September 2018

**Re: Draft Registration of Overseas Entities Bill**

To whom it may concern:

Thank you for the opportunity to provide comments on the Draft Registration of Overseas Entities Bill.

The Financial Transparency Coalition is a global civil society network[1]. We work to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone.

In our collective work we have found that the ability to hide and spend suspect funds overseas is a large part of what makes serious corruption and organised crime attractive and possible. In order to steal public money, corrupt individuals need to be able to hide those funds in the international financial system and find somewhere attractive to spend them. Increasingly, London's high-end property market has become one of the go-to destinations to give questionable funds a fresh start. At least £170bn worth of property in England and Wales is owned by companies registered offshore,[2] and while some of these transactions may be lawful, 75% of properties whose owners are under investigation for corruption made use of this kind of secrecy.[3]

A public register showing the real, natural persons who own and control the overseas companies that own UK property will deter the corrupt from using London as a safe haven to invest their criminal proceeds. In doing so, it will signal the beginning of the end for a system of secrecy facilitates and entrenches the corruption keeping citizens in poor countries poor, robbing people of their futures, and threatening global stability and security.

Over the past three years the UK has taken bold and meaningful steps towards tackling corruption, most notably by legislating for the creation of the PSC register of UK companies (the PSC Register) and enacting clause 51 of the Sanctions and Anti-Money Laundering Act 2018, which requires the creation of public beneficial ownership registers of companies registered in the British Overseas Territories. Financial Transparency Coalition therefore welcomes the publication of this Draft Registration of Overseas Entities Bill (the Draft Bill), as it cements this government's ambition to end the use of the UK as a safe haven for the world's criminal and corrupt.

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[1] This submission is endorsed by the Financial Transparency Coalition, a global civil society network working to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone. The members of the Financial Transparency Coalition's coordinating committee are the Asian Peoples Movement on Debt and Development, the Centre for Budget and Governance Accountability, Christian Aid, European Network on Debt and Development, Fundacion-SES, Global Financial Integrity, Global Witness, Latin American Network on Debt, Development and Rights, Pan-African Lawyers Union, Tax Justice Network, Tax Justice Network Africa, and Transparency International.

[2] The Guardian, *Revealed: the tycoons and world leaders who built secret UK property* empires, April 2016. Available at: https://www.theguardian.com/news/2016/apr/05/panama-papers-world-leaders-tycoons-secret- property-empires.

[3] 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.

On the whole, we think the Draft Bill is a fairly robust and comprehensive attempt to increase transparency in the UK property market and stop the overseas entities involved from using that market to conceal the proceeds of crime and corruption. We set out below our general response to the legislation and, in the Annex, our responses to the specific questions posed by the Department for Business, Energy & Industrial Strategy (BEIS).

Please note that our commentary on the issues in the current response is limited to the legal and policy position in England & Wales. For our views on the Scottish arrangements, please see our responses to the ongoing consultations led by the Scottish government. We have not made comment as to the position in Northern Ireland.

In terms of our general response to the Draft Bill, we applaud the government's decision to:

- impose criminal sanctions for contraventions of the Draft Bill (clauses 8, 14 and 28);
- align the register proposed under the Draft Bill (the Property Register) with the PSC Register, especially regarding its treatment of the data captured (that is, making it public, free to access and published as open data, i.e. structured, machine readable data, made freely available under an open licence that allows reuse);
- require registered entities to obtain a unique identification number (clause 5), as this will allow for comparison between entities within the Register itself and across other data sets (as called for in our recent analysis of the PSC Register);[4]
- require registered entities to provide – where applicable – their company registration number (Schedule 1, Part 2, clause 2(1)(g)), as this will assist in verifying the existence and details of that entity, and uncovering any discrepancies;
- make penalties available when Companies House flags an inconsistency and the overseas entity does not provide the required documents within 14 days (clauses 7 and 8); and
- create an archive of company information that is in the public interest, including for the purposes of countering money laundering and other crimes.

