

# ENDING THE ROLE OF THE UK PROPERTY MARKET AS A SAFE HAVEN FOR DIRTY MONEY

*Transparency International UK's submission of written evidence to the Joint Committee on the Draft Registration of Overseas Entities Bill (18.3.2019)*

## SUMMARY

The UK is a top destination for money laundering. The National Crime Agency (NCA) has estimated that “there is a realistic possibility the scale of money laundering impacting the UK **annually** is in the **hundreds of billions of pounds**.”<sup>1</sup>

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

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

To address this problem, the Government has committed to introducing a publicly accessible register of the beneficial owners of overseas companies that own or buy UK property.<sup>2</sup> To ensure the register works to achieve its aim of preventing money laundering through the UK property market, it **must be accurate, effective, and a sharp tool in ending the UK's role as a safe haven for corrupt money**.

## KEY RECOMMENDATIONS

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

- 1. Put systems in place to ensure data submitted to the new register is verified:**
  - Require information notices to be sent to managing officers to help identify beneficial owners.
  - Require a UK professional who is registered a UK anti-money laundering supervisor, to verify the beneficial ownership information for any overseas entity seeking to buy or sell UK property and require that professional to declare the accuracy of that information.
  - Require proof of identification for beneficial owners as well as proof of ownership of the entity.
  - Introduce data validation at Companies House.
- 2. Create a credible deterrent to stop companies submitting false and misleading data:**
  - Ensure proportionate sanctions for UK professionals found to have allowed false or misleading data to be submitted to the registrar.
  - Ensure fines are a deterrent to continuous noncompliance by increasing these so they more quickly lead to fines greater than the value of the property.
  - Introduce a new confiscation power to combat determined noncompliance.
- 3. Ensure the register is updated regularly as per the requirements for the UK's Persons of Significant Control (PSC) register:**
  - Require event-driven updates as well as an annual conformation statement of beneficial ownership, to mirror the requirements of the UK company register.

### In the meantime:

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

<sup>1</sup> <http://www.nationalcrimeagency.gov.uk/publications/905-national-strategic-assessment-for-soc-2018/file>

<sup>2</sup> The UK also committed to a similar register of the companies that bid for UK contracts, which will be published separately from the information published under the provisions of the Register of Overseas Entities draft bill.

## **1. Will the public register as established by the draft Bill effectively deliver the policy aim of preventing and combatting the use of land in the UK for the purposes of laundering money or investing illicit funds?**

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

1.2 UK property has become a safe haven for corrupt funds stolen from around the world, facilitated by the laws which allow UK property to be owned by anonymous offshore companies. Research by Transparency International UK (TI-UK) has identified property across the UK worth £4.4 billion bought with suspicious wealth.<sup>3</sup> All of the cases where information is available involve the use of companies registered in secrecy havens. Across England and Wales there are more than 86,000 land titles owned by anonymous companies with almost 40,000 of these in London.<sup>4</sup>

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

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

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

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

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

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

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

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

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

3.2 Trusts are not currently within scope of the UK's public beneficial ownership register. Because of this exemption these vehicles may become more popular with those seeking to hide their ownership of property. The lack of transparency around who controls and benefits from trusts is abused to mask the identity of those who have criminal wealth to hide.<sup>5</sup> This is highlighted by the Organisation for Economic Co-operation and Development (OECD)<sup>6</sup> and the Financial Action Task Force (FATF) who both identify trusts as a money laundering risk.<sup>7</sup> As an example, according to a 2016 investigation by the Guardian, Expedito Machado, the son

<sup>3</sup> Transparency International UK, *Understanding the Impact of Overseas Corruption on the London Property Market* (March 2017) <http://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseascorruption-on-the-london-property-market/#.W4-a2s5KjIU>

<sup>4</sup> <https://www.globalwitness.org/en/blog/two-years-still-dark-about-86000-anonymously-owned-uk-homes/> [Accessed 5 September 2018]

<sup>5</sup> Global Witness, *Don't Take It On Trust* (February 2017) [https://www.globalwitness.org/documents/18781/Dont\\_take\\_it\\_on\\_trust.pdf](https://www.globalwitness.org/documents/18781/Dont_take_it_on_trust.pdf)

<sup>6</sup> OECD, Report on Tax Fraud and Money Laundering Vulnerabilities Involving the Real Estate Sector (2007)

<sup>7</sup> FATF, Money Laundering & Terrorist Financing Through the Real Estate Sector (2007)

of a former Brazilian politician implicated in the Petrobras corruption scandal, used trusts as well as companies to purchase two UK properties worth £8 million in total in 2015.<sup>8</sup>

#### **4. Are the information requirements sufficiently comprehensive? Are there other types of information that it would be useful to include? Conversely, do the requirements place an undue burden on entities?**

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

##### *Data updates*

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

##### *On foreign governments*

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

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

4.5 The “Republic of Azerbaijan” is listed on the UK’s PSC register as a beneficial owner of 10 companies which according to their accounts hold tens of millions of pounds in assets.<sup>9</sup> In these circumstances it may be beneficial to require foreign governments to identify a role within that government that is relevant to the property (e.g. “Embassy Administrator”) and provide contact details for that position (e.g. the Embassy’s general access enquiry line) so it is easier to establish accountability for the use of those assets.

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

5.1 To ensure data submitted to the register is accurate, the UK Government should seek to place measures into this – or another – Bill which would allow for the verification of persons of significant control (PSC) information. Currently Companies House is required to accept information at face value, with limited enforcement action against those intentionally submitting false information to the register. Based on current enforcement levels this will be unlikely to deter individuals seeking to submit false and misleading data. The first ever prosecution for filing false information came in March 2018 for a formation agent who purposefully set up companies with incorrect information to highlight how easily this could be done – drawing this to the authorities attention in the process.<sup>10</sup> Since then there has been no public information on any further prosecutions, indicating a lack of credible deterrent against such behaviour.

5.2 The UK Government is required to ensure UK company ownership data is accurate under the fifth anti-money laundering directive (5MLD) and should apply these standards for overseas entities’ data.<sup>11</sup> Four key areas require improvement in order to give confidence in the accuracy of data on this register.

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

5.3 As currently drafted, the Bill states that reasonable steps to identify a beneficial owner include sending information notices to people who they believe may be a beneficial owner. We think the definition of reasonable steps should be expanded to include a requirement to also send information notices to managing officers as it is

<sup>8</sup> <https://www.theguardian.com/world/2016/jul/28/corrupt-brazilian-businessman-expedito-machado-uk-property-splurge>

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

<sup>10</sup> <https://www.gov.uk/government/news/uks-first-ever-successful-prosecution-for-false-company-information> [Accessed 11 September 2018]

<sup>11</sup> [http://europa.eu/rapid/press-release\\_STATEMENT-18-3429\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-3429_en.htm) [Accessed 5 September 2018]

likely that these persons could also hold important information on who the beneficial owner is, or know of a person that would have this information.

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

#### *The role of UK professionals in verification*

5.5 To improve the accuracy of data received, there should be a requirement for a professional, regulated by a UK money laundering supervisor, to be responsible for verifying beneficial ownership information of the overseas entity seeking to sell or purchase UK property. In practice, the professional acting on behalf of an entity seeking to purchase a property would likely be a solicitor, whereas if a company was looking to sell and needed to provide information an estate agent might be the relevant registered professional. As regulated firms are already required by the UK’s Money Laundering Regulations 2017 (MLRs) to identify the beneficial owner of companies that are clients, this would not constitute any additional burden.

5.6 A relevant professional would need to make a declaration as to the accuracy of the information of the overseas entity being submitted to Companies House. The register should indicate the name and address of the firm responsible for verifying this information, providing a point of contact for Companies House, UK law enforcement and other professionals seeking to follow on information submitted. This principle is already being considered by the Government in relation to preventing the abuse of Scottish Limited Partnerships (SLPs).<sup>12</sup>

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

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

#### *Empower Companies House to verify information submitted to them*

5.9 As with the UK PSC regime, under the current proposals Companies House would not have the power or resources to carry out data verification on the information they receive from overseas entities. This leaves the register vulnerable to inaccurate data being submitted as explored in our previous research on the UK company formation system.<sup>13</sup>

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

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

5.12 Analysis carried out by Global Witness shows that currently over 335,000 companies on the UK PSC register claim to have no beneficial owner, making this the most common reason why UK companies do not report PSC information. To ensure companies are submitting accurate information in regard to this, overseas entities which claim to have no beneficial owner should submit a description of the ownership structure – for example the articles of incorporation – giving clear indication as to why there is no beneficial owner listed.

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

#### *Companies House data validation*

<sup>12</sup> <https://www.gov.uk/government/consultations/limited-partnerships-reform-of-limited-partnership-law> [5 September 2018]

<sup>13</sup> Transparency International UK, *Hiding in Plain Sight: How UK Companies are used To Launder Corrupt Wealth* (November 2017) <http://www.transparency.org.uk/publications/hiding-in-plain-sight/#.W4-fGs5KjIU>

5.14 Companies House should introduce data validation into its processes to reduce human error in data inputting and ensure those submitting data cannot circumvent PSC requirements. For example, a restricted field could be used to ensure only Relevant Legal Entities can be added as PSCs that are not natural persons. Using PSC data, Global Witness found more than 10,000 UK companies listing legal entities that were unlikely to be an RLE.<sup>14</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>14</sup> Global Witness, *The Companies We Keep*, (July 2018) <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-1>

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

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

10.4 When PSC rules were changed for SLPs in July 2017 – with a £500 daily fine introduced for non-compliance – Companies House was slow to sanction SLPs not abiding by the rules. As of 31 January 2018 no fines had been levied against non-compliant SLPs<sup>10</sup> despite up to 17,000 firms not providing PSC information at this point. This undermined confidence in the new requirements.

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

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

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

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

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

## ABOUT TRANSPARENCY INTERNATIONAL UK

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

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

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

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

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