Executive summary

- Where jurisdictions of incorporation do not already systematically and reliably verify beneficial ownership information, verification by professionals in the UK would be necessary. This would be costly and logistically difficult, as it would require professionals in the UK to have a knowledge of the legal systems in the jurisdiction of incorporation. Ordinarily, this would require legal advice being procured locally: doubling or tripling the cost of verification.

- However, in jurisdictions where verification is done systematically, this would not add any value. A professional in the UK being required to do the same again would be duplicative – and indeed inferior to – processes already adopted locally.

- The imposition of additional costs on transacting through jurisdictions from which UK law enforcement and tax authorities already receives unlimited access to corporate beneficial ownership information would incentivise incorporation to move to centres where less information is provided: degrading UK law enforcement.

- The National Crime Agency notes that it already has access to ‘quality beneficial ownership information’ from the Crown Dependencies and Overseas Territories, under the Exchange of Notes between the UK and those territories in 2016.

- The Crown Dependencies’ and Overseas Territories’ registers have been independently assessed as containing the highest-quality information in the world, and information from them can be used prima facie in courts in the UK – for example, to procure Unexplained Wealth Orders or Account Freezing Orders.

- The costs of verification would be significantly greater – perhaps a hundred times greater – than the £9.10 per transaction that the Impact Assessment claims. This extra cost will reduce investment through centres that already conduct such verification locally. Where, as with the CDOTs, jurisdictions already provide information to the UK, this will reduce the information available.

- Given the extra imposition of a verification requirement by a professional in the UK would reduce the information accessible to and able to be relied on by UK law enforcement and HMRC, we recommend that entities incorporated in jurisdictions that already provide the UK with this quality information be exempted from the register requirement, just as the draft Bill proposes entities in EU Member States be.
1. Introduction

1.1. The International Financial Centres Forum (‘IFC Forum’) is a not-for-profit membership organisation composed of professional service firms based in Bermuda, the British Virgin Islands (‘BVI’), the Cayman Islands, Gibraltar, Guernsey, the Isle of Man, and Jersey. IFC Forum advocates responsible cross-border financial intermediation as a means to support trade and investment and promote economic growth and international development.

1.2. IFC Forum submitted evidence to the April 2017 call for evidence on registers of beneficial owners (‘UBOs’) of overseas companies and other legal entities and to the July 2018 call for evidence on the draft Bill. IFC Forum welcomes further pre-legislative scrutiny of the register proposed by the Bill (the ‘proposed register’).

1.3. Throughout, we refer to the Draft Registration of Overseas Entities Bill (the ‘draft Bill’), the accompanying Explanatory Notes to the draft Bill (the ‘Explanatory Notes’), and the accompanying impact assessment of the draft Bill (the ‘Impact Assessment’).

2. Why CDOT-incorporated companies are used to hold UK property

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1 Member firms include international law and professional firms Appleby, Butterfield Group, Conyers Dill & Pearman, Harneys, Hassans, Maples, Mourant Ozannes, Ogier, Rawlinson & Hunter, Vistra Group, and Walkers. IFC Forum is advised by Canadian and international lawyers Stikeman Elliott (London) LLP and public affairs agency Lansons.

2 BEIS (April 2017): “A Register of Beneficial Owners of Overseas Companies and Other Legal Entities”.

3 BEIS (23 July 2018): “Overview document: Draft Registration of Overseas Entities Bill”.

4 BEIS (23 July 2018): “Draft Registration of Overseas Entities Bill”.

5 BEIS (11 July 2018): “Impact Assessment”.
2.1. We note that during the Committee proceedings, one witness\(^6\) stated that ‘very little good’ happens in overseas jurisdictions, and we therefore wish to explain why property often is held by entities incorporated in the Crown Dependencies and British Overseas Territories (the ‘CDOTs’).

2.2. Tax is rarely a motive to purchase residential properties through overseas companies, as this incurs the Annual Tax on Enveloped Dwellings, introduced in 2013. Both commercial and residential properties are also subject to higher Stamp Duty Land Tax, LBTT in Scotland, or LBT in Wales when acquired by companies.

