



global witness

A register of beneficial owners of overseas companies and other legal entities

Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement.

Submission from Global Witness – 15 May 2017

The ability to hide and spend suspect funds overseas is a large part of what makes serious corruption and organised crime possible. In order to steal public money, corrupt individuals need to be able to hide those funds in the international financial system and find somewhere attractive to spend them. Increasingly, London's high-end property market has become one of the go-to destinations to give questionable funds a fresh start. At least £122bn worth of property in England and Wales is now 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.¹

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. In doing so, it will signal the beginning of the end for a system of secrecy facilitates and entrenches the corruption that keeps citizens in poor countries poor, robs people of their futures, and threatens global stability and security.

Over the past two years the UK has taken bold and meaningful steps towards tackling corruption, most notably by legislating for the creation of the PSC register of UK companies and hosting the International Anti-Corruption Summit in 2016.² However, this progress and ambition will be undermined unless the next government follows through on its commitment to implement the proposed public register of overseas companies in the next legislative cycle.

Question 1: Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?

Yes.

Properties owned by trusts need to be included in the register. All legal forms should be captured by the register, including legal arrangements such as trusts.

¹ 'Corruption on your Doorstep', Transparency International UK (Feb 2015) Available online: <http://www.transparency.org.uk/publications/corruption-on-your-doorstep/> [Accessed 14 May 2017].

² Available online at: <https://www.globalwitness.org/en/archive/global-witness-welcomes-uks-historic-rollback-corporate-secrecy/> [Accessed 8 May 2017].

Trusts offer an unparalleled degree of secrecy and are often used as the final step in complex chains of shell companies as the ultimate entity that allows individuals to disguise the true ownership of their assets whilst still benefitting from them.³

Global Witness's report, 'Don't Take it on Trust', details the case of Prince Jefri Bolkiah, the former Finance Minister of Brunei and chair of the Brunei Investment Agency (BIA), the country's sovereign wealth fund. During his time in office, Prince Jefri siphoned \$14.8 billion out of the fund into his personal bank accounts. At the same time he undertook a prolific international spending spree. While the BIA was attempting to recover these assets, Prince Jefri bought property in Mayfair using an offshore company, owned by a Jersey trust. By using the trust to hide his ownership he may have been able to hide the property from the BIA to prevent it from being returned to the Brunei government.⁴

Even if the overseas register was in force at the time of Prince Jefri's investments it would not have captured any information which would have supported the BIA to recoup its assets. This case, which only came to light with the release of the Panama Papers, demonstrates how the secrecy afforded by trusts could create huge legal barriers to creditors or anyone else seeking to make a claim against UK properties.

To allow trusts to own property without naming their beneficial owners is a glaring omission in the UK's transparency regime and will encourage those individuals who are intent on maintaining secrecy to alter their ownership arrangements during and after the transition period. To be effective in preventing, detecting and investigating money laundering the identities of all parties to the trust should be disclosed as beneficial owners, including the settlor, trustee, protector, and beneficiary or class of beneficiaries.

HMRC's register of trusts with UK tax liabilities should be made public. The European Union's 4th Money Laundering Directive requires the UK to establish a register of trusts. Global Witness understands that HMRC are in the process of developing proposals to deliver this commitment regarding trusts that have tax liabilities in the UK. To keep in step with both the persons of significant control (PSC) register and the overseas register and close the transparency loophole, this register of trusts should be made public and have an equivalent protection regime for vulnerable or at risk individuals.

Legal entities should only be exempt if they are registered with regimes of absolute equivalence. The only reason why any legal forms should be exempted from the register is if they are incorporated or already registered in jurisdictions which require absolutely equivalent disclosure requirements to the UK. Absolute equivalence between the registers is critical to avoid creating an incentive for companies that own property to 'jurisdiction-shop', domiciling their companies in jurisdictions where the information is less accessible, less usable and less detailed than the new overseas register.

To be deemed equivalent, registers in other jurisdictions must:

³ 'Don't Take it on Trust', Global Witness (February 2017); pp.6-7. Available online https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf [Accessed 8 May 2017].

⁴ Throughout Prince Jefri's court disputes related to the BIA, his ownership of the Mayfair property does not appear to have been disclosed. It is not clear whether the property was included in the out of court settlement with the BIA. https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf

- be public and open to all, not just those who have a ‘legitimate interest’;
- be free to access;
- provide beneficial ownership information in an open data format;
- require that beneficial ownership information is updated annually; and
- require the same information of beneficial owners as the UK register.

The full chain of ownership should be published: Companies on both the PSC register and the overseas register should be required to provide information on each stage of their ownership chain between the property and the ultimate beneficial owner. Having information on the full chain of control is vital for those in third countries seeking to use the register to assist in their investigations: it would provide sufficient details to enable authorities to request further information about any company in the chain of ownership which would be critical to enable proper investigations and criminal cases to be brought.

Question 2: Is the suggested definition of leasehold appropriate?

No comment.

Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?

No comment.

Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?

Global Witness agrees that parity between the PSC regime and the new overseas register is critical.

The definition of beneficial ownership used by PSC regime and the new overseas register need to be amended. The following amendments need to be made to the proposed definition:

- **Natural person:** The beneficial owner should always a natural person, i.e. an individual human being, as opposed to a legal person which may be fictitious such as a company, a trust, a foundation and any other type of legal entities or arrangements;
- **Ownership test:** The beneficial owner is any individual holding, directly or indirectly, at least one share in the entity or alternatively, holding shares or interests above a 10% threshold;
- **Voting test:** The beneficial owner is any individual, with the direct or indirect right to at least one vote, or alternatively, any individual holding directly or indirectly voting rights above a 10% threshold;
- **Directors’ appointment or removal test:** The beneficial owner is any individual with the direct or indirect right to appoint or remove at least one director or manager;
- **Residual test:** Any individual with direct or indirect control over the entity (e.g. decision or veto rights on business operations, right to profit, contractual associations, joint ownership arrangements).

Finally, in situations where no individual passes any of the above beneficial ownership tests, at least the top ten owners (e.g. members, shareholders, etc.) should be identified as beneficial owners. These

refined tests will result in registers which will more accurately report on the beneficial ownership of UK companies and overseas companies that own UK property.

The ownership and voting thresholds need to be lowered. In Global Witness's view the 25% ownership and voting threshold that applies to the PSC register and that is proposed for the new overseas register is problematic for two reasons: firstly, providing a threshold beneficial ownership potentially provides money launderers with guidelines on how to avoid scrutiny - they simply have to structure company ownership so that no shareholding passes the threshold. The European Commission states in its own impact assessment that the "25% threshold is fairly easy to circumvent, leading to [the] obscuring of [...] beneficial ownership [information]".⁵ 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."⁶

Secondly, the threshold is too high. An analysis of the PSC register by Global Witness and DataKind in November 2016 revealed that nearly 1 in 10 companies "claimed to have no beneficial owner" at all, a claim which is made possible in part by the high ownership threshold level set at 25%.⁷

Moreover, corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves. Global Witness' investigations expose many examples of allegedly suspect transactions involving a stake in the company of under 25%:

- In Azerbaijan, a gold mine was awarded to a UK company which allegedly involved the daughters and wife of Azeri President Ilham Aliyev. They ultimately owned 11% of the company.
- In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25% of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown.
- A US company, Cobalt International Energy formed joint ventures in Angola with two companies, Nazaki Oil and Gas and Alper. Nazaki originally held 30%, later dropping to 15%. Alper held 10%. Nazaki was found to be owned by Angolan Vice President Vicente, Director of the National Reconstruction Office General Kopelipa and his advisor General Dino. Alper's ownership is also suspected to include officials. Cobalt is now under an FCPA investigation.
- Statoil's deals in Angola have also been under considerable scrutiny. In July 2005, Norsk Hydro (a company that later merged with Statoil) was awarded a 20% share in an oil licence in Angola. Two 15% slices were awarded to two Angolan private companies, Somoil and Angola Consultancy Resources. At the time, Norsk Hydro was "concerned about partnering with a company whose owners are unknown" but went ahead with the deal anyway.

⁵ European Commission, Impact Assessment accompanying the 4th Money Laundering Directive. Available online: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0223&from=EN> [Accessed 15 May 2017].

⁶Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief, (Feb 2017); p12. Available online: <http://www.justice.gov.ng/documents/POLICY%20BRIEF%20ON%20BENEFICIAL%20OWNERSHIP%20FMOJ%20AND%20IBLF%20GLOBAL%20FINAL.pdf> [Accessed 8 May 2017]

⁷'What does the UK Beneficial Ownership Data show us?', Global Witness (22 November 2016). Available online: <https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/> [Accessed on 8 May 2016]

- In 2005, a subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the 10% share held by “the relative of an Angolan Minister”.⁸

These cases demonstrate that a beneficial ownership register which uses 25% threshold will not capture enough information to deliver the promised benefits of company transparency in terms of deterring the corrupt from investing in the UK property market.

Global Witness believes that the voting and ownership thresholds should be lowered to 10% or lower. This would ensure that the register aligns with both the U.S. Foreign Account Tax Compliance Act (FATCA)⁹ and with the European Commission’s recommendation for the 5th AML Directive which argues for the threshold for declaring a beneficial interest to be lowered to 10%.¹⁰ Lowering the ownership and voting threshold in both registers to 10% would also ensure that the UK continues to set and lead global standards on beneficial ownership transparency as it has done since 2015.

Indeed, if the UK is to maintain its position at the forefront of best practice it is critical that both the PSC register and the register of overseas companies adapt to match changes to the definition made in other jurisdictions over time. For example, if EU member states lower the threshold to 10% or lower in the wake of the 5th AML Directive, the UK registers will need to be amended to meet their requirements.

One of the main arguments against lowering the threshold is that companies would find it very difficult to identify their beneficial owners. However, DataKind and Global Witness’s analysis revealed that this has not been a problem for the majority of companies appearing in the PSC register. In fact, in only 2% of cases did companies say they were struggling to identify a beneficial owner or collect the right information.¹¹

Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?

Yes.

Question 6: Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?

Yes.

The definition and adaptations will have to keep up with international best practice. The success of both the PSC register and the register of overseas companies relies on the definition of beneficial

⁸ ‘Assessment of EITI Beneficial Ownership pilots’, Global Witness (March 2015); p7. Available online: https://www.globalwitness.org/documents/18014/Beneficial_Ownership_Report_March_24_FINAL.pdf [Accessed 8 May 2017].

⁹ FATCA requires certain non-U.S. financial institutions to identify U.S. customers and provide information on them to the U.S. authorities. Under FATCA a substantial U.S. owner is defined as “any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of such corporation (by vote or value)”.

¹⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2017-0056%2b0%2bDOC%2bPDF%2bV0%2f%2fEN>

¹¹ ‘What does the UK Beneficial Ownership Data show us?’, Global Witness (22 November 2016). Available online: <https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/> [Accessed on 8 May 2016]

ownership to be updated as more jurisdictions adopt public registers and best practice evolves over time.

The definition and its adaptations will need to be responsive to efforts to evade manipulation.

In 2008/9 Scottish Limited Partnerships (SLPs) experienced a spike in popularity. This occurred not long after the commencement of Section 155 of the Companies Act 2006 in October 2008, which required that all UK companies must have at least one director that is a natural person. Transparency International UK has suggested that those who desired to operate in secrecy established SLPs in response to policy and legislative changes that increased the transparency of other UK legal entities.

This case suggests that those looking for anonymity will be willing to alter their company structures to avoid transparency. To be effective, the definitions of beneficial ownership – and the adaptations that accompany them – will need to allow for displacement and adapt accordingly in order to capture precisely those individuals that the register is seeking to expose and deter.

Question 7: What methods of raising awareness would be most effective?

No comment.

Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?

Transparency over the beneficial ownership of foreign companies would help stop the abuse of opaque corporate structures which allow the corrupt to buy UK property and enter into public contracts. Requiring these companies to provide their beneficial ownership information to a public register would act as a deterrent for those seeking to hide illicit wealth in the UK and would help ensure that those that are already hiding such wealth, and those who have intentions to, would be far more likely to be caught by law enforcement and revenue inspectors both in the UK and overseas.

This would provide a benefit to those countries which suffer from officials stealing public funds and being paid bribes, as this practice degrades the level of public services, hinders development and causes insecurity as well as undermining public trust in institutions. It would also benefit economic growth. Former Prime Minister David Cameron said that "...corruption adds 10% to business costs globally and that cutting corruption by just 10% could benefit the global economy by \$380 billion every year ... tackling corruption hasn't held back growth, it's actually boosted it."¹²

Domestic and international law enforcement would also benefit. A searchable database of beneficial ownership information for foreign companies would increase the efficiency of criminal investigations as law enforcement would not have to request beneficial ownership information from other jurisdictions under mutual legal assistance treaties.¹³ This could lead to the proceeds of crime being frozen, recovered and returned to their countries-of-origin, which would benefit developing countries and act as a deterrent for money launderers.

¹² Available online at: <https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore> [accessed 8 May 2017].

¹³ Transparency International UK identified a lack of time was a main obstacle to the National Crime Agency investigating suspicious activity reports related to corruption: <http://www.transparency.org.uk/publications/empowering-the-uk-to-recover-corrupt-assets/> p.16

The register could also create a cost-saving for UK law enforcement. A 2002 HMT impact analysis of the disclosure of beneficial ownership information by unlisted companies estimated that public register of beneficial ownership would yield savings to UK law enforcement to the effect of £30.3m.¹⁴ Global Witness commissioned the same consultant to update the cost figures in 2013.¹⁵ They found that the savings in police time in having this information publicly available would be more than double the combined cost to the public sector of running the database and the cost to the private sector of submitting the data – let alone the other wider benefits to the public sector and to businesses.

There would also be a practical and financial benefit to business: those UK firms that are subject to the Money Laundering Regulations (MLRs) in the UK (including real estate agents, solicitors and banks) would benefit greatly from beneficial ownership declarations from foreign companies. A crucial part of their due diligence process is identifying the beneficial owner of a company, and this can often constitute a costly and time-consuming process, and can lead to the business being lost. A public register of beneficial ownership of foreign companies would assist those firms in ascertaining the beneficial owners of their clients and exercising a better-informed risk-based approach to their business.

UK businesses would also benefit from being on a level playing field with foreign companies. Having the same transparency requirements apply to UK and non-UK companies would help ensure that UK companies are not unduly disadvantaged. As former Prime Minister David Cameron said, corruption “makes it riskier to trust strangers and that doesn’t just undermine business, it erodes the bonds of society more broadly too. So we simply cannot afford not to ignore it.”¹⁶ In addition, UK companies will be able to do business with those overseas companies investing in with greater visibility and reduced risk than previously.

The cost to businesses would be minimal, as under existing international money laundering standards, companies must already to determine their beneficial ownership in a timely manner.¹⁷ All G20 states have already signed-up to these standards, and the EU and the UK’s Overseas Territories and Crown Dependencies have pledged to create central registers by summer 2017.¹⁸ Therefore, asking foreign companies that own property in England & Wales or engage in public contracting to identify their beneficial owners would not impose much of an additional burden. The only additional cost to companies is likely to be providing that information to Companies House, and providing an annual update of that information. These activities should fall within those companies’ existing reporting requirement, so there should only be a minimal (additional) cost of communicating that information to Companies House.

The costs of setting up a new register of non-UK companies (or adding them to the existing PSC register) compared to establishing the PSC register would be far smaller too. Companies House has already developed the systems and infrastructure for collecting and holding the information. In

¹⁴ Available online at: http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/9/9/ownership_long.pdf p100 [accessed 8 May 2017]

¹⁵ Available online at: <https://www.globalwitness.org/sites/default/files/library/Cost%20of%20Beneficial%20Ownership%20Declaration%20Report.pdf> [accessed 8 May 2017]

¹⁶ Available online at: <https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore> [accessed 8 May 2017].

¹⁷ See interpretative note to Financial Action Task Force recommendation 24: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf [accessed 8 May 2017].

¹⁸ See exchange of notes <https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies>

addition, the total number of non-UK companies for which information would need to be collected would be fewer than those included in the PSC register, lowering the cost of administering the entries.

It is important to acknowledge that the corrupt may seek to avoid any system put in place to expose their criminality, which in the case of registering beneficial ownership may include listing a nominee to obscure the identity of a corrupt individual. Even with this in mind, a public register of beneficial ownership of non-UK companies adds an extra obstacle for criminals to negotiate, and adds to their risk of being caught. The risks involved in attempting to game the system will act as a deterrent to some.

Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.

Stopping the flow of corrupt money into UK properties would bring benefits to the UK property market; namely reducing the potential for that money to inflate house prices and increase social inequality. In 2015, Donald Toon of the NCA told The Times, "I believe the London property market has been skewed by laundered money...Prices are being artificially driven up by overseas criminals who want to sequester their assets here in the UK."¹⁹

Transparency International UK's report published in March 2017, 'Faulty Towers', cited research conducted by the Saïd Business School which linked political risk and uncertainty overseas with house price increases in specific areas of London. The findings showed that when countries experienced political uncertainty, such as during China's anti-corruption drive or the aftermath of the Arab Spring, the areas of London which had corresponding communities experienced increases in house prices. It is estimated these areas experienced both an average 1.84% increase in the volume of transactions and 1.41% increase in house prices because of overseas demand effects. The research suggests this is due to individuals in these countries moving assets into London property as a safe haven asset, leading to increased competition and higher prices.²⁰

There is also evidence to support a theory which posits that increases in the price of high-end property creates a 'ripple effect' in other, lower ends of the market. It follows that this register could have a calming effect on the London property market as a whole if it succeeds in deterring the corrupt from investing in the city as a safe haven.²¹

Increasing transparency of ownership in the UK property market would also improve the integrity and reputation of the real estate sector. The former Prime Minister has said that the UK is no place to "stash dirty cash".²² By closing the loopholes that exist around property ownership the UK would clearly indicate its intent to shed its reputation as a safe haven for the corrupt. The UK's already-established reputation abroad as a safe place to do business will be further enhanced, paving the way for more sustainable and legitimate economic growth.

¹⁹ Available online at: <http://www.thetimes.co.uk/tto/news/uk/crime/article4508163.ece> [accessed 8 May 2017].

²⁰ Transparency International UK; 'Faulty Towers: Understanding the Impact of Overseas Corruption on the London Property' Market (March 2017), p29. Available online at: <http://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market/> [accessed 8 May 2017].

²¹ Ibid; p33.

²² Available online at: <https://next.ft.com/content/4d83097a-34ef-11e5-bdbb-35e55cbae175> [accessed 8 May 2017].

Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?

A one year transition period is reasonable. However, there is potential for the corrupt and criminal to view the one year period as a window of opportunity to either divest themselves of UK properties or rearrange company ownership to ensure that their relationship to the property remains obscured before the register comes into force.

The Land Register should be tasked with monitoring the sale of properties owned by companies in the run up to the register's implementation and flag to law enforcement when properties have been sold below the market rate.

Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?

Adopting the criminal penalties for non-compliance from the PSC register is appropriate to both deter non-compliance and provide law enforcement with additional offences to pursue money launderers and the corrupt.

The commitment to consider whether to make it a criminal offence to fail to provide information to the new register or keep information up to date is welcome; non-compliance should be made as undesirable as possible.

Without authentication the deterrent effect of the register is diminished. The effectiveness of the statutory restrictions and criminal offences in ensuring compliance is undermined by the fact that the self-reported information collected by Companies House is not subject to systematic authentication or scrutiny. It is critical to the success of both registers that beneficial ownership data is authenticated and non-compliance is acted upon.

In November 2016 Global Witness and DataKind conducted in-depth analysis of the PSC register and identified a series of flaws with the way in which data is collected and validated. Firstly, free text fields were found to result in inaccurate or error-laden inputs. Secondly, the analysis discovered several entries which were not in compliance with the law.

For example, of the 9,800 companies which listed their beneficial owner as a foreign company, almost 3,000 companies listed their beneficial owner as a company with a tax haven address, which is specifically disallowed. The review also discovered 76 beneficial owners that shared the same name and birth month and year with someone on the US sanctions list.²³

In April 2017 Private Eye reported that, according to document seen by them which was dated January 2017:

- more than 100 companies listed on the PSC register have declared beneficial ownership in a 'loop' structure wherein no natural person is involved;
- 3,449 companies were found to have no real person as a director, as required under company law; and

²³ Available online at: <https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/> [Accessed 8 May 2017]

- 528 active public limited companies had ‘insufficient officers’.²⁴

Global Witness acknowledges that Companies House 2017/18 business plan includes a commitment to improve the accuracy of the data on the PSC register and introduce a ‘report it now’ button.²⁵ The same reporting facility should be applied to the overseas register.

However, the nub of the problem is that Companies House does not have the statutory remit or capacity to authenticate the data it requests, and, to Global Witness’s knowledge, no other government department has been specifically tasked to review or authenticate the submissions. In order to create an effective register, and to comply with FATF recommendation 24 which states that beneficial ownership information must be ‘adequate, accurate, and timely’, the government needs to review the case for awarding Companies House the power and resource to interrogate the authenticity of the information it holds.

Global Witness proposes that regulated professionals play a role in the authentication of the beneficial ownership information submitted to Companies House. The government’s commitment to consider how the new register and MLRs can work cooperatively is welcome.

To ensure compliance with the new regime and the authenticity of the information provided, 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 MLRs) who will be responsible for verifying the beneficial ownership of that company. The name of that professional should be publicly declared on the register, along with the company’s beneficial ownership information. This will charge professionals with the task of verifying the beneficial ownership 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 to the government.

Both the MLRs and their guidance should be clarified to ensure that a company that seeks to avoid naming its persons of significant control, for example 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.

If the UK professional nominated by the company responsible for submitting beneficial ownership information 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 sanction 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.

²⁴ Private Eye, No. 1442; p 36.

²⁵ Companies House, ‘Business Plan 2017 to 2018’; pp.13-14. Available online at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609263/Companies_House_Business_Plan_2017-18.pdf [Accessed 8 May 2017]

Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?

Yes.

Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?

No comment.

Question 14: Is there another way that we could achieve this result?

No comment.

Question 15: Which is your preferred option for procurement and why?

Option 3.

Global Witness believes that unless bidders provide beneficial ownership information from the outset, they should not be able to move forward in the bidding process.

It is important to capture bidder beneficial ownership for bidders, and not just for the successful company. This is because it is substantially less expensive to terminate a contract pre-award than to terminate the contract once it has already been awarded (possibly losing money in the process and requiring the government to begin the search over again, and wasting valuable resources).

The proposal that transparency provisions will only apply to procurements valued at over £10m creates disparity between UK and overseas companies. All UK companies will have to disclose their beneficial ownership information whatever their size, it follows that a size threshold would unfairly privilege non-UK companies.

Many cases of procurement fraud demonstrate that criminals use multiple anonymously owned companies and often win multiple contracts either on the same project or over the course of time (varying in size but resulting in millions stolen). £10 million still represents too high a figure and would still constitute a risk of giving significant amounts of public funds to companies involved in criminal activities.

Bidders' and awardees' beneficial ownership information should be available for free, in an open data and machine-readable format as per the information contained in the PSC register. This information should be made available on the OpenOwnership Register.

To ensure that beneficial ownership information is captured and shared seamlessly across the contracting and bidding process, disclosure should be integrated into the relevant paperwork and e-forms. Further, corporate IDs should be recorded and shared in an open data format.

Finally, wherever possible beneficial ownership information should align with national registers in other countries and with the OpenOwnership Register. This will remove the need for companies to register in multiple jurisdictions and so reduce the cost of bidding.

Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?

Parity between the registers is critical. In addition to personal information stipulated in the proposal, the following information should be collected and published by both registers:

The full date of birth: Analysis by Global Witness and the Open Knowledge Foundation of the previous register of company directors in 2014 found that redacting information on the day of birth meant that there were at least 57,000 people in the UK whom could not be identified to the level of an individual. They concluded that without full identifying information for beneficial owners, including full name, date of birth and nationality, the benefits of company ownership transparency could not be fully realised.²⁶

Dual nationality information: Citizenship-by-investment programmes offer legitimate investors an alternative residency permit or passport. In some jurisdictions, weaknesses in vetting procedures mean that the programmes are vulnerable to abuse by the corrupt, tax evaders, terrorists and sanctions busters. Evidence suggests that demand for these passports and visas is highest from those countries with significant outward illicit financial flows or corruption-related political instability.

For the corrupt or those looking to operate businesses in secret, having an additional citizenship at their disposal provides an opportunity to misdirect authorities as to the nature of their identity and background. Publishing details of the range of nationalities of each PSC would better enable investigators, journalists, and civil society to identify and track down individuals of interest. In the case of individuals who hold dual citizenship entirely legitimately, publication of this information would better inform businesses in their due diligence processes. Companies House should request a verified copy of the passport/s that the individual has declared; these need not be published.

PEP status information: Divulging the beneficial owner's PEP status²⁷ would signal to lawyers, estate agents, and accountants involved in any related transaction that they need to consider carrying out enhanced due diligence on the individual.

The information collected must also be:

Open: It is crucial that the register is public and held in an open data format. The commitment to making data available in CSV files via an API (Application Programming Interface) is welcome. As per the PSC register, it is critical that there is no requirement to log-in (with the exception of use of the API which could require the use of API keys) or supply personal details to access the register as is currently the case for the Land Registry's data on foreign owned properties.

²⁶ Open Knowledge Foundation & Global Witness, Confidential briefing to BIS/Treasury: The UK's beneficial ownership registry needs to make full date of birth public (Jan 2014).

²⁷ The definition of PEP should be interpreted as per FATF guidance: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>

Accurate: As mentioned above, Global Witness and DataKind have identified problems with the PSC register's free text fields. For the purposes of accuracy, and to reduce the work of the Data Integrity team at Companies House, fields for nationality and country or state of residence in both registers should not be free text.

Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?

If beneficial ownership information cannot be ascertained this should be made very clear on the Land Register in order to alert third parties. Not being able to identify a beneficial owner should flag to public authorities and others of the possibility of anomalies with the company and the need to conduct enhanced due diligence before engaging in business relationships.

All entities or arrangements need to be represented on the register by natural persons, even where the beneficial owner has not been identified. If legal entities or arrangements are named as managing officers and are not registerable Relevant Legal Entities, their PSC must be publically disclosed.

Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?

The managing officer's statement to Companies House should be accompanied by evidence that they have sought to identify ownership. Dated copies of letters, emails, or requests to review registers of members or shareholders, articles of association etc. should be submitted to Companies House. These documents would not need to be made public, but the bar to having a statement accepted should be sufficiently high to deter false or misleading statements from being drafted.

Question 19: Is a requirement for an update every two years appropriate?

The proposal to require updates to the register every two years is inadequate. To attain the highest levels of transparency over who owns UK property, overseas legal entities should be required to update their beneficial ownership information on an annual basis as well as listing all the changes to beneficial ownership which have occurred in that year. If entities were only required to give information on an annual basis without listing changes this would allow them to give a snapshot of beneficial ownership information without providing a full picture on this information.

Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?

Yes.

If criminal sanctions are to have the desired deterrent effect it is critical that the information provided to the register is authenticated and verified.

Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?

Global Witness agrees that parity with the offences that accompany the UK PSC register is appropriate.

If false or inaccurate information is provided by the company there should be sanctions available for both individuals and the company itself. The severity of the sanction should be dependent on the level of inaccuracy and/or the degree of knowledge or intention with which the information was provided.

In addition, should a company fail to comply with the register by the end of the transition period, the following penalties should apply:

- i. Failure to comply should result in a fine being imposed and a freeze / hold / lien / mortgage being placed on the company and property, resulting in the beneficial owner not being able to transfer the land or property until they have provided the required information. The same freeze / hold / lien / mortgage could operate to prevent the beneficial owner from applying for any other changes to the property, including 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.
- ii. Any fine payable should increase incrementally every 12 months until the company makes the required disclosure with any such fine being linked to the current value of the property e.g. 5% of total after 12 months of no disclosure, 10% for the next 12 months, 20% for a further 12 months, etc.
- iii. Where the accumulation of the yearly fines is worth more than the value of the property or, in any event after five years from the first time the company is notified of its failure to comply, the UK government (via law enforcement) would be entitled to seize / foreclose / acquire the property and sell it to a new purchaser.
- iv. Following the sale to a new purchaser, and once allowances have been made for any mortgages / other rights over the property, the funds should be distributed to:
 - a. UK law enforcement, to cover the costs of the investigation and seizure of the property;
 - b. 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
 - c. a fund established by the UK government to finance the regulation and enforcement of transparency regulation in the property market.

As articulated above in response to Q11, the UK professional nominated by the company responsible for submitting beneficial ownership information should also be sanctioned if it is found that false or inaccurate information has been provided by them to Companies House.

Given that these companies are based overseas, it may be more difficult to enforce these sanctions compared to UK-based companies. Therefore, a broader array of penalties for non-compliance should be available. Companies that provide false or inaccurate information should be barred from certain

economic activity within the UK such as being unable to purchase new property, bidding for public contracts or applying for planning permission on a property.

Companies House should be empowered 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.

In turn, UK law enforcement should be empowered to share the information it collects on disbarred companies with other governments and enforcement agencies, with a view to eventually centralising the information in a public list of disbarred companies.

Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?

The imposition of an additional termination clause into the public contract is appropriate and proportionate. Global Witness recognises the difficulty of terminating a contract for a major project part-way through its implementation. However, as currently envisaged, there is little incentive for companies to comply with the register once they have won a contract and have begun to deliver a complex project. If a company has failed to update its beneficial ownership or has made a false statement and the government or local authority body chooses to not to terminate the contract, a financial penalty should be imposed against the contracted party.

Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?

Beneficial ownership details should only be suppressed from the register if publication creates a strong possibility that individuals will be put at serious risk. The protection regime for the overseas register is likely to be exploited by exactly the kind of individual that the government hopes to deter. The need to protect individuals must be balanced against creating a system which does not allow those seeking to launder and enjoy the proceeds of crime to use the protection provisions to preserve anonymity. It is therefore critical that the criteria for suppression are set at the highest possible bar. The test in the protection regime for the overseas register should be put at least as high as the test in the PSC register which states that the risk must be 'serious'.²⁸

Suppression should only be granted by law enforcement on a case by case basis. There should be no characteristics or attributes that automatically qualify individuals to have their details suppressed from the register. Whether someone is a politically-exposed-person (PEP) should not prevent law enforcement from ensuring that there is a real prospect that publication of their details puts them at a credible and verifiable serious risk. Likewise, if someone has successfully claimed political asylum in the UK it should still be incumbent upon them to demonstrate that publication would put them at a specific, additional, and serious risk beyond that detailed in their asylum claim. In addition, particular

²⁸ Regulation 36 of the PSC guidance states that the grounds on which an application may be made are that the applicant reasonably believes that if that secured information is disclosed by the registrar will put the applicant or a person living with the applicant at serious risk of being subjected to violence or intimidation. 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 [Accessed 11 May 2017].

caution should be applied to claims based on the fear of 'intimidation' which should not be interpreted too generously and demand a robust evidential basis to justify.

A clear plausible link between the supposed risk and publication of the information should be required before suppression is granted. The overseas register should adopt the language of the PSC Regulations, which state that suppression will be granted if the publication of information 'will' put the applicant at serious risk. Further, the risk itself should be convincingly established by the relevant enforcement agency.

Companies House should publish how many applications for suppression are made each year and how many of these are granted under which criteria. This would allow the effectiveness of the protection regime to be monitored and scrutinised over time.

When a beneficial owner has been exempted from the register, the criteria under which they are exempted should be clearly communicated on the Companies House register. As above, publishing information about the way in which the regime is used will enable the protection regime to be monitored. Publishing this information will inform private businesses about the level of due diligence they may need to conduct. It will also support investigators, journalists, civil society, and citizens to understand why an exemption was granted and either appeal the decision, submit additional mitigating information, or in the case of overseas law enforcement, make a formal request for the information via a mutual legal agreement.

Question 24: Are there additional situations we should consider where protections should be granted?

No. The criteria suggested are sufficient.

Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?

No.

Why the new overseas register needs to be public

It is vital that the beneficial ownership information collected by the overseas register is held publicly. It is not just law enforcement that stands to benefit from the disclosure of this information, but also business and wider civil society in both developed and developing countries.

A public register will help civil society detect crime and corruption. In countries with weak rule of law where corruption is prevalent it can be especially difficult to identify wrongdoing and hold political leaders or public officials to account. A public register which makes beneficial ownership information available to journalists, NGOs and concerned individuals will support citizens around the world to follow the money and call for reforms that will promote integrity in their political systems.

A public register will help businesses know who they are doing working with. 91% of senior executives worldwide believe it is important for them to know the beneficial owner of entities they do business with.²⁹ Several prominent business leaders have lent their name to the call for company ownership transparency, including Paul Polman, the CEO of Unilever, Bob Collymore, the CEO of Safaricom, Dominic McVey, entrepreneur, Richard Branson, the founder of the Virgin Group, Arianna Huffington, the co-founder of The Huffington Post and Mo Ibrahim, the founder of Celtel.³⁰

A public register will level the playing field. Without transparency small business owners may be duped into thinking they are negotiating with a small, unknown company, when they are in fact doing business with a multinational which is hiding behind an anonymous company. Public registries will help small companies negotiate on a more competitive basis. The free market works best when all parties have full access to information.

A public register will better inform businesses, tenants, and citizens about their buildings, homes, towns, and cities. Understanding who owns a property for sale on the market, or knowing the actual identity of a landlord, or who it is that is seeking planning permission to alter a building, are seemingly simple requests which are currently difficult to answer. Public information about the ultimate owners of UK properties will support citizens to understand who is behind the companies who operate in their towns, will support prospective buyers to negotiate sales, and enable tenants to hold their landlords to account.

A public register will help protect civil and environmental rights. If a property is deemed unsafe for habitation or commercial use, it is useful need to know who is ultimately at fault and liable in order to develop and bring a legal action against the owner. Public information about the beneficial owners of properties will support the realisation of these rights.

A public register will reduce costs and increase the efficiency of law enforcement and business. As detailed in response to Q8, a public register of overseas companies that own UK properties could create cost-savings for UK law enforcement. Both the HMT impact analysis and

²⁹ Ernst & Young, 'Global Fraud Survey 2016' Available online at: <http://www.ey.com/GL/en/Services/Assurance/Fraud-Investigation---Dispute-Services/EY-global-fraud-survey-2016> [Accessed 8 May 2017].

³⁰ More arguments on why company ownership transparency is good for business are detailed in 'The Business Case for ending anonymous companies', The B Team (January 2015). Available online at: <http://bteam.org/plan-b/ending-anonymous-companies-report-published/> [Accessed 8 May 2017].

Global Witness assessment mentioned above found that the savings in police time in having UK PSC information publicly available would be more than double the combined cost to the public sector of running the database and the cost to the private sector of submitting the data – let alone the other wider benefits to the public sector and to businesses. A public register would also deliver practical and financial benefit to businesses that conduct due diligence on clients and partners by assisting firms to ascertain the beneficial owners of their clients and exercising a better-informed risk-based approach to their business.