Global Witness – Written evidence (ROE0007)

Executive summary:

1. The public register proposed under the draft Bill (Property Register) will help deter the corrupt from using the UK as a safe haven to invest their criminal proceeds, so long as the following amendments are considered:

1.1 The 25% ownership and voting thresholds that apply for “registrable beneficial owners” should be reduced (ideally removing the threshold or at least lowering it to 10%; and ensuring it is reported in exact percentages), and the disclosable information required of trusts and partnerships should be expanded (to include the settlor, trustee, protector, beneficiary or class of beneficiaries, and anyone who receives income from the trust).

1.2 The grounds for exemption under the draft Bill should mirror the grounds that apply under the UK’s register of people with significant control (PSC Register).

1.3 The updating duty that applies under the draft Bill (which currently requires only an annual update) should mirror the duty under the PSC Register and follow trigger events.

1.4 Amendments should urgently be made to the 2006 Companies Act to give Companies House additional capacity to verify the information contained in and sanction non-compliance with the Property Register. The government should allocate more staff and funding to Companies House to carry out thorough checks, identify suspicious activity, and pursue prosecutions.

1.5 UK-based regulated professionals should be obligated under law to verify the beneficial ownership information submitted to the Property Register, and should face sanctions if found to be complicit in submitting inaccurate information.

1.6 The draft Bill should be amended to establish the enforcement procedure in the event that certain of its sanctions are not complied with – e.g. where significant fines have accrued, a more severe penalty (such a freezing / seizing of the property) should apply.

Full submission:

2. Will the public register as established by the draft Bill effectively deliver its policy aim?

2.1 Global Witness’ latest research shows that (as of 1 January 2019), the number of freeholds and leaseholds in England & Wales owned by companies incorporated in secrecy jurisdictions is just shy of 90,000, with a significant proportion of those secretly owned properties (over 40,000) being located in London. The value of these properties is at least £56 billion according to Land Registry data - and likely to be in excess of £100 billion when accounting for inflation and missing price data. Within London, the borough with the biggest share of secret owners (with more than a quarter of the total London properties) is the City of Westminster. While some of these property-owners will be using offshore companies for lawful purposes, we know that 75% of properties whose
owners are under investigation for corruption made use of this kind of secrecy, and so the move towards more transparency should be applauded.

3. Are the conditions for “registrable beneficial owners” appropriate?

3.1 The conditions contained in Schedule 2, Part 2 are problematic and should be amended.

3.2 First, the 25% ownership and voting thresholds that apply (Conditions 1 and 2) create a risk that significant interests in a company will not appear in the Property Register, and that money launderers will simply be able to structure company ownership so that no shareholding meets the threshold. Indeed, people who are currently using the property market to launder money can simply use the transitional period to disperse their ownership to fall below the threshold. This is a significant loophole.

3.3 Global Witness has in previous submissions on the draft Bill identified numerous case studies which show that owning as little as 5% of a company can raise serious red flags. The European Commission itself has said that the 25% threshold “is fairly easy to circumvent”, and the Nigerian Ministry of Justice has stated “[the 25% threshold] is being exploited by some businesses to avoid full compliance with the reporting rules.”

3.4 Removing the ownership and voting threshold in both the Property and PSC Registers would ensure that the UK continues to lead global standards on beneficial ownership transparency.

3.5 One of the main arguments made against lowering the threshold is that companies will find it difficult to identify their beneficial owners. However, Global Witness’ previous analysis has shown that this has not been a problem for the majority of companies complying in the PSC Register (indeed, in only 2% of cases did companies say they were struggling to identify a beneficial owner or collect the right information).

3.6 Not only is the current threshold too high, but there are also challenges resulting from the banding of ownership stakes. This will always result in an imprecise figure and can make it difficult to compare data across jurisdictions. Ideally, there should be no ownership threshold and companies should be required to report their beneficial owners’ holdings of shares or voting rights in exact percentages. At the very least, the UK government should make a public commitment (set down in legislation) that the proportionality of lowering the thresholds that apply in both the Property and PSC Registers will form part of the Summer 2019 review of the UK PSC regime.

3.7 Secondly, the disclosable information required of trusts and partnerships (Condition 5) is also problematic. Although the draft Bill requires the disclosure of the identity of the trustee and anyone with the “right to exercise... significant influence or control over the activities of that trust or entity”, this is not sufficient. To effectively deliver its policy aim, the Property Register must require all parties to a trust to disclose their identities, including the settlor, trustee, protector, beneficiary or class of beneficiaries, and anyone who receives income from the trust. See further our response to Question 4, below.
4. Should other types of entity (such as trusts) be included in the scope of the draft Bill?

4.1 Yes. Parties owning UK properties who wish to remain hidden from the public can simply transfer the ownership of their property into a trust during the transitional period, presenting another major loophole.

4.2 As we have explained in previous responses to consultations on the draft Bill, trusts offer an unparalleled degree of secrecy and are often used as the final step in complex corporate chains to disguise a property’s true ownership. We believe that the paucity of published examples detailing the role of trusts in the purchase of UK property is due to the difficulty of tracing property ownership in the UK via trusts (even more so than with regard to offshore companies) and because – until the advent of the draft Bill – offshore companies have traditionally been a simpler and cheaper way of structuring property ownership in the UK.

4.3 However, there are some published examples of trusts having been used to disguise ownership in suspicious circumstances, as we have cited in previous submissions to the draft Bill. Recently, a UK court found that a discretionary trust was used by the recipient of the UK’s first Unexplained Wealth Order (UWO – Zamira Hajiyeva, the wife of the former chairman of a state-owned bank in Azerbaijan who has been imprisoned on fraud charges) to disguise ownership of UK property. In this case, Mrs Hajiyeva may not have met the limited and ambiguous circumstances requiring disclosure under the draft Bill, and so the conditions for trusts should be expanded to reflect the categories set out in paragraph 3.7, above.

4.4 The UK government therefore needs to either bring trusts fully within the scope of the draft Bill or make a public commitment (set down in legislation) that it will ensure that the UK’s upcoming Trusts Register as required by the 5AMLD - and building on HMRC’s existing register of trusts with UK tax liabilities - will be made public.

5. Are the proposed powers allowing the Secretary of State to exempt, or modify application requirements for, certain types of entities appropriate? Does the draft Bill provide sufficient protections for individuals? Should it be possible to appeal the suppression of information from public disclosure?

5.1 On its face, it is not clear under the draft Bill whether the Secretary of State will use the same standard as applied under the PSC regime to allow exemptions (that is, only in the case of serious risk of violence or intimidation).

5.2 The grounds on which an exemption can be granted under the draft Bill should therefore:

- be articulated expressly in the Bill or in its guidance;
- not go beyond the grounds allowed under the PSC regime;
- be granted only on a case-by-case basis; and
• be subject to the same reporting requirements as under the PSC regime (i.e. with the number of successful applications published annually by Companies House as will be required by the 5AMLD).\textsuperscript{xii}

5.3 If it comes to light that information has been suppressed from public disclosure in relation to a particular entity, there should be an avenue for appeal and direct reporting to the relevant crime authorities, if appropriate.

6. \textit{Are the information requirements sufficiently comprehensive?}

6.1 We applaud the government’s decision to mirror the information requirements between the PSC and Property Registers, and in addition to require registered entities under the draft Bill to obtain a unique identification number (clause 5) and – where applicable – their company registration number (Schedule 1, Part 2, clause 2(1)(g)), as this will allow for comparison between entities within the Property Register and across other data sets. However both the PSC and Property Registers as currently foreseen fail to require unique identification numbers for individuals listed as beneficial owners, which makes it difficult to see when several records refer to the same person.

6.2 However, the updating duty in relation to these information requirements should be modified to be in line with the PSC regime and follow trigger events. It currently requires registered entities to update the register annually (clause 7), providing only a “snapshot” of the entity’s beneficial ownership information at the date of registration and on the date of each annual update thereafter, meaning that any changes throughout the year (including any aimed at concealing the owner’s identity) would not be caught.

6.3 In previous submissions, several respondents (including Global Witness) have argued that event-driven updates are the best approach. However, the government has said in response that there should be an element of predictability in the update process so that it was clear to an overseas entity and any third party doing business with the overseas entity when the next update is due.\textsuperscript{xiii} This is not acceptable. Overseas entities should be required to update or confirm their beneficial ownership information on an annual basis as well as listing all the changes to beneficial ownership that have occurred in that year.

6.4 Global Witness has – in a previous briefing – showed that the move away from annual and towards event-driven reporting gave a major boost to proactive compliance with the PSC Register and helped the UK authorities to follow-up with companies failing to report or taking too long to identify their beneficial owners.\textsuperscript{xiv} It therefore made the process more effective and efficient. It does not make sense for a lesser requirement to be placed on overseas companies. The obligation should mirror that placed on UK companies (which requires changes to be filed within 28 days).\textsuperscript{xv} Otherwise, the government is placing UK companies at a competitive disadvantage, as it will encourage property-owners to favour the use of overseas companies in their ownership structures.

6.5 The Financial Action Task Force (\textit{FATF}) explicitly recommends that beneficial ownership information should be updated as changes occur,\textsuperscript{xvi} as previous FATF reports have shown that criminals use frequent changes of ownership as a way to obstruct law enforcement investigations.\textsuperscript{xvii} The burden that would be placed on overseas companies and third parties during a transaction does not outweigh
the public policy benefit of having a Register that is better complied with and more easily monitored.

7. What controls should be in place to verify the information provided to the Register?

7.1 The effectiveness of the Property Register is undermined by the fact that the self-reported information collected by Companies House is not subject to systematic verification or scrutiny. It is critical to the success of both the PSC and Property Registers that beneficial ownership data is verified and non-compliance is acted upon.

7.2 In a July 2018 report, we analysed the data contained in the PSC Register to identify loopholes, information gaps and suspicious activity. As a result of that analysis, we made a number of recommendations that should also be applied to the Property Register:

- The UK government should clearly mandate and resource Companies House to verify beneficial ownership data submitted to both the PSC and Property Registers and sanction non-compliance.
- Companies House should develop a capability to identify and investigate suspicious activity revealed in the data, in coordination with other relevant government departments.
- Loopholes for suppressing beneficial ownership information need to be closed, including by making it more difficult to file statements saying there is no beneficial owner and checking up on companies that are listed as the controlling entity.

7.3 In particular, Companies House’s current statutory powers under the 2006 Companies Act should be amended to give it both the function to scrutinize information submitted and the powers to take enforcement action, which could include more options to sanction non-compliant companies, increasing the civil sanctions available for administrative breaches, and greater cooperation with law enforcement agencies if there is evidence of a criminal offence.

7.4 The type of controls that can be used to verify the data include:

- Identification documents (e.g. a passport) should be submitted along with company documents, which can then be cross-checked against UK governmental datasets including: the Driver and Vehicle Licensing Agency database; National Insurance data; credit reference databases; and risk intelligence databases, to ensure persons behind an entity are real and free from red flags.
- Those unable to be verified through these processes could be referred to a regulated professional to carry out necessary AML checks and verification. Registered professionals should provide proof of their AML registration on documents submitted to Companies House; e.g., proof or registration with an AML supervisor.
- UK companies listed as corporate PSCs should be checked against the company numbers they supply. There should be extra validation on the data entered for corporate PSCs to ensure they are indeed a UK relevant
legal entity *(RLE – e.g. that they are actually registered with Companies House).*

- Foreign corporate PSCs should provide their company numbers (which can be checked e.g., through third-party aggregators such as OpenCorporates), and their ticker symbols (an identification code for a stock – if listed on a relevant stock exchange), to verify that they are RLEs. However, foreign corporate PSCs should only be allowed to be listed as beneficial owners where they are registered in jurisdictions that are deemed to be absolutely equivalent to the UK.

7.5 The UK government is under an obligation to implement verification of UK company beneficial ownership data as part of the transposition of 5AMLD by January 2020. The government should ensure the Property Register also meets these new verification requirements.

8 Does Companies House have sufficient capacity or resources to administer and monitor the register?

8.1 As set out above, amendments should be urgently made to the *Companies Act* to give Companies House additional capacity to verify information and sanction non-compliance. However, it is impossible for Companies House to take on more responsibility without being given adequate resources. The government should allocate more staff and funding to Companies House to carry out thorough verification, identify suspicious activity, and pursue prosecutions. So far, the government has been reluctant to do so, despite this having been highlighted as an important area of weakness in the recent FATF review of the UK’s fight against financial crime. This year presents an important opportunity to make these changes, with a statutory review of the register due this Summer.

8.2 Anti-corruption NGOs are not the only ones calling for this change. In addition to backing from major UK banks, a recent YouGov poll found that business leaders back related measures to toughen up the UK’s defences against money laundering:

- 84% would pay an additional fee (around £2) for more robust checking procedures by Companies House.
- 67% want tougher penalties for those behind shell companies.
- 64% believe more robust checking procedures at Companies House would reduce money laundering in the UK.

8.3 In January 2018, the UK government confirmed that there are 20 staff employed to deal with PSC compliance activities, and in July 2018, it confirmed that 80 staff at Companies House work on “integrity issues” across all the records they hold. This is clearly not enough staff to deal with the volume of checks and investigations required. One possible source for funding for further resources could be the future income generated from fines for non-compliance with the rules under the PSC and Property Registers (see our answer to Question 9, below).

9 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 proportionate and enforceable?
9.1 First, as we have explained in previous consultation responses, Global Witness strongly believes that regulated professionals should play a role in the verification of beneficial ownership information. All entities and arrangements wishing to own property in the UK should be required to appoint a UK-based professional such as a solicitor, bank or accountant (or any professional accredited by a supervisory body and covered by the UK’s Money Laundering Regulations – MLRs) who will be responsible for verifying the beneficial ownership of that company. The name of that professional should be publicly declared on the Property Register. This will charge professionals with the task of verifying the information that is provided by non-UK companies to the UK government, and will provide a point of contact in the UK that law enforcement can take action against in the event that incorrect or false information has been provided. The current approach (which asks for a service address – Schedule 1, Part 3) is not sufficient to deter money launderers and the like.

9.2 Both the MLRs and their guidance should be clarified to ensure that a company that seeks to avoid naming its PSC, e.g. by restructuring the company for no discernible reason other than to secure secrecy or by contracting nominees, is deemed to be behaving suspiciously. Should any regulated professional become aware of this behaviour, it would be incumbent on them under the MLRs to submit a Suspicious Activity Report to the UK Financial Intelligence Unit.

9.3 If the relevant UK professional is found to be complicit in submitting inaccurate information, they should face sanctions in addition to those imposed for breach of the MLRs. Penalties could range from being struck off the relevant professional register, to imprisonment and/or a fine. The severity of the sanctions imposed should be dependent on the level of inaccuracy and the degree of knowledge or intention with which the information was submitted to Companies House.

9.4 It is vital that this change is made in the primary legislation proposed in the draft Bill. It will help address the specific difficulty the Property Register will face when it comes to enforcing breaches committed by legal persons who are registered offshore. It will not cost the government money and will result in a more effective Register. It is a mistake not to take the opportunity to create this obligation at this point in time.

9.5 Secondly, the draft Bill should be amended to establish the enforcement procedure in the event that certain of its sanctions are not complied with. E.g., clauses 8 and 23 envisage that a daily fine of £500 will be payable for failure to comply with the updating and notification duties within the Bill. Although this fine should accrue automatically from the date of non-compliance, we have seen that in the case of LLPs and the PSC Register, no fine has ever been levied, which drastically decreases its deterrent effect. The draft Bill should therefore require that after a certain period of non-compliance, a more severe penalty will apply (although one which is still proportionate). E.g., if a company or individual fails to comply with its updating duty for two years, the fines accrued would amount to £365,000. At that point, a freeze should be placed on the property, resulting in the owner not being able to transfer the property until they have provided the required information. The same freeze could operate to prevent the owner from applying for any other changes to the property, including obtaining planning permission. This will encourage non-criminal companies to provide accurate information in a timely manner, and will prevent any criminals from
dealing with the asset while law enforcement has had time to investigate. If non-compliance continues after this point, the UK authorities should investigate and – if there is evidence of wrongdoing – seize the property and sell it to a new purchaser. Following the sale to a new purchaser, and once allowances have been made for any mortgages / other rights over the property, the funds should be distributed to:

- UK law enforcement, to cover the costs of the investigation;
- the victim and/or country-of-origin, if it can be shown that the funds are the proceeds of crime and that they can be safely and responsibly returned; and/or
- a fund established to help Companies House resource compliance and enforcement of the Register (see paragraph 8.3, above).

9.6 Companies House should be further empowered and resourced to pass on to law enforcement and the relevant professional regulators information relating to companies and/or individuals that have been non-compliant or purposefully evasive in disclosing suspicious activity.

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iii 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](https://www.transparency.org/news/pressrelease/uk_property_gives_global_corrupt_a_home)

iv See our September 2018 Submission, which outlines six relevant case studies.


viii See our June 2017 and September 2018 submissions.


xii As required by 5AMLD (Art 30, para 9). For further detail of what the exemptions regime should look like, see Global Witness’ submissions dated June 2017 and September 2018. Also see Global Witness’ July 2018 report, The Companies We Keep, where we found that of over 4 million companies covered in the UK
PSC register, only 199 individuals had applied and been granted an exemption on security grounds. Available at: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/


xiv Global Witness, Learning the Lessons of the UK Beneficial Ownership Register, October 2017. Available at: https://www.globalwitness.org/documents/19250/Learning_the_Lessons_from_the_UKs_public_Beneficial_Ownership_register.pdf


xviii The Companies We Keep, pp 2-3; 12-34.


xxi See Robust survey results. Available at: https://bdgroup.co.uk/robust

xxii See UK Parliament response to written questions, January 2018. Available at: https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-16/123021/

xxv See our June 2017 and September 2018 submissions.

xxvii See news reports from Scotland showing that as of 31 January 2018, no fines had been levied against non-compliant SLPs despite up to 17,000 firms not providing PSC information at this point. Available at: https://theferret.scot/scottish-limited-partnerships-crack-down/ and http://www.heraldscotland.com/news/homenews/16110425.Labour_Scottish_shell_firms_owe_2_Billion_in_fines/