

## UK GOVERNMENT 5MLD IMPLEMENTATION CONSULTATION

*Submission from Transparency International UK to HM Treasury*

TI-UK welcomes the Government's consultation on the UK's transposition of the EU's Fifth Money Laundering Directive (5MLD), and makes the following headline recommendations:

### KEY RECOMMENDATIONS

To be fully compliant with the EU's Money Laundering Directives, the Government should:

1. **Ensure UK beneficial ownership data is adequate, accurate and current** to help prevent the abuse of legal structures for corruption and associated money laundering.
2. **Overhaul the UK's anti-money laundering supervisory system** to provide an accountable and credible deterrent against non-compliance with Britain's money laundering rules.
3. **Refine the conditions for accessing beneficial ownership information on trusts with tax consequences** to help identify and investigate potential financial crime.
4. **Include senior members of international sporting federations explicitly within the UK's definition of Politically Exposed Persons (PEPs)** to help tackle corruption in sport.

We would also like to take this opportunity to note that the UK Government is still yet to announce the results of its initial Call for Evidence on corporate liability reform, which closed over two years ago. Reforming the UK's corporate liability regime is critical to creating a real and credible deterrent against large businesses engaging in high-end money laundering. To date, action against serious and large scale money laundering through companies operating in the UK, such as banks, has only taken the form of civil regulatory action, which can merely be shrugged off as part of the cost of doing business. Providing the spectre of criminal prosecution against firms engaged in this activity, with a realistic prospect of success, would be a step-change towards ending Britain's complicity in global corruption and associated financial crime, such as money laundering.

### Ensure UK beneficial ownership data is adequate, accurate and current

The UK has taken a strong lead in promoting the concept of public, central registers of beneficial ownership, both with its domestic register of Persons of Significant Control (PSC) and its support through the Department for International Development (DfID) of the Open Ownership platform.<sup>1</sup> The forthcoming Registration of Overseas Entities Bill is a further positive development that will deliver on the Government's commitment to increase transparency over the purchase of property, which was made at the 2016 Anti-Corruption Summit in London.<sup>2</sup> The Government has also expressed its commitment to working with the UK Overseas Territories (OTs) in delivering on the reforms set-out in Section 51 of the Sanctions and Anti-Money Laundering Act 2018, which will extend the UK's existing provision of public registers of beneficial ownership to these jurisdictions.<sup>3</sup>

These are welcome developments. There is now a large volume of evidence showing how the opaque corporate structures are used to help move the proceeds of corruption and other crimes with relative impunity. Our recent research found secretive corporate vehicles registered in the UK's OTs alone had facilitated at least 237 different corruption cases globally and caused in excess of £250 billion in economic damage over the last three decades.<sup>4</sup> To put this in perspective, this is larger than the UK's

<sup>1</sup> <https://www.openownership.org/> [Accessed 4 June 2019]

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522749/United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522749/United_Kingdom.pdf) [Accessed 4 June 2019]

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2018/13/section/51/enacted> [Accessed 25 May 2019]

<sup>4</sup> Transparency International UK, *The Cost of Secrecy: The role played by companies registered in the UK's Overseas Territories in money laundering and corruption* (December 2018) <https://www.transparency.org.uk/publications/cost-of-secrecy/>

foreign aid budget over the last 20 years. Taking strong action at home and within the UK's wider family of territories against the abuse of legal entities is critical to ending Britain's role as a conduit and safe haven for dirty money. Central to this is ensuring the information on its registers are accurate.

Under the EU's Fourth Money Laundering Directive (4MLD), Member States are required to ensure that beneficial ownership data is adequate, accurate and current. The 5MLD also requires Member States to introduce mechanisms to ensure that any discrepancies between the information on the register and other sources be rectified in order to help ensure the implementation of the requirements specified in 4MLD above. The intention of these provisions is to provide a high level of confidence that the information provided on Member States' corporate registries can be relied upon for the purposes of tackling financial crime.

As recognised by the Government's recent consultation launched in May 2019, there are those engaged in serious financial crime who have deliberately reported false or misleading information to Companies House as a means of obscuring the ownership and/or control of UK legal entities.<sup>5</sup> Requiring regulated businesses and competent authorities to report suspected inaccuracies to Companies House would help increase the amount of actionable intelligence available about potential breaches of the UK's PSC requirements. If acted upon, this information should help improve data accuracy and reliability, and identify suspicious activity that could constitute an offence under the Proceeds of Crime Act 2002 (as amended) and/or failure to comply with the UK's Money Laundering Regulations (MLR).

To ensure discrepancy reporting results in a more accurate register, the Government should introduce the following measures.

