Validation: https://www.openownership.org/news/what-we-really-mean-when-we-talk-about-verification-validation-part-3-of-4/
- Truth verification https://www.openownership.org/news/what-we-really-mean-when-we-talk-about-verification-truth-verification-part-4-of-4/

3. Verifying that the statement made is actually true (truth verification).

Each of these is a different type of verification, with different solutions. Above this is the overarching requirement of transparency, which exposes the data to a much larger audience. Not only does this transparency provide real societal benefits, it also massively increases the risk that bad data will be identified – whether inadvertent errors, or deliberate falsehoods[50]. And, we should add that without the feedback loops that come with the widespread usage transparency brings, good data quality is pretty much impossible to achieve.

As written, the bill does little to tackle these three issues, and it is important that this is corrected; as we move towards a world of short-lived, highly dynamic companies created algorithmically, we will need all three aspects of verification: authentication/authorization; validation; truth verification.

However, getting there will be a journey rather than an instant solution, and we will need to get there step-by-step.

The first step, and a relatively easy one, is that Companies House should validate the data that is submitted to it, i.e. check that it has a valid value (e.g. no missing fields, no dates in the future, no invalid UK postcodes, countries must be from a given list, etc).

Second, the identities of the beneficial owner should be confirmed. In the short term, this should be done either by Companies House, based on certified copies of passports, or by certified AML professionals who should publicly certify the documents (i.e. the professional that certified it is part of the data captured and published). In the longer term, Companies House should move to using digital identities for individuals, such as the EU's eIDAS system[51].

Third, the truth of the submitted beneficial ownership data should be verified in a similar way. This is empirically hard, since often the only source of this data is the company or the beneficial owner, and if they've lied about the beneficial owner, they are perfectly able to provide false share registers, or share certificates[52]. However, this does not mean it is not worth it, because in public beneficial ownership registers is a much riskier strategy, as producing false data (particularly if authenticated by Companies House or a certified AML professional) carries risks for the true owners (who could lose their assets).

Finally, Companies House, who have done great work on very limited resources, need to have the legal power and resources to carry out investigations, and also to mount prosecutions. At present, however, often this is not the case.

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[50] See the Global Witness Report, The Companies We Keep, which shows many examples of bad data in the PSC register data, both inadvertent and deliberate: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-1

[51] https://en.wikipedia.org/wiki/EIDAS

[52] See the case of Unaoil, which submitted fake references to Trace International, to game its due diligence processes: https://www.theage.com.au/interactive/2016/the-bribe-factory/day-2/trace.html

UK company incorporation fees are some of the lowest in the world, and increasing them marginally (say by £5) would have no material effect on the cost of creating a business, nor on the costs of purchasing a property, yet would generate considerable revenue for Companies House to perform its duty of ensuring that the registers it.

Should entities which cannot identify, or provide full details of their beneficial owners be allowed to register? Is it useful to hold the information of a managing officer in place of a beneficial owner? Is there any additional information that should be required from entities that are unable to give information about their beneficial owners?
Entities which cannot identify or provide full details of their beneficial owners should not be allowed to hold UK property. Any deviation from this important principle would by definition be introducing a loophole that would quickly be exploited by criminals.

Does the draft Bill provide sufficient protections for individuals who could be put at risk by having information about them made publicly accessible?
Yes. However, it is important that such protections are only for limited and well defined reasons. Currently, the Secretary of State appears to be able to exempt a person "if satisfied that there are special reasons" – without specifying what reasons would justify this. In the case of the UK PSC register the exemption test is whether the applicant reasonably believes that they or a person living with them will be put at serious risk of being subjected to violence or intimidation as a result of being the PSC of the company, and we see no reason why this should not be the test for the property register.

Should it be possible to appeal the suppression of information from public disclosure?
Yes. This way civil society organisations, journalists and companies with anti-money laundering duties can test that such a suppression outweighs the public interest reasons for disclosure.

Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive and practicable way to ensure compliance? Are the sanctions for non-compliance with information requirements proportionate and enforceable?
We don't think fines alone will be sufficient to effectively deter criminals seeking to sell properties through ownership of company shares, due to the disproportionate value of high-end property. Given this, the only credible sanction would be the seizing and confiscation of the property in the case of continued no-compliance. We should add that the sanctions for PSC offences has not been used to any significant degree, even when it could have been, undermining its effectiveness.

About OpenCorporates

OpenCorporates is the largest open database of companies in the world, and an essential tool for business, governments and society at large. It is also a social enterprise with an innovative corporate structure to protect its public benefit mission – to create a global archive of publicly available records about companies for wider public benefit, including countering money laundering, corruption, fraud and organised crime.

OpenCorporates' data has been central to a number of groundbreaking investigations, including the ICIJ's Panama and Paradise Papers, Thomson Reuters and Transparency International's investigation into money laundering in the London property market, and Global Witness' investigations into Trump Ocean Club in Panama and into the Myanmar Jade industry. Among OpenCorporates' commercial clients are blue-chip companies such as Mastercard, Capital One, PWC, and the US and UK governments, as well as leading FinTech companies such Stripe, Transferwise and Exiger.

11 April 2019

Solicitors Regulation Authority – Written evidence (ROE0002)

Introduction

1 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. Further information is available at www.sra.org.uk.

2 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.

3 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

4 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.

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

6 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.

7 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

8 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.

9 We would instead suggest that the information should 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.

10 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

11 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.

18 March 2019

Transparency International UK – Written evidence (ROE0004)

Summary

The UK is a top destination for money laundering. The National Crime Agency (NCA) has estimated that "there is a realistic possibility the scale of money laundering impacting the UK **annually** is in the **hundreds of billions of pounds**."[53]

The UK's property market is a prime destination for the corrupt and other criminals to launder their stolen wealth. Using anonymous shell companies registered overseas, these individuals can anonymously purchase luxury property in the UK with the proceeds of their crimes. This enables them to enjoy their ill-gotten gains with impunity, and **use vital UK housing as their own personal safety-deposit boxes**.

Research by Transparency International UK has identified **176 properties worth £4.4 billion in the UK that have been bought with suspicious wealth**. The owners of these properties were only brought to light due to leaks and court documents, so this is likely to be only the **tip of the iceberg**.

To address this problem, the Government has committed to introducing a publicly accessible register of the beneficial owners of overseas companies that own or buy UK property.[54] To ensure the register works to achieve its aim of preventing money laundering through the UK property market, it **must be accurate, effective, and a sharp tool in ending the UK's role as a safe haven for corrupt money**.

Key recommendations

To ensure money launderers can no longer use overseas companies to hide their identities and purchase UK property, the UK should:

1. **Put systems in place to ensure data submitted to the new register is verified**:
   - Require information notices to be sent to managing officers to help identify beneficial owners.
   - Require a UK professional who is registered a UK anti-money laundering supervisor, to verify the beneficial ownership information for any overseas entity seeking to buy or sell UK property and require that professional to declare the accuracy of that information.
   - Require proof of identification for beneficial owners as well as proof of ownership of the entity.
   - Introduce data validation at Companies House.

[53] http://www.nationalcrimeagency.gov.uk/publications/905-national-strategic-assessment-for-soc-2018/file

[54] The UK also committed to a similar register of the companies that bid for UK contracts, which will be published separately from the information published under the provisions of the Register of Overseas Entities draft bill.

2. **Create a credible deterrent to stop companies submitting false and misleading data:**
   - Ensure proportionate sanctions for UK professionals found to have allowed false or misleading data to be submitted to the registrar.
   - Ensure fines are a deterrent to continuous noncompliance by increasing these so they more quickly lead to fines greater than the value of the property.
   - Introduce a new confiscation power to combat determined noncompliance.

3. **Ensure the register is updated regularly as per the requirements for the UK's Persons of Significant Control (PSC) register:**
   - Require event-driven updates as well as an annual conformation statement of beneficial ownership, to mirror the requirements of the UK company register.

In the meantime:

UK law enforcement agencies and the private regulated sector should be **vigilant** for suspicious activity regarding home ownership in the 18-month period between the Bill's commencement and full implementation.

