

OpenCorporates responds to the Draft Registration of Overseas Entities Bill

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,¹ 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.² 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.

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 publication of this 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.

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. Our summary and responses to the specific questions posed by the Department for Business, Energy & Industrial Strategy (BEIS) are outlined below.

Summary

In terms of our general response to the Draft Bill, we applaud the government’s decision to:

- align the register proposed under the Draft Bill (the Property Register) with the PSC Register, especially regarding its treatment of the data captured (that is, making it public, free to access and published as open data, i.e. structured, machine-readable data, made freely available under an open licence that allows reuse);

¹ The Guardian, *Revealed: the tycoons and world leaders who built secret UK property empires*, April 2016. Available at: <https://www.theguardian.com/news/2016/apr/05/panama-papers-world-leaders-tycoons-secret-property-empires>.

² 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.

- impose criminal sanctions for contraventions of the Draft Bill (clauses 8, 14 and 28);
- require registered entities to obtain a unique identification number (clause 5), as this will allow for comparison between entities within the Register itself and across other data sets (as called for in our recent analysis of the PSC Register);³
- require registered entities to provide – where applicable – their company registration number (Schedule 1, Part 2, clause 2(1)(g)), as this will assist in verifying the existence and details of that entity, and uncovering any discrepancies;
- make penalties available when Companies House flags an inconsistency and the overseas entity does not provide the required documents within 14 days (clauses 7 and 8);

Response

Question 1.1: Are there any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply? Please provide evidence.

In order for the Overseas Entities register to be effective and comprehensive, it's essential that the register also include the beneficiaries of trusts that own property in the UK. Without this, 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 2015.⁴

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).

³ 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/>.

⁴ 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>

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.

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

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

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

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

Where a registrable beneficial owner is a government or public authority, the required information about the owner is (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).

Echoing responses from Global Witness and Transparency International UK, 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.

In contrast, the required information about an overseas entity is (a) name; (b) country of incorporation or formation; (c) registered or principal office; (d) a service address; (e) an email address; (f) the legal form of the entity and the law by which it is governed; (g) any public register in which it is entered and, if applicable, its registration number in that register.

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 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. We also recommend that entities that do not appear on publically available registers (for example, trusts, partnerships) be required to register for a Global Legal Entity Identifier (LEI)⁵, which has the effect of creating a globally unique ID and of validating the underlying data.

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

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

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

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

⁵ 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 17442 standard. More information <https://www.gleif.org/>

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.

Given this precedent, we are concerned by proposals that companies who disclose beneficial ownership data elsewhere will be effectively exempted from the register, unless that register is of absolute equivalence to the UK.

While reducing the filing burden for companies is important, exemption due to declaration elsewhere will severely reduce the scope and quality of the dataset overall. 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 will likely have access 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.

Therefore, unless alternative registers are of absolute equivalence to the UK register, this exemption will encourage jurisdiction shopping, and drastically reduce the access, utility and quality of beneficial ownership data overall. We therefore strongly recommend that the government introduces four metrics to determine if transparent information about beneficial ownership is recorded elsewhere:

1. Does the register contain the same level of detail as the UK register, including unique identifiers?
2. Is it publically accessible?
3. Is it free?
4. Is it available open data?

Additionally, the register itself 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 with registers of absolute equivalence , which could be compiled by civil society. Companies House should 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.

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

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

No, entities should not be able to register a property without providing full details of beneficial ownership. It's also important to note here that the Overseas Entities register should learn from the implementation of the PSC register.

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. either well below 25% or 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]”.⁶ 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

⁶ 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>.

threshold as it is suspected that this is being exploited by some businesses to avoid full compliance with the reporting rules.”⁷

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.

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

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

No comment

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

No comment

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

No comment

⁷ 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>.

About OpenCorporates

OpenCorporates – a social enterprise with an innovative corporate structure to protect its public benefit mission – is the largest open database of companies in the world, and an essential tool for business, governments and society at large. The primary purpose is 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 as Stripe, Transferwise and Exiger.