**Guidance should be issued when these new requirements come into force to assist obliged entities with reporting useful information.** The guidance should include which discrepancies are of a higher priority and should be reported; for example, if there are substantive differences in:

- An entity's PSC
- An entity's shareholders
- An individual's date of birth, nationality or country of residence

It should also help regulated entities understand which discrepancies are a lower priority and may not need to be reported; for example, due to stylistic preferences there may be minor differences in the spelling of an individual's name.

**There should be facility for regulated businesses, competent authorities and members of the public to provide bulk data where they see large scale potential inaccuracies on the UK company register.** Analysis by Global Witness in May 2019 found that

- 6,711 companies were controlled by a beneficial owner who themselves controlled over 100 companies, suggesting they were actually nominees and not the PSC.
- 487 companies were part of circular ownership structures, which are not compliant with the UK PSC requirements.
- 8,872 companies named foreign companies as their ultimate owner that were unlikely to be listed on a stock exchange.<sup>6</sup>

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<sup>5</sup> Department for Business, Enterprise & Industrial Strategy (BEIS), *Corporate transparency and register reform* (May 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799662/Corporate\\_transparency\\_and\\_register\\_reform.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799662/Corporate_transparency_and_register_reform.pdf)

<sup>6</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/> [Accessed 23 May 2019]

This kind of macro analysis of Companies House data shows that it is possible to spot anomalies on the register *en masse*, which requires a reporting arrangement that is not just focussed on isolated, individual instances of potential non-compliance.

**When information is submitted, the reason for submitting should be included to assist Companies House with triaging information flows, allowing them to act on it more efficiently.**

Given the potential scale of data Companies House is likely to receive from regulated entities and other parties regarding discrepancies in entries, it will be necessary for it to have in place the means to help process and action this information effectively and efficiently. Based on our experience of using Companies House data, we anticipate there to be at least three broad categories of discrepancies being reported:

1. **Low priority:** clerical mistakes or clarifications, for example, spelling errors that will help increase the accuracy of the entry but are not substantive.
2. **Medium priority:** more substantive errors that may affect confidence in the use of the data for anti-money Laundering (AML) purposes, for example, a date of birth is recorded in the wrong year or a name has changed but not been updated.
3. **High priority:** where there is reasonable suspicion that the information provided to Companies House or the regulated business is deliberately false or misleading.

The mechanisms for reporting inaccuracies should include provision for this form of categorisation in order to help prioritise those that pose a higher risk to the integrity of the register.

We continue to think that there needs to be more substantive and wide-ranging reform of Companies House to ensure these measures are effective at protecting against the abuse of UK legal entities. We will provide more detailed comment on this specific issue in our response to the Department for Business, Enterprise & Industrial Strategy's (BEIS) consultation on corporate transparency and register reform, but note the following high-level points in the meantime:

**There needs to be more assertive compliance and enforcement activity against those legal entities where there is a high probability that the information they have submitted is deliberately false or misleading.** Our experience of investigating, analysing and reporting UK companies involved in financial crime, principally high-end corruption and associated money laundering, has found the current response by Companies House to alleged false-filings insufficient to help ensure compliance. When we have reported obviously non-compliant PSC reporting by UK legal entities involved in money laundering – for example, the various Laundromat schemes exposed by the Organised Crime and Corruption Reporting Project (OCCRP) – we have only been given assurance that the relevant individual or entity will be sent a letter. Considering the individuals engaged in these schemes are involved in high-stakes criminality, it is difficult to see how written correspondence will bring them into compliance.

**There needs to be greater joined-up working between Companies House, law enforcement agencies and the Insolvency Service to take advantage of the information reported under the proposed changes.** Our research has found at least 766 UK registered legal entities that have been involved in 52 different cases of high-end corruption and associated money laundering.<sup>7</sup> Where we have flagged evidence to Companies House that UK legal entities have been involved in economic crime, we have been directed to report this information to the Insolvency Service, separate to our concerns about false PSC reports. From our engagement with them and UK law enforcement and AML supervisory bodies, it is unclear that there is any joint working or communication on resolving these cases. We recognise the new National Economic Crime Centre (NECC) may help provide a greater level of coordination between these bodies. However, there should be greater clarity about the multi-agency response where actionable intelligence of financial crime is reported to any of these organisations.