However, we feel the Draft Bill falls short on some important aspects that will make it less effective at achieving its stated aim (that is, to "[increase] transparency and trust in the UK property market, and [support] law enforcement in their investigations"].[5] In particular:

A. ***Trusts should be brought within the scope of the Property Register or the information pertaining to them must be made public by HMRC.***

Properties owned by trusts need to be included in the Property Register. When it comes online, 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 18-month transitional period provided by the Draft Bill, presenting a major loophole to avoid disclosure.

The government therefore needs to either bring trusts within the scope of the regime under the Draft Bill or make a public commitment (set down in legislation) that it will ensure that HMRC's register of trusts with UK tax liabilities (the Trusts Register) will be made public once the UK implements the EU's 5th Anti-Money Laundering Directive (5AMLD).

For further discussion, see our response to Q 1, below.

B. ***The ownership and voting thresholds in both the PSC and Property Registers are too high and should be lowered or scrapped entirely.***

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[4] Global Witness, *The Companies We Keep*, July 2018, pp 29-30. Available at: https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company- owners/companies-we-keep/.

[5] *DraftRegistrationofOverseasEntitiesBill:Overviewandquestions*,July2018,para.5. Availableat: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2._FINAL_Overview_document_1 1_.pdf.

The 25% ownership and voting threshold that applies to both the PSC and the Property Registers is problematic.

It creates a risk that significant interests in a company may not appear in either Register, and money launderers will simply be able to structure company ownership so that no shareholding passes the threshold. Indeed, people who are currently using the UK property market to launder money could simply use the transitional period to disperse their ownership to a collection of beneficial owners who fall below the 25% threshold requirement.

Lowering the ownership and voting threshold in both the PSC and Property Registers to 10% (or lower) would ensure that the UK continues to lead global standards on beneficial ownership transparency, as it has done since 2015. 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. There is real value in getting the approach right in this Register from the start.

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 government should make a public commitment (set down in legislation) that the proportionality of lowering the thresholds that apply in both the PSC and Property Registers will form part of the 2019 review of the UK PSC regime.

For further discussion, see our response to Q 4, below.

### *C. The exemptions regime under the Draft Bill needs to be clarified and limited.*

On its face, the exemptions regime under the Draft Bill appears to differ slightly from that under the PSC Register as it is not clear 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).

The grounds on which an exemption could 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 (whereby the number of successful applications should in future be published annually by Companies House, as required by the 5th EU Anti-Money Laundering Directive (Art 30, para 9).

A clear articulation of how the exemptions regime will work is especially important given the sensitive relationship between the UK's transparency measures and the provisions of the General Data Protection Regulation (GDPR). In creating both the Property and PSC Registers, the UK government has created a hugely useful archive of company information can be used to help fight corruption and money laundering both at home and abroad. It is imperative that a clear and predictable exemptions regime exists, so as not to fall afoul of the GDPR or create scope for abuse of the provision.

### *D. The updating duty should be modified to be in line with the PSC regime and follow trigger events.*

The updating duty under the Draft Bill only requires registered entities to update the register annually. It provides 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 deliberately aimed at concealing the identity of certain owners) would not be caught.

In the government's response to the call for evidence, several respondents (including Financial Transparency Coalition members) suggested that event-driven updates would be the best approach. But this suggestion was not favoured by the government as they considered that there should be an element of predictability in the update process so that it was clear to the overseas entity and any third party doing business with the overseas entity when the next update was due.[6]

This is not acceptable.

To attain the highest levels of transparency over who owns UK property, and ensure information is accurate, 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 which have occurred in that year.

