Summary

1. Jersey Finance Limited (JFL) is run as a not for profit organisation and was formed in 2001 to represent and promote Jersey as an international finance centre of excellence. JFL is funded by members of the local finance industry and the Government of Jersey. Although JFL is funded in part by the Government of Jersey, the Government has not contributed to this response.

2. We submitted a response to the initial consultation on the Draft Registration of Overseas Entities Bill (the Draft Legislation) in September 2018. Our response to the consultation and this further written evidence has been prepared based on discussions and views supplied by our members. In particular, we have consulted on this written evidence with the Jersey branch of STEP (the Society of Trust and Estate Practitioners) and the Jersey Association of Trust Companies, who support the views expressed herein. As a result, while JFL does not represent the Jersey finance industry in its entirety, we are confident that this response is broadly representative of an industry view.

3. Our response to the consultation submitted in September 2018 outlined what we considered the impact of the Draft Legislation would be and, where appropriate, addressed specific questions raised by the consultation. Our conclusions, which remain relevant, can be summarised as follows:

   - Entities registered on Jersey’s central register of beneficial ownership information should either be exempt from the need to disclose information in accordance with the Draft Legislation or Jersey should be considered to have an ‘equivalent’ register as per the Draft Legislation.
   - The information found on Jersey’s central register is of superior quality to that contained on many public registers, due to its strict collection and verification regime undertaken by regulated professionals.
   - The information on Jersey’s central register is available to law enforcement agencies on request and therefore achieves the aim of fighting financial crime.
   - Enhanced co-operation arrangements are in place between the UK and Jersey which mean that beneficial ownership information is available on request by law enforcement within 24 hours or one hour where the request is urgent. The UK government has confirmed in a statement that these enhanced arrangements are working well to support criminal investigations.
   - It is vital that personal details of directors, including but not limited to residential address, are afforded adequate protection from public disclosure, due to threats to the personal safety of individuals.
• The proposal to charge overseas entities that currently own UK property to register may constitute a restriction on the free movement of capital. This requirement results in overseas entities subject to an additional fee which is not levied on UK companies owning property. JFL would invite the Department for BEIS to reconsider this proposal.

• JFL is in agreement with the proposal to exempt trusts from the need to register.

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

4. One of the questions now to be considered by the Joint Committee is whether other entities such as trusts should be caught by the draft bill and be required to provide beneficial ownership information which will be held on a public register. The Impact Assessment published alongside the consultation stated that:

"as set out in our response of March 2018 to the call for evidence on the register, and consistent with the commitment made at the 2016 Anti-Corruption Summit, we do not consider that trusts should be included on the register. Trusts do not have legal personality in their own right and so are not capable of entering into contracts. They are also commonly used for reasons including protecting assets for children and vulnerable adults, meaning that legitimate grounds exist for ensuring that information on the beneficial owners of trusts is not made publicly available.”

5. JFL strongly endorses this view, trusts are predominantly used to structure family wealth and, in this context, will often be used to hold the families’ portfolio of properties in the UK. Furthermore, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 already requires all express trusts (including those administered from outside the UK) which generate a UK tax consequence – such as when property held within the trust is purchased or sold - to register details of their beneficial ownership with HMRC (the HMRC Register).

6. It is noted that the French Constitutional Court has recognised that a fully public trusts register is incompatible with privacy rights. The EU acknowledged this decision when implementing AMLD5 as it requires a different test to be met (the legitimate interest test) in order to access beneficial ownership information of trusts. JFL therefore suggests that beneficial ownership information in relation to trusts should not be on a public register for all to access.

7. BEIS research on the impact of the register, found 50% of stakeholders sampled believed the new register would not make the UK a less attractive place for investment. However, 41% thought it would have a negative impact. Our members are firmly of the view that if trusts were in scope of the Bill, then investors would have the same safety concerns as raised in relation to companies, regarding the details of beneficiaries being made public. In some respects, these risks may be exacerbated in relation to trusts because these are predominantly used to structure
family wealth. Such concerns may ultimately lead some investors to withdraw from investing in UK property.

8. The additional administrative burden that having to comply with this registration regime will place on companies, administrators and (as the case may be) trustees should also be considered. Aside from the potential for duplication with other registration requirements such as the HMRC Register, the proposed measures would increase the cost of doing business in the UK. This potentially reduces the attractiveness of UK property as an asset class. Moreover, whilst regulated professionals such as the trust and company service providers in Jersey will be aware of these requirements under UK law and will ensure compliance, the same may not be true for structures managed by individuals and non-professionals.

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

9. We note that Section 22 of the Draft Registration of Overseas Entities Bill provides the Secretary of State with a regulation making power to protect other information submitted to the register from public disclosure. JFL acknowledges that the explanatory notes to the Draft Registration of Overseas Entities Bill recognise that there are circumstances in which all of a beneficial owner’s information should be suppressed from public disclosure. An example is provided of where the activities of the overseas entity mean that the public disclosure of information relating to the individual would put that individual at risk of physical harm.

10. JFL notes that the above example corresponds with the position in relation to suppression of information submitted to the PSC Register, however questions whether this is sufficiently broad. As previously stated in JFL responses to consultations and select committee enquires on beneficial ownership registers, there is a very real risk that public registers may lead to increased instances of crimes such as cybercrime, extortion, kidnap and ransom, as personal – and by extension family – information is made publicly available. Professor Jonathan Fisher QC who gave evidence to the Joint Committee on 4 March 2018 noted that “there are cases where people do have family offices where they want to keep matters private…. the Lloyds market is selling kidnap insurance for a reason.”

11. Further, the PSC Register permits the disclosure of information relating to minors. To put information about children in the public domain could make them vulnerable and more susceptible to criminal activity. JFL would submit that such information should be redacted from public disclosure. However, in the case of the PSC Register, the ability to suppress information on PSCs is generally linked to the activities of a company. This severely limits the scope of the protection this measure offers. There are very real concerns regarding the safety and security of individuals which do not necessarily relate to the activities of the company. We would therefore submit that the exemption criteria should be broadened so as to allow those at risk of harm due to other reasons to have their details suppressed from public disclosure.

12. In addition, while the residential addresses of directors will be suppressed from the register, the Draft Legislation fails to take into account situations where the property
the company owns is the residential address of the beneficial owner. A further exemption should be introduced for such circumstances.

18 March 2019