2.3. Instead, companies in the CDOTs are used to purchase property due to other factors:

2.3.1. **Ownership of diversified international assets portfolios:** UK real estate owned by CDOT companies is often part of a diversified investment portfolio. Companies incorporated in the CDOTs are often used for cross-border asset purchases, including UK real estate, to allow the pooling of investments via a neutral jurisdiction. Removing real estate from the portfolio and holding it in an individual’s name would reduce the ability to balance it against assets with other risk profiles. If the holding of UK real estate in such portfolios is discouraged, it will reduce the attractiveness of the UK property market to institutional investors: reducing the supply of new housing and commercial property.

2.3.2. **Flexibility afforded by English law, e.g. avoiding restrictions on inheritance:** Many investors are based in jurisdictions with Sharia law or other legal systems with limitations on disposal of property that English law does not impose. For example, under Sharia law, two-thirds of an estate must be distributed in a set manner, and female heirs must inherit half as much as male heirs.\(^7\) Forced heirship is also prevalent in Latin America. Investing via a CDOT company allows family affairs to be managed under English law. This promotes British social norms – such as women’s rights and religious freedom – globally.

2.3.3. **Familiarity of international banks with lending to, and getting credit support from, CDOT companies:** Lenders will typically prefer to lend to, and take security from, a company, as it can secure a loan over assets other than the property more easily when lending to companies than when lending to individuals. For example, banks that have taken a charge over the shares in a BVI company to support a property financing will have rights that are similar to the rights of secured creditors under English law. That gives the banks a great deal of comfort with the BVI as a creditor-friendly jurisdiction.\(^8\)

\(^6\) Alex Cobham on 18\(^{th}\) March 2019, yet to be published in Hansard

\(^7\) See, for example, Heba Saleh (26 September 2018): “Arab women left in inheritance trap by delayed reforms”. FT

\(^8\)
2.3.4. **Familiarity with corporate structures:** CDOT companies have standardised and internationally-familiar corporate governance and are often used to invest in China, Latin America, Africa, and other jurisdictions with poor corporate governance and rule of law. International investors are thus familiar with how they operate: making it more cost-effective to invest via a CDOT company.

2.3.5. **Legitimate privacy concerns:** UK residential property is owned by many high-profile people for whom privacy and security is a concern. The fact that information on the ownership of CDOT companies is not publicly available is attractive and valued by high-profile individuals and families, many of whom would not want their personal UK home address to be a matter of public record for safety reasons, including for children and vulnerable persons. For example, UK-resident Emma Watson held her UK home through a BVI company to protect her from stalkers,\(^9\) even though this incurred significant additional UK taxation.

3. **Importance of verification**

3.1. We note that the Bill’s primary objective is “to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK”.\(^{10}\)

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8 See Matthew Gilbert and Joanna Russell (1 October 2016): “Cross border: the legal and practical advantages of incorporating a real estate holding company in the British Virgin Islands (BVI)”. Practical Law.


10 Consultation, para8
3.2. We note that Donald Toon of the National Crime Agency highlighted to the Joint Committee that the key issue for the NCA is securing Unexplained Wealth Orders, which requires the ability to persuade the court of the link between a person and an asset. That requires access to credible and accurate data by law enforcement and HMRC.

3.3. The World Bank’s *Puppet Masters* report outlined the conditions under which a company register can be considered a viable option for providing beneficial ownership information for the purposes of preventing criminality. These conditions are:

i. Upon submission of information to the registry, the Registrar checks the information against available resources. Companies incorporated to conduct sensitive activities are subject to particularly close checks.

ii. Only registered and licensed corporate service providers may incorporate companies where any legal or beneficial owners are located overseas.

iii. Application for registration can only be approved at director level, where beneficial owners will be known.

The World Bank collectively calls these conditions the ‘Jersey Model’, as all three elements are exemplified by the approach adopted in the CDOTs.

3.4. Verification of information is essential to ensure the register may be relied upon by HMRC, law enforcement, and courts. Law and tax enforcement, and the Financial Action Task Force, view unverified, self-contributed data as being of limited use for this reason.

3.5. Many jurisdictions will not systematically verify the information. To ensure that it is of suitable quality and usable by law enforcement, it should be verified by a UK professional except where it can be demonstrated that verification takes place systematically and by an equivalent or superior system elsewhere.

4. **Basis of equivalence**

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4.1. We note that Clause 15 of the draft Bill permits the Government to exempt jurisdictions with systems that are equivalent to the proposed Register (‘equivalent’). A number of differing systems of beneficial ownership disclosure have been adopted globally to meet different objectives. We base our understanding of how systems might be equivalent to the proposed Register with reference to the policy objectives as discussed above.

4.2. As noted at paragraph 3.1 above, the objective of the Bill is law enforcement: deterrence of crime, disruption of crime, pursuit of crime, and improvement of investigative capacity. Thus, systems ought to be deemed equivalent to the UK’s system where they provide equivalent access by reliable information law enforcement and tax authorities.
4.3. The UK has an ‘open register’ in the sense that any individual may incorporate an entity and be responsible for updating it. The UK thus permits companies to file any information on UBOs (which the UK calls ‘people with significant control’), whether or not the information is accurate, on either incorporation (form IN01) or later (form PSC04). 250,000 UK companies are created each year without any checks on identity.\textsuperscript{13}

4.4. Companies House is required by law to accept the information submitted as accurate, as noted by the Economic Secretary John Glen in March 2018.\textsuperscript{14} Companies House has stated that they do not have the resources or power to verify the information.\textsuperscript{15} However, the disclaimer on Companies House’s website noting that the information is not verified or passed off as accurate is difficult to find and little-understood by users.\textsuperscript{16}

4.5. This is a low-security regime that does not afford opportunity for the information to be verified by Companies House or by a third party. This has led to significant concerns being expressed publicly about this self-policed system:

4.5.1. The \textit{Financial Times} reported in September 2018 on the National Crime Agency opening an investigation into Danske Bank after the filing of false information with Companies House facilitated billions in money laundering.\textsuperscript{17}

4.5.2. The \textit{Evening Standard} has reported how criminals openly mock Companies House’s register by citing their occupation as ‘Fraudster’ and address as ‘Street of 40 Thieves’.\textsuperscript{18}

4.5.3. \textit{The Financial Times} reported that a campaigner listed politicians as a company’s people with significant control as a stunt to highlight the system’s flaws. This was only noticed – leading to the first prosecution for incorrect filing – when the person himself contacted Companies House to tell them of his fraud.\textsuperscript{19}

4.5.4. False information was filed with Companies House to defraud potential investors in Telegram.\textsuperscript{20}

4.5.5. \textit{The Times} has reported how an 85-year-old was fraudulently listed as a director to facilitate securities scams.\textsuperscript{21}

\textsuperscript{13} Andrew Davis (26 April 2018): “\textit{Closing door to corporate crime}”. \textit{FT}
\textsuperscript{14} HC Deb 6 March 2018 Col 168, Sanctions and Anti-Money Laundering Bill (Lords)
\textsuperscript{15} James Hurley (5 February 2018): “Companies House offers open door to fraudsters”. \textit{The Times}
\textsuperscript{16} Companies House: “Service information”.
\textsuperscript{17} Caroline Binham (21 September 2018): “Crime agency investigates UK entity linked to Danske Bank”. \textit{FT}
\textsuperscript{19} Naomi Rovnick (17 April 2018): “Campaigner prosecuted over stunt to expose UK company records fraud”. \textit{FT}
\textsuperscript{20} Joon Ian Wong and Max de Haldevang (9 April 2018): “Someone created a sham British company to exploit Telegram’s mega ICO”. \textit{Quartz}
\textsuperscript{21} Danny Forston (11 December 2016): “How can one 85-year-old woman set up 25,802 companies?” \textit{The Times}
4.6. As a result of the widely-publicised and widely-recognised flaws with the public PSC register, practitioners have already dismissed the register as not trustworthy, and do not put reliance on it: failing to increase trust in the financial system.22

5. **Systems in the Crown Dependencies and Overseas Territories**

5.1. In his oral evidence, the NCA’s Donald Toon singled out the CDOTs as already having systems that provided this information to the UK, noting, “At the moment, we are in a situation where we can get quality beneficial ownership information from the Overseas Territories and Crown Dependencies.”23

5.2. Toon was referring to the arrangements (the 'Exchange of Notes') that the CDOTs agreed with the UK in 2016 to introduce registers of beneficial ownership of entities incorporated in each jurisdiction and to exchange information contained on those registers on request and without limitation.

5.3. Under these Exchange of Notes, the CDOTs’ governments maintain centrally-accessible databases of beneficial ownership information. Before entering the registers, the information is verified by licensed and regulated Corporate Service Providers. This ensures the information is more reliable and accurate, enables the information to be used as evidence in investigations and court proceedings, and reduces the administrative costs to the UK of correcting errors.

5.4. This verification takes place on a much wider scale in practice than in other countries that nominally require it to take place. Academic research has found that Cayman Islands, Jersey, Isle of Man, and BVI all feature in the top five jurisdictions globally in compliance with Financial Action Task Force’s requirements to verify identity.24

5.5. The UK National Crime Agency has access to this information upon request – without having to give a reason for the request or a prima facie case for needing the information – within 24 hours, or 1 hour where the NCA claims that it is urgent. This information may then be used by UK law enforcement for any purpose whatsoever.25

5.6. As a result, the CDOTs already provide the information that it is the objective of the Bill to provide.

6. **Policy costs**

6.1. We note the agreement of all three professional bodies that have given oral evidence to the Joint Committee that the cost of implementing the policy will be

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22 Hugo Greenhalgh (5 April 2016): “UK company register criticised as costly and bureaucratic”. FT

23 Oral evidence, 18th March 2019, not yet published in Hansard, at 17:38.32.


25 Para7(viii) of each Exchange of Notes
significantly higher than that estimated by the Bill Impact Assessment. The Society of Licensed Conveyancers noted that the forecast cost of £9.10 per transaction ‘should have a few noughts added to it’, and we agree that the cost of independent verification would add at least hundreds or possibly thousands of pounds to each transaction.

6.2. Conveyancers and other UK professionals involved in real estate transactions are ordinarily not familiar with the legal systems in overseas jurisdictions. They will thus usually not be well-placed to identify who is a beneficial owner as a matter of law. Furthermore, unlike the corporate service provider that performs corporate services for an entity overseas, these professionals will usually not be familiar with the actual operation of the company, and thus will usually not be well-placed to identify who qualifies under any legal definition as a matter of fact. As a result, they will ordinarily have to procure legal advice within the jurisdiction.

6.3. We further note that this additional cost would often have to be incurred by both the buyer and the seller, as both incur liabilities under UK land law that they would wish to transfer along with the title. For example, if a legal title does not transfer, the seller retains the legal responsibilities and rights as competent landlord under the Landlord & Tenant Act 1954. As such, if legal title is prohibited from passing, notices must be served on and by a seller that has – having signed a contract to sell the land – no equitable interest and thus no commercial interest in the land, nor any knowledge of how it is managed. A well-advised buyer and a well-advised seller would thus likely both have to independently performing this due diligence: compounding the costs.

6.4. Due to this additional cost – which would likely amount to many millions of pounds a year – it should only be imposed where there is a tangible law enforcement benefit to the imposition of the requirement.

6.5. The CDOTs’ registers are assessed on an ongoing basis by the UK against the commitments in the Exchange of Notes. Independent and impartial examinations of these systems ought to be sufficient to ensure that these commitments are met. Equivalence determinations could change with changes in assessment of the compliance or otherwise with the Exchange of Notes.

6.6. As such, per section 4 above, where the Exchange of Notes are assessed as being implemented fully, the CDOTs have systems that are superior to proposed register. We thus recommend they be considered equivalent and excluded from the requirement.

7. Conclusion
7.1. We accordingly recommend that registers should be considered equivalent as thus entities incorporated in their jurisdictions exempt where:

(a) they are maintained by or directly accessible by governments;

(b) UBO information on the register is required to be verified by licensed corporate service providers abiding by international standards; and

(c) information on those registers is reasonably accessible by the UK Government without explanation or limits on its usage.