In an October 2017 briefing, Global Witness set out the lessons learned from analysing the data contained in the PSC Register. We explained in that briefing that initially under the regime, UK companies only had to provide information about any changes in its beneficial ownership on an annual basis to the PSC Register, as part of the company's annual confirmation statement, echoing what is required in the Draft Bill. However, as part of the implementation of 4AMLD, UK companies are now required to update the central register within 28 days of any change to its beneficial ownership (i.e. after a trigger event). Our analysis showed that the move away from annual reporting and towards event-driven reporting for companies has given a major boost to proactive compliance with the PSC Register and the ability for UK authorities to follow up on companies failing to report or taking too long to identify their beneficial owners.[7] It has 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 – that is 14 days to update the company and another 14 days in which to send the updated information to Companies House).[8] Otherwise the UK government is in effect placing UK companies at a competitive disadvantage to offshore companies as it will encourage property-owners to favour the use of offshore companies in their ownership structures.

The system of annual reporting proposed in the Property Register under the Draft Bill will create potential loopholes for the criminal and corrupt to exploit and it will result in less accurate information. Trigger-event reporting has been shown to have strengthened the value of the PSC Register. In fact, the Financial Action Task Force (FATF) explicitly recommends that beneficial ownership information should be updated as changes occur.[9] Previous FATF reports have referred to the fact that – in the context of owning property – frequent changes to ownership are used by criminals as a way to obstruct law enforcement investigations.[10] The burden that would be placed on third parties who would have to monitor the Property Register throughout a transaction does not outweigh the public policy benefit of having a Property Register that is better complied with and more easily monitored by law enforcement.

### *E. The PSC and Property Registers should require validation and verification of the data they collect and should be the subject of better enforcement practices.*

The effectiveness of the statutory restrictions and criminal offences in ensuring compliance is undermined by the fact that the self-reported information collected by Companies House is not subject to systematic authentication or scrutiny. It is critical to the success of both the PSC and Property Registers that beneficial ownership data is authenticated and non-compliance is acted upon.

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[6] *A Register of Beneficial Owners of Overseas Companies and other Legal Entities: The Government response to the call for evidence*, March 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681844/ROEBO_Gov_Response_to_Call_for_Evidence.pdf.

[7] 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_O wnership_register.pdf).

[8] See Chapter 3 of the *Companies Act 2006*. Available at https://www.legislation.gov.uk/ukpga/2006/46/part/21A/chapter/3.

[9] See the FATF's *Guidance on Transparency and Beneficial Ownership*, para 34(a) of page 16. Available at: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.

[10] See page 46 of FATF's report on *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, Available at: http://www.fatf- gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf.

In Global Witness' July 2018 report, *The Companies We Keep*, 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 with regards to the PSC Register that should also be applied to the Property Register.

They are:

- 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.

For further discussion of these recommendations and the evidence behind them (including suggestions as to the type of information that should be collected in order to verify the data submitted), please refer directly to our July 2018 report.[11]

The UK government is under an obligation to implement verification of company beneficial ownership data as part of the implementation of 5AMLD (both in terms of ensuring that the information is accurate and having the mechanisms to do so, and by having channels for obliged entities to report discrepancies). It would be prescient for the government to use the Draft Bill as the mechanism for enacting these changes, particularly as the deadline for transposing 5AMLD is 10 January 2020.[12] It will be a waste of resources to create a Property Register which will need to be so quickly amended.

### F. *Compliance with the Draft Bill could be significantly increased by making amendments to its sanctions regime.*

First, as explained in previous consultation responses,[13] we strongly believe that regulated professionals should play a role in the authentication of the beneficial ownership information submitted to Companies House.

To ensure compliance with the new regime and the authenticity of the information provided, 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 Register, along with the company's beneficial ownership information. This will charge professionals with the task of verifying the beneficial ownership 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 to the government. The current approach (which asks for a service address – Schedule 1, Part 3) is not sufficient to deter money launderers and the like.

Both the MLRs and their guidance should be clarified to ensure that a company that seeks to avoid naming its persons of significant control, for example 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.

If the UK professional nominated by the company responsible for submitting beneficial ownership information 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.

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[11] *The Companies We Keep*, pp 2-3; 12-34.

[12] See Article 4 – Transposition. Available at: https://eur-lex.europa.eu/legal- content/EN/TXT/HTML/?uri=CELEX:32018L0843&from=EN.