Q & A

1. **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 purposes of laundering money or investing illicit funds?**

1.1 If implemented effectively, this Bill will be a significant and vital step towards achieving that aim. Given the complexity of both the problem and the UK's anti-money laundering infrastructure, other accompanying measures must also be adopted to fully realise this goal.

1.2 UK property has become a safe haven for corrupt funds stolen from around the world, facilitated by the laws which allow UK property to be owned by anonymous offshore companies. Research by Transparency International UK (TI-UK) has identified property across the UK worth £4.4 billion bought with suspicious wealth.[55] All of the cases where information is available involve the use of companies registered in secrecy havens. Across England and Wales there are more than 86,000 land titles owned by anonymous companies with almost 40,000 of these in London.[56]

1.3 In order to reduce the risk that the UK is used as a safe haven for corrupt money, Transparency International UK's key recommendation is that transparency should be established over who owns the companies that in turn own so much property in the UK.

[55] Transparency International UK, *Understanding the Impact of Overseas Corruption on the London Property Market* (March 2017) http://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseascorruption-on-the-london-property-market/#.W4-a2s5KjIU

[56] https://www.globalwitness.org/en/blog/two-years-still-dark-about-86000-anonymously-owned-uk-homes/ [Accessed 5 September 2018]

1.4 TI-UK recommends the following measures to ensure the effectiveness of this legislation:

1. Put systems in place to ensure data submitted to the new register is verified.
2. Create a credible deterrent to stop companies submitting false and misleading data.
3. Ensure the register is updated regularly as per the requirements for the UK's Persons of Significant Control (PSC) register.

And: Take steps to encourage the regulated sector and UK law enforcement to be particularly vigilant against suspicious property transactions in the implementation period.

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

2.1 The current system of opaque property ownership creates an environment within which it is easy to hide the proceeds of corrupt and criminal activity. If implemented well, the proposed register will help deter the flow of illicit funds into this sector and provide law enforcement with information that could be helpful in their investigations.

2.2. The exemptions provided under legislation surrounding the existing PSC register allow those with legitimate security concerns to have their information removed from the public-facing aspect of the register, although it remains on file at Companies House. A similar process should be implemented with this register, to ensure those with security concerns can apply for exemptions. Investors with nothing to hide should not be deterred by the implementation of this register.

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

3.1 There is a need for public beneficial ownership transparency to be extended to trusts – either through this Bill or another piece of government legislation, such as the expected HMT legislation regarding transposition of the fifth update to the European Union's Anti-Money Laundering Directive (5AMLD).

3.2 Trusts are not currently within scope of the UK's public beneficial ownership register. Because of this exemption these vehicles may become more popular with those seeking to hide their ownership of property. The lack of transparency around who controls and benefits from trusts is abused to mask the identity of those who have criminal wealth to hide.[57] This is highlighted by the Organisation for Economic Co-operation and Development (OECD)[58] and the Financial Action Task Force (FATF) who both identify trusts as a money laundering risk.[59] As an example,

[57] Global Witness, *Don't Take It On Trust* (February 2017) https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf
[58] OECD, Report on Tax Fraud and Money Laundering Vulnerabilities Involving the Real Estate Sector (2007)
[59] FATF, Money Laundering & Terrorist Financing Through the Real Estate Sector (2007)

according to a 2016 investigation by the Guardian, Expedito Machado, the son of a former Brazilian politician implicated in the Petrobras corruption scandal, used trusts as well as companies to purchase two UK properties worth £8 million in total in 2015.[60]

4. 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?

4.1 In addition to existing requirements which mirror the information obtained under the existing UK PSC register, TI-UK recommends that the register also collects the name of the professional who has subscribed the information.

Data updates

4.2 The Draft Bill only provides an annual 'snapshot' of beneficial ownership information, which means unlike the UK's PSC register the information it would contain would not be 'current' and therefore 'accurate', as required by 5AMLD. This means that changes to this information throughout the year are not captured and could lead to misleading information being submitted to conceal the true identity of companies' owners. The register of overseas entities should mirror the UK's PSC register in this regard, which requires an annual confirmation statement of PSCs as well as event driven updates, to capture changes of beneficial ownership information in a timely manner.

On foreign governments

4.3 As the Draft Bill is currently worded, foreign governments are only required to provide details of — (a) name; (b) principal office; (c) a service address; (d) its legal form and the law by which it is governed; (e) the date on which the entity became a registrable beneficial owner in relation to the overseas entity; (f) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner (Schedule 1, Part 3).

4.4 Providing only a "name" in relation to the relevant government does not give the level of transparency required to contact the government in question. This is already an issue in certain circumstances on the UK's PSC register.

4.5 The "Republic of Azerbaijan" is listed on the UK's PSC register as a beneficial owner of 10 companies which according to their accounts hold tens of millions of pounds in assets.[61] In these circumstances it may be beneficial to require foreign governments to identify a role within that government that is relevant to the property (e.g. "Embassy Administrator") and provide contact details for that position (e.g. the Embassy's general access enquiry line) so it is easier to establish accountability for the use of those assets.

[60] https://www.theguardian.com/world/2016/jul/28/corrupt-brazilian-businessman-expedito-machado-uk-property-splurge

[61] https://register.openownership.org/search?utf8=%E2%9C%93&q=%22republic+of+azerbaijan%22 [Accessed 24 August 2018]

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

5.1 To ensure data submitted to the register is accurate, the UK Government should seek to place measures into this – or another – Bill which would allow for the verification of persons of significant control (PSC) information. Currently Companies House is required to accept information at face value, with limited enforcement action against those intentionally submitting false information to the register. Based on current enforcement levels this will be unlikely to deter individuals seeking to submit false and misleading data. The first ever prosecution for filing false information came in March 2018 for a formation agent who purposefully set up companies with incorrect information to highlight how easily this could be done – drawing this to the authorities attention in the process.[62] Since then there has been no public information on any further prosecutions, indicating a lack of credible deterrent against such behaviour.

5.2 The UK Government is required to ensure UK company ownership data is accurate under the fifth anti-money laundering directive (5MLD) and should apply these standards for overseas entities' data.[63] Four key areas require improvement in order to give confidence in the accuracy of data on this register.

Require information notices to be sent to managing officers to help identify beneficial owners

5.3 As currently drafted, the Bill states that reasonable steps to identify a beneficial owner include sending information notices to people who they believe may be a beneficial owner. We think the definition of reasonable steps should be expanded to include a requirement to also send information notices to managing officers as it is likely that these persons could also hold important information on who the beneficial owner is, or know of a person that would have this information.

5.4 We think expanding the definition of "reasonable steps" to include this requirement would improve the accuracy of the data submitted. This would mean more individuals with knowledge of, often complex, company ownership structures would be included in the process; for example, professionals involved in the administration of the company.

The role of UK professionals in verification

5.5 To improve the accuracy of data received, there should be a requirement for a professional, regulated by a UK money laundering supervisor, to be responsible for verifying beneficial ownership information of the overseas entity seeking to sell or purchase UK property. In practice, the professional acting on behalf of an entity seeking to purchase a property would likely be a solicitor, whereas if a company was looking to sell and needed to provide information an estate agent might be the relevant registered professional. As regulated firms are already required by the UK's Money Laundering Regulations 2017 (MLRs) to identify the beneficial

[62] https://www.gov.uk/government/news/uks-first-ever-successful-prosecution-for-false-company-information [Accessed 11 September 2018]
[63] http://europa.eu/rapid/press-release_STATEMENT-18-3429_en.htm [Accessed 5 September 2018]

owner of companies that are clients, this would not constitute any additional burden.

5.6 A relevant professional would need to make a declaration as to the accuracy of the information of the overseas entity being submitted to Companies House. The register should indicate the name and address of the firm responsible for verifying this information, providing a point of contact for Companies House, UK law enforcement and other professionals seeking to follow on information submitted. This principle is already being considered by the Government in relation to preventing the abuse of Scottish Limited Partnerships (SLPs).[64]

5.7 These measures are necessary to safeguard against jurisdictions which do not have public registers of beneficial ownership of the same standard as the UK's as well as questionable anti-money laundering compliance.

5.8 Guidance for regulated sectors should also be updated flag that when UK professionals identify company structures that appear to have been formed to purposefully obscure beneficial ownership – including the use of nominees and shareholding structures which avoid naming an individual PSC – they should consider reporting this to the financial intelligence unit within the NCA as suspicious activity.

Empower Companies House to verify information submitted to them

5.9 As with the UK PSC regime, under the current proposals Companies House would not have the power or resources to carry out data verification on the information they receive from overseas entities. This leaves the register vulnerable to inaccurate data being submitted as explored in our previous research on the UK company formation system.[65]

5.10 To address this and in addition to the measures specified in B. above, additional information should be required from companies submitting PSC information. This should include proof of identification for the PSCs which would allow Companies House to satisfy themselves that the PSC is who they say they are.

5.11 In addition to this, proof of ownership of the entity should also be submitted. This could normally take the form of submitting shareholding information of the company or the voting rights as set out in the articles of association. This would give Companies House more documentation to help identify those intent on submitting false information and fraudulent filings, increasing their risk of prosecution.

5.12 Analysis carried out by Global Witness shows that currently over 335,000 companies on the UK PSC register claim to have no beneficial owner, making this the most common reason why UK companies do not report PSC information. To ensure companies are submitting accurate information in regard to this, overseas

[64] https://www.gov.uk/government/consultations/limited-partnerships-reform-of-limited-partnership-law [5 September 2018]
[65] Transparency International UK, *Hiding in Plain Sight: How UK Companies are used To Launder Corrupt Wealth* (November 2017) http://www.transparency.org.uk/publications/hiding-in-plain-sight/#.W4-fGs5KjIU

entities which claim to have no beneficial owner should submit a description of the ownership structure – for example the articles of incorporation – giving clear indication as to why there is no beneficial owner listed.

5.13 By requiring this information, Companies House could carry out basic verification checks on all the information they receive as the population of overseas entities owning UK property is substantially smaller than active UK companies in general – around 100,000 compared to four million UK incorporated entities.

Companies House data validation

5.14 Companies House should introduce data validation into its processes to reduce human error in data inputting and ensure those submitting data cannot circumvent PSC requirements. For example, a restricted field could be used to ensure only Relevant Legal Entities can be added as PSCs that are not natural persons. Using PSC data, Global Witness found more than 10,000 UK companies listing legal entities that were unlikely to be an RLE.[66]

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

6.1 Companies House is the most appropriate home for the new register, but it needs to be empowered and resourced to verify any beneficial ownership data submitted to it.

7. Should entities which cannot identify, or provide full details of, their beneficial owners be allowed to register? Is it useful to hold the information of a managing officer in place of a beneficial owner? Is there any additional information that should be required from entities that are unable to give information about their beneficial owners?

7.1 No. Under the circumstances outlined in paragraph 25, entities which cannot identify a beneficial owner's details in full should not be able to register. Entities which are unable to find a beneficial owner should not be able to dispose of or purchase property as they are still vulnerable to abuse by corrupt individuals. Structures which include bearer shares are formed specifically to obscure the identity of beneficial owners and have been abolished in jurisdictions around the world due to their attractiveness to money launderers. Allowing the continued use of companies controlled by structures like bearer shares in the ownership of UK property would undermine the effectiveness of this legislation.

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

8.1 TI-UK would welcome further clarification on how the exemptions regime under the Draft Bill would work in practice.

[66] Global Witness, *The Companies We Keep, (*July 2018) https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-1

8.2 Clause 16 empowers the Secretary of State to exempt a person "if satisfied that there are special reasons", giving no further information on what these reasons should be. This should be linked to specific reasons for exemptions should be clearly laid out, as in the UK's PSC legislation where an application for exemption may be made are where the applicant reasonably believes that they or a person living with them will be put at serious risk of being subjected to violence or intimidation. These exemptions should:

- not go beyond the grounds allowed under the PSC regime;
- be granted only on a case-by-case basis with oversight by law enforcement agencies; and
- be subject to the same reporting requirements as under the PSC regime under which the number of successful applications is published by Companies House.

9. Should it be possible to appeal the suppression of information from public disclosure?

9.1 Yes. There may arise cases where there is a clear public interest to put suppressed information in the public domain, and there should be an opportunity for parties – such as civil society organisations and firms with anti-money laundering responsibilities – to make that case.

10. Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive and practicable way to ensure compliance? Are the sanctions for non-compliance with information requirements proportionate and enforceable?

10.1 The weakness of the system lies in the risk of false information being submitted in relation to a specific company, rather than no information being submitted. The UK Government should ensure a robust sanctions regime is in place to create a credible deterrent against submitting false and misleading information. If a UK professional responsible for verifying beneficial ownership information is found to have allowed false or misleading data to be submitted, they should face proportionate sanctions ranging from being struck off their professional register, to fines or imprisonment, depending on whether they intentionally submitted inaccurate data.

10.2 The current proposals do not contain a strong enough deterrent to submit timely information about the PSC nor do they provide a credible deterrent against companies withholding information with a view to evading secrecy.

10.3 In order to ensure the timely submission of information under these new requirements, it is important that fines accrued referred to in clauses 8 and 23 are levied when companies violate the rules. If they are not, this measure risks being ignored as an insufficient incentive to submit timely information.

10.4 When PSC rules were changed for SLPs in July 2017 – with a £500 daily fine introduced for non-compliance – Companies House was slow to sanction SLPs not abiding by the rules. As of 31 January 2018 no fines had been levied against non-

compliant SLPs10 despite up to 17,000 firms not providing PSC information at this point. This undermined confidence in the new requirements.

10.5 As well as ensuring fines for late submission are levied to ensure timely responses, there needs to be a stronger deterrent against those seeking to continually evade scrutiny by not filing PSC information. Under the current proposals, failure to submit details about the PSC result in certain restrictions being imposed upon the property, including a prohibition on its sale. However, there appears to be a loophole in these penalties that would allow a property to change hands without these beneficial ownership information being submitted or enforcement action being taken.

10.6 The proposals impose a prohibition on certain dispositions that relate to the registering of interests on the Land Registry as a means to preventing the onwards sale of a property by a company that has not submitted PSC information. Yet these dispositions would not apply where a property is exchanged via the sale of shares in the holding company, which is an approach that has historically been used to reduce the tax liabilities on the purchase of properties. Disposing of a property in this way under the current proposals could result in a criminal conviction and a five-year jail term however because of the opacity of some overseas entities it would be extremely unlikely that this kind of behaviour would be detected.

10.7 As an additional disincentive to overseas entities not registering, TI-UK notes the potential for accumulating financial penalties of £500 a day. Whilst this represents a disincentive against late filing and administrative errors it would not be a proportionate deterrent against those intent on determined criminality.

10.8 Fines alone are very unlikely to be sufficient to effectively deter criminals seeking to sell properties through ownership of company shares. In the case of premium real estate, it is likely that the asset will appreciate in value faster than the value by which fines for non-compliance would accumulate.

10.9 In order to provide a credible deterrent against determined non-compliance, we suggest that a new confiscation power is introduced where PSC information is not submitted within a certain timeframe. We think it would be reasonable to allow confiscation proceedings to commence after an entity has failed to submit PSC information within 24 months, and possibly even earlier. This additional measure for the most serious cases would act as an extra disincentive for continued refusal to comply with the law. As per existing civil recovery powers this would be subject to challenge and oversight by the courts.

About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.

18 March 2019

UK Finance – Written evidence (ROE0003)

Thank you for the opportunity to support the Joint Committee's scrutiny of this draft legislation. UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

UK Finance support the aims of the Bill as part of wider reforms to the UK's regime for company registration and beneficial ownership transparency, as a critical part of the legal and institutional framework guarding against economic crime. We want the UK to be the safest and most transparent place in the world to do business and for our customers. Doing this cannot be delivered by either the public or private sector on their own, especially in a globally significant financial centre such as the UK. Public-private partnerships on anti-money laundering (AML), fraud and cyber security have proven the value of collaboration.

However, despite significant resource across the private and public sector invested, and all the good initiatives the overall outcomes are less effective than the sum of their parts. Too often we are trying to work around the limitations of the current fragmented system. Beneficial ownership information is one example of this fragmentation, with Companies House not required to conduct the type of AML and know-your-customer (KYC) checks required for regulated company and trust formation companies. As a result the current regime for beneficial ownership registration makes it more difficult for banks to prevent economic crime, duplicates cost and effort across all participants and can lead to increased administrative requirements for the end customer.

This is why we are working with the Government to support reform of beneficial ownership registration for companies, trusts and partnerships, as a key part of a more strategic and holistic approach to tackling economic crime. We are concerned that this new Register should learn lessons from the Register of Persons of Significant Control (PSC Register) and Scottish Limited Liability Partnerships, and provide for credible checks, monitoring and enforcement of non-compliance.

Our evidence focuses on these concerns and we provide specific comments below in line with relevant questions from the call for evidence.

<u>Objectives and Scope</u>

There is a good risk-based rationale for focusing the Bill's new transparency requirements on the purchase of property. The NCA's 2017 National Risk Assessment of Money Laundering and Terrorist Financing explicitly recognises the risks of opaque company ownership being used to facilitate money laundering through property purchases. The Joint Money Laundering Intelligence Taskforce (JMLIT) also has a dedicated workstream focused on the risks that UK property is abused to launder the proceeds of international corruption.

However, the effectiveness of the Bill in preventing and combating the abuse of UK property to launder the proceeds of crime will depend on whether data

presented to the Register is credibly checked, monitored and subject to enforcement in cases of identified non-compliance. We do not consider that the current Companies House regime will provide an adequate basis for an effective Register. For example, Companies House checks that data presented to it is valid but does not verify the data through independent sources of information.

Operation of the Register

From the banking and financial services sector perspective, what is important is the quality and accessibility of information required for customer due diligence purposes. Publicity does not necessarily guarantee quality, and research by Transparency International, Global Witness and other organisations indicates that the UK's regime for public registration is currently vulnerable to misuse. Similar concerns have been identified by the mutual evaluation report of the UK by the Financial Action Task Force (FATF) and the Treasury Select Committee's inquiry into economic crime.

We have called for changes to both Scottish Limited partnerships and the PSC Register to close identified vulnerabilities. Poor quality or inaccessible beneficial ownership information makes it more difficult for banks to prevent economic crime, including anti-money laundering, protecting customers from fraud and preventing the facilitation of tax evasion. The current regime also duplicates cost and effort across all participants and can lead to increased administrative requirements for the end customer.

We note that the consultation on proposed reforms to Limited Partnerships included the proposal that presenters should be required to demonstrate that they were registered with an AML supervisory body, and therefore subject to AML regulations for KYC and verification of beneficial ownership. We supported this proposal, noting that the fees to register through a regulated Trust and Company Service Provider (TCSP) were minimal (£40-£100) and not seen as prohibitive, and noting that information supplied by regulated TCSPs can be viewed generally as being more reliable. We recommended that the Government give serious consideration to adopting a similar arrangement for Companies House registrations, while acknowledging the challenges of scaling up such an approach for the generality of company registrations. We do not consider that there would be a significant challenge of scale for the registration of foreign entities in scope of the Bill.

Compliance and Enforcement

We are willing to support enhanced review and monitoring by Companies House, including through support for consideration of innovative technologies, improved targeting of AML risk typologies and through the transposition of new EU requirements (which we understand will be consulted on shortly). However, we consider that it would be more efficient and effective to 'get it right first time' through requiring credible initial checks prior to registration.

We consider that greater transparency of foreign company ownership also needs to be supported by greater consistency in AML supervision across different sectors. This is relevant to the Bill's focus on UK property as accountants, conveyancing lawyers and banks all play key gatekeeper roles in a property transaction chain.

We are supporting Government work to address inconsistencies in the AML regime, as identified in the latest FATF review of the UK. This will build on JMLIT work with other regulated sectors to build a clearer picture of the risks of proceeds of corruption being laundered through UK property.

Nick van Benschoten

18 March 2019