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<sup>7</sup> Transparency International UK, *Hiding in Plain Sight: How UK companies are used to launder corrupt wealth* (November 2017) <https://www.transparency.org.uk/publications/hiding-in-plain-sight/>

**Where possible, data submitted to Companies House should be validated to achieve more consistent and accurate data.** This would address problems of impossible and inconsistent values being entered, which reduces the quality and reliability of data on the register. Data points that could be easily validated include:

- **Addresses:** it is relatively standard practice in the public and private sector to validate or provide suggested addresses for those using services or buying products online.
- **Country of nationality/residence:** there are numerous standardised lists of countries that could be used for this validation process, including the one provided by the International Organisation for Standardisation.
- **Dates:** validation could be used to restrict data entry to dates that are in the past, or trigger an alert box to notify the user if an improbable date has been entered; for example, a company director who is less than one year old.
- **Money laundering supervision numbers:** for Trust and Company Service Providers (TCSPs) using the Companies House bulk incorporation service, it should be a requirement that they provide their AML supervisory number to show that they are overseen by a UK AML supervisory body. For those based outside of the UK, similar documentation should be required to provide proof they are overseen by an AML supervisor in their jurisdiction.

## Overhaul the UK's anti-money laundering supervisory system

Key to ensuring regulated businesses' compliance with their legal obligations under the transposed Directives are effective and impartial AML supervisory bodies. Under 5MLD, there are a number of amendments making it clear that Member States must ensure that these supervisors have the powers to investigate potential breaches and provide proportionate sanctions to deter future non-compliance if these breaches are confirmed.<sup>8</sup> They should also ensure these supervisors are staffed with appropriate skills and manage conflicts of interest that arise.<sup>9</sup>

There is a growing body of evidence that the UK's current arrangement for AML supervision fails these requirements and does not meet basic standards of independent, proportionate or effective regulation. In November 2015, we published a report highlighting how the UK's AML supervisory system was riven with conflicts of interest, opaque, and failing to provide transparent and effective deterrence against potential non-compliance.<sup>10</sup> With the notable exception of the Financial Conduct Authority (FCA), all AML supervisors fared poorly against good practice regulatory standards.

Worryingly, four years later the Office for Professional Body Anti-money laundering Supervisors (OPBAS) has found that most of those non-public bodies who have been given AML oversight responsibilities in the UK continue to fail to meet basic standards of effective regulation.<sup>11</sup> This situation is untenable and indicates a need for a complete overhaul of the UK's AML supervisory regime.

To do this, the UK's AML supervisory system needs to comply with the principles of:

1. **Consistency:** it provides consistent advice and guidance, compliance monitoring and enforcement functions, and is free from conflicts of interest.

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<sup>8</sup> Paragraph 30(a) 5MLD <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843> [Accessed 5 June 2019]

<sup>9</sup> Paragraph 30(b) 5MLD

<sup>10</sup> Transparency International UK, *Don't Look, Won't Find: Weaknesses in the supervision of the UK's anti-money laundering rules* (November 2015)

<https://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/>

<sup>11</sup> Office for Professional Body Anti-money laundering Supervisors (OPBAS), *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Themes from the 2018 OPBAS anti-money laundering supervisory assessments* (March 2019) <https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments.pdf>

2. **Proportionality:** it can target its resources effectively and provide a credible deterrent against money laundering.
3. **Transparency:** it is open about its policies, actions and costs to allow external scrutiny of its performance.
4. **Accountability:** its performance is subject to independent external scrutiny.

Whilst the Government's commitment to continue to publish an annual report on AML supervision within the UK will help provide some accountability, as will the work of OPBAS, the key issues at play are well understood. What is needed now is strong and comprehensive action. We included an initial sketch of proposed reforms in our 2016 and 2017 submissions to both of HM Treasury's Calls for Information on AML supervision.<sup>12</sup> We would be happy to work with Government and relevant parties to explore how these can be implemented in practice.

### Refine the conditions for accessing beneficial ownership information on trusts with tax consequences

Trusts are not currently within the scope of the UK's public PSC register, although a private register of trusts with tax consequences in the UK is maintained by HMRC. Because of this exemption from public scrutiny, these vehicles may become the favoured vehicle of choice for money launderers as companies become subject to greater transparency requirements.

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>13</sup> This is highlighted by the Organisation for Economic Co-operation and Development (OECD)<sup>14</sup> and the Financial Action Task Force (FATF)<sup>15</sup> who both identify trusts as a live money laundering risk. Documents relating to the UK's first Unexplained Wealth Order (UWO) seen by TI-UK show that a trust structure was used by the Hajiyev family to control a Guernsey company, which owned a golf course that is currently subject to a freezing order. The family also used trust structures to hold luxury property in Surrey, which has since been sold.

The 5MLD requires that those with a legitimate interest can access beneficial ownership information in relation to trusts. The EU have not defined 'legitimate interest', leaving it open to interpretation for Member States. As currently drafted, the UK's interpretation would not provide scope for private sector and civil society actors to effectively investigate suspected money laundering and corruption using trusts on Britain's register.