[13] Global Witness, *Response to the Department of Business, Energy and Industrial Strategy*, June 2017. Available at: https://www.globalwitness.org/en-gb/blog/how-stop-dirty-money-coming-london-properties/.

The severity of the sanction 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.

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.

Secondly, the Draft Bill should be amended to establish the enforcement procedure in the event that certain of its sanctions are not complied with.

For example, clauses 8 and 23 of the Draft Bill 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 other legal entities on the PSC Register, no fine has ever been levied, which drastically decreases its deterrent effect.[14]

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).

For example, 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 / hold / lien / charge / mortgage should be placed on the property, resulting in the beneficial owner not being able to transfer the property until they have provided the required information. The same freeze / hold / lien / charge / mortgage could operate to prevent the beneficial 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 / foreclose / acquire 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 and seizure of the property;
- 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 by the UK government to finance the regulation and enforcement of transparency regulation in the property market.

Given that these companies are based overseas, it may be more difficult to enforce these sanctions compared to UK-based companies. Therefore, a broader array of penalties for non-compliance should be available. Companies that provide false or inaccurate information should be barred from certain economic activity within the UK such as being unable to purchase new property, bidding for public contracts or applying for planning permission on a property.

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.

***G. The Property Register should publish the full chain of ownership in relation to each property.***

[14] 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/.

Under the PSC Register, it is possible to see the chain of ownership for each company.[15] The Property Register should similarly require registered entities to provide information on each stage of their ownership chain between the property and the ultimate beneficial owner. Having information on the full chain of control is vital for those in third countries seeking to use the register to assist in their investigations: it would provide sufficient details to enable authorities to request further information about any company in the chain of ownership which would be critical to enable proper investigations and criminal cases to be brought.

[15] See pages 10-11 of the *Register of People with Significant Control: Guidance for people with significant control over companies, societates, europaeae, limited liability partnerships and eligible Scottish partnerships*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621566/ 170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf

**ANNEX**

## 1. *Types of overseas entities that may not have beneficial owners or managing officers*

*Question 1.1: Are there any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply? Please provide evidence.*

Properties owned by trusts need to be included in the register. When the register proposed under the Draft Bill comes online, 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 lengthy transitional period provided by the Draft Bill (which is 18 months pursuant to Schedule 3, Part 2).

As we have explained in previous responses to consultations on the Draft Bill,[16] trusts offer an unparalleled degree of secrecy and are often used as the final step in complex chains of shell companies as the ultimate entity that allows individuals to disguise the true ownership of their assets whilst still benefitting from them. We believe that the paucity of published examples detailing the role of trusts in the purchase of UK property is due of 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.

However, there are some examples. Global Witness's report, *Don't Take it on Trust*, details the case of Prince Jefri Bolkiah, the former Finance Minister of Brunei and chair of the Brunei Investment Agency (BIA), the country's sovereign wealth fund. During his time in office, Prince Jefri siphoned $14.8 billion out of the fund into his personal bank accounts. At the same time, he undertook a prolific international spending spree. While the BIA was attempting to recover these assets, Prince Jefri bought property in Mayfair using an offshore company, owned by a Jersey trust. By using the trust to hide his ownership he may have been able to hide the property from the BIA to prevent it from being returned to the Brunei government.[17] And if the chain of ownership for this property had included the Jersey trust only (and not an offshore company), then it would fall outside of the regime under the Draft Bill entirely.

Even if the overseas register was in force at the time of Prince Jefri's investments it would not have captured any information which would have supported the BIA to recoup its assets. This case, which only came to light with the release of the Panama Papers, demonstrates how the secrecy afforded by trusts could create huge legal barriers to creditors or anyone else seeking to make a claim against UK properties.

Recently, we have seen further evidence of trusts being used to own property in situations of potential wrongdoing. In February 2018, the National Crime Agency (NCA) used their powers under the Criminal Finances Act 2017 to successfully apply for two unexplained wealth orders (UWOs) to be issued against UK properties. In a public hearing in July 2018, it emerged that the NCA had already identified a number of details relating to the case which they regarded as suspicious, including complex corporate structures featuring a British Virgin Islands company and trusts in Guernsey used to hold the properties. The case is still ongoing.[18]

Although the Draft Bill includes trusts in the definition of beneficial owner in some limited circumstances and therefore requires some disclosure (Schedule 2, Part 2, clause 6), the type of information it would publish is not sufficient. To be effective in preventing, detecting and investigating money laundering, the identities of all parties to the trust should be disclosed as beneficial owners, including the settlor, trustee, protector, and beneficiary or class of beneficiaries. To allow trusts to own property without naming all of their beneficial owners is a glaring omission in the UK's transparency regime

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[16] Global Witness' Response, June 2017.

[17] Global Witness, *Don't Take it on Trust*, February 2017; pp.6-7. Available at: https://www.globalwitness.org/en-gb/campaigns/corruption-and-money-laundering/anonymous-company- owners/dont-take-it-trust/.

[18] Transparency International UK, *First UWOs challenged in court*, July 2018. Available at: https://www.transparency.org.uk/first-uwos-challenged-in-court/#.W4U0DExFyUk.

and will encourage those individuals who are intent on maintaining secrecy to alter their ownership arrangements during and after the lengthy transitional period provided within the Draft Bill.

We have real concerns that people may utilise this transitional period to transfer their property ownership out of offshore companies and into trusts. If that occurs, none of those properties will be caught under the current regime. While the figures of current ownership of UK property by trusts are difficult to ascertain,[19] we have reason to believe that the number will increase rapidly once the Draft Bill is enacted (and may have begun to rise already).

If the government wants to remain true to its aim of ending the practice of UK property being used to launder money, it should do the following:

- Require the Land Registry in England & Wales to identify and publish annually the number of properties owned by trusts.
- Make a public commitment (set down in legislation) that upon the implementation of 5AMLD (i.e. by January 2020), it will interpret "legitimate interest" to include access for the general public. The government has – pursuant to the 4th Anti-Money Laundering Directive (4AMLD) – already created a register of trusts with UK tax liabilities which is currently private and housed by HMRC. To keep in step with both the UK PSC register and the register proposed under the Draft Bill, HMRC's register of trusts should be made public and available as open data, alongside having an equivalent protection regime for vulnerable or at risk individuals.

### 2. *Power to exempt types of overseas entities from the requirement to register*

*Question 2.1: Is it reasonable to keep the current requirements (described at paragraphs 18 and 19) applicable as they relate to foreign governments and public authorities as beneficial owners? If not, how can the regime be modified to keep with the intent of the policy?*

*Question 2.2: Do you consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register? Please provide evidence as to why this should or should not be the case.*

*Question 2.3: Are there other types of overseas entities that you consider should be exempt from the regime? If so, please explain why and provide evidence.*

*Question 2.4: How should the power described at paragraph 18 be exercised to apply in a coherent and workable way in relation to these types of entities (referred to at Questions 2.2 and 2.3 above)?*

Under the Draft Bill, where a registrable beneficial owner is a government or public authority, the required information about the owner is— (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).

There has been an incident reported in the media of a government embassy having been purchased under suspicious circumstances in another country.[20] There is clearly still a risk that state money could be misappropriated in this context in the UK.

We do not think it is sufficient for the "name" in this instance to only refer to the name of the government concerned, rather than the name of a person, as it will prove very difficult for a member of the public to use that information to ascertain details about the property. At a minimum, the legislation should require the identification of a role within that

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[19] The England & Wales Land Registry does not categorise the ownership of properties by trusts in the same way that it does for individuals and companies. As such, it is impossible to work out the exact number on current datasets.

[20] RFI, "Expensive Tokyo embassy leads to Kenyan resignations", October 2010. Available at: http://en.rfi.fr/africa/20101027-expensive-tokyo-embassy-leads-kenyan-resignations.

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). In essence, there should be some clear way of contacting a real person who is employed by the government concerned in relation to the relevant property.

With regards to the exemptions regime under the Draft Bill more generally, we believe that the current regime requires clarification and express limitations set out within the legislation.

On its face, the exemptions regime under the Draft Bill appears to differ from that under the PSC register.

Clause 16 empowers the Secretary of State to exempt a person "if satisfied that there are special reasons". Under the PSC regime, the grounds on which an application for exemption may be made are 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.[21] It is not clear whether the Secretary of State will use the same standard as applied under the PSC regime.

The grounds on which an exemption could be granted under the power in 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 base-by-case basis; and
- be subject to the same expected reporting requirements for the PSC regime as required by the 5AMLD (whereby the number of successful applications is published annually by Companies House.[22]

A clear articulation of how the exemptions regime will work is especially important given the sensitive relationship between the UK's transparency measures and the provisions of the GDPR.

### ***3. Power to modify the application of the regime for types of overseas entities***

*Question 3.1: Are there other types of overseas entities that you consider should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty? If so, please explain why and provide evidence.*

*Question 3.2: Do you consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified? Please provide evidence as to why this should or should not be the case.*

*Question 3.3: How should this power be exercised to apply in a coherent and workable way in relation to the types of entities described at Questions 3.1 and 3.2 above? For example, what criteria should be used to determine which registers may be considered "equivalent"?*

The only reason why any legal forms should be exempted from the register proposed under the Draft Bill is if they are incorporated or already registered in jurisdictions which require absolutely equivalent disclosure requirements to the UK.

Absolute equivalence between the registers is critical to avoid creating an incentive for companies that own property to 'jurisdiction-shop', domiciling their companies in jurisdictions where the information is less accessible, less usable and less detailed than the new overseas register.

[21] Regulation 36 the *Register of People with Significant Control Regulations 2016*, p.17. Available online: http://www.legislation.gov.uk/ukdsi/2016/9780111143018/pdfs/ukdsi_9780111143018_en.pdf.

[22] For further detail of what the exemptions regime should look like, see Global Witness' Response, June 2017. Also see *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.

To be deemed equivalent, registers in other jurisdictions must:

- be public and open to all, not just those who have a 'legitimate interest';
- be free to access;
- provide beneficial ownership information as open, structured data;
- require that beneficial ownership information is updated as changes occur;
- require the same information of beneficial owners as the UK register; and
- provide a unique identifier for the companies it registers.

In order to ensure that the equivalence regime is not an avenue for avoidance or abuse of the regime, Companies House should publish annually a list of those registers that are deemed to be absolutely equivalent to the UK (which civil society organisations like Global Witness and Transparency International could help create). The register itself should only allow users to input the name of an equivalent register by using a "drop-down" menu that is limited to the names of the countries on that list.

In addition, companies seeking to make use of an equivalent register should be required to enter the unique company identifier it has been allocated in that other register, so that cross-reference between the two registers is made easier for members of the public.

Companies House should require, as proof of registration in an equivalent register, a link, screenshot or extract from that register showing that the registration has been made and is current.

### *4. Registration of entities unable to identify their beneficial owners*

*Question 4.1: Should it be possible for an entity to register without providing full details of its beneficial owners in the circumstances explained in paragraph 25?*

*Question 4.2: If so, should this be the case only in specified circumstances, and, if so, what should these be (for example, for those entities that already own land in the UK when the provisions commence)? Please provide examples.*

No – it should not be possible for an entity to register without providing full details of its beneficial owners.

Furthermore, the ownership and voting thresholds in the Draft Bill need to be lowered (Schedule 2, Part 2).

As we have explained in previous responses to consultations on the Draft Bill, we believe that the 25% ownership and voting threshold that applies to the PSC register and that is proposed for the register under the Draft Bill is problematic.[23]

As we set out in our recent analysis of the PSC register, this high threshold creates a risk that significant interests in a company may not appear in the register, and money launderers will simply be able to structure company ownership so that no shareholding passes the threshold.[24] Indeed, people who are currