

## JOINT COMMITTEE ON THE DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL

Call for written evidence – April 2019

**This submission is made on behalf of OpenCorporates.**

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]”.<sup>1</sup> 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.”<sup>2</sup>

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.

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<sup>1</sup> 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>.

<sup>2</sup> 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>.

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.

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<sup>3</sup>), as well as certain types of financial structures such as mutual

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<sup>3</sup> 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.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>

funds and the 'cells' in a protected cell company<sup>4</sup>. 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 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<sup>5</sup>. 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.<sup>6</sup>

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):

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<sup>4</sup> See <https://www.investopedia.com/terms/p/protected-cell-company-pcc.asp> and <https://www.gov.uk/hmrc-internal-manuals/international-manual/intm236500>

<sup>5</sup> See for example the FATF report *Money Laundering & Terrorist Financing Through the Real Estate Sector* (2007)

<sup>6</sup> 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>

*“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”*

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<sup>7</sup> – is actually much easier than 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

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<sup>7</sup> <https://www.openownership.org/news/the-beneficial-ownership-data-standard-is-now-in-beta/>

part of its work, supported by DfID, OpenOwnership is creating a global beneficial ownership data standard, and advocating for countries 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<sup>8</sup>. 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

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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.

- 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)<sup>9</sup>, 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<sup>10</sup>), 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:

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<sup>9</sup> 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/>

<sup>10</sup> 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/>

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);
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<sup>11</sup>. 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<sup>12</sup>.

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<sup>13</sup>. 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).

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<sup>11</sup> 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>

<sup>12</sup> <https://en.wikipedia.org/wiki/EIDAS>

<sup>13</sup> 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>

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.

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 non-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 as Stripe, Transferwise and Exiger.