We recognise that there is a substantive difference between trusts and companies, which is reflected in the Government's general approach to providing access to information about the beneficiaries and relevant parties to these arrangements. We do not currently have sufficient evidence to assert that trusts and all of their parties should be made publicly available. However, **we consider the proposed approach to providing access to parties with a legitimate interest in this information is unduly restrictive and counter to the intent of the Directive's provisions.**

The requirement to 'have reason to believe that the trust or person that is the subject of the legitimate interest enquiry is involved with money laundering or terrorist financing' is too high an evidential threshold and will prevent civil society organisations and journalists from accessing information that would allow them to establish a link to criminality. It is often only after accessing information about a trust that this link can be established – for example, if a suspected beneficiary of a trust is confirmed through

<sup>12</sup> <https://www.transparency.org.uk/publications/hm-treasurys-call-for-information-on-the-uks-anti-money-laundering-aml-supervisory-regime/> and <https://www.transparency.org.uk/publications/ti-uk-submission-to-money-laundering-supervision-call-for-information/> [Accessed 5 June 2019]

<sup>13</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>14</sup> OECD, *Report on Tax Fraud and Money Laundering Vulnerabilities Involving the Real Estate Sector* (2007) <https://www.oecd.org/ctp/exchange-of-tax-information/42223621.pdf>

<sup>15</sup> FATF, *Money Laundering & Terrorist Financing Through the Real Estate Sector* (June 2007) <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>

disclosure. As currently constructed, unless a lead is obtained through leaked information from another source, it would be almost impossible for those investigating potential criminality to pass the proposed evidential threshold.

To align the test of access with the intention of the Directive's provisions, we think that access to information on specific trusts should be granted to organisations that can demonstrate genuine involvement in AML or counter-terrorist financing activity; for example, a civil society organisation carrying out research into suspected corruption and associated financial crime. HMRC already grants access to the information it holds to certain organisations, such as academic institutions and government departments, through its DataLab project. Whilst this currently requires the anonymisation of information – which would not be compliant with 5MLD if applied to trust data – the principle of granting access to certain organisations to further the public interest is already in place.<sup>16</sup>

To mitigate the potential misuse of such sensitive information, we recognise there needs to be measures in place to ensure the responsible handling of trust data. We consider this is already provided for under the General Data Protection Regulations (GDPR), which outlines statutory requirements for the responsible management and processing of data relating to those within the EU. Assuming these or similar regulations apply when the UK renegotiates its relationship with the EU, this should give HMRC the necessary assurance that data they share with legitimate interests would be used responsibly.

To implement the proposed approach above, we think HMRC could be given responsibility for assessing requests by organisations and individuals on a case-by-case basis. So long as the general intent of this test is set out in statute, the technical mechanics can be defined in policy by HMRC.

### Include senior members of international sporting federations explicitly within the UK's definition of Politically Exposed Persons (PEPs)

The definition of PEPs as currently drafted does not take into account the money laundering risk posed by those in decision making roles of international sporting federations. Sport's intricate ties to private and political interests make it a multi-billion pound industry rich in opportunities for corruption. This is clearly evidenced by the major international scandal surrounding senior figures in FIFA<sup>17</sup> and continued allegations of corruption relating to senior members of the International Olympic Committee (IOC).<sup>18</sup> Senior members of international sporting federations are entrusted by the public to make decisions that often involve dealings with governments and large sums of money. We therefore recommend it is included as an explicit category of PEPs alongside their family and close associates – as is already the case in Swiss law.<sup>19</sup> This will allow for closer scrutiny of financial activity by individuals who pose a significant corruption and money laundering risk.

We have not sought to provide a legal definition of an international sporting federation, however these following basic characteristics could provide the basis for one. An international sporting federation is the governing body of a particular sport. Typically it administers the international championships for that sport and if the sport is recognised by the IOC it is also a member of the IOC. It would also have jurisdiction over the rules of the game, though in some cases this is dealt with by a separate body. Its membership is made up of the national federations which control that particular sport in their own countries.

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<sup>16</sup> <https://www.gov.uk/government/organisations/hm-revenue-customs/about/research#the-hmrc-datalab> [Accessed 04 June 2019]

<sup>17</sup> United States Department of Justice press release: <https://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption>

<sup>18</sup> <https://www.theguardian.com/sport/2016/may/11/tokyo-olympic-games-2020-ioc-international-olympic-committee-corruption-bid-scandal> [Accessed: 10 November 2016]

<sup>19</sup> <https://www.admin.ch/opc/en/classified-compilation/19970427/index.html#a2a> see Article.2a [Accessed 5 June 2019]

## 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 anticorruption expertise in the UK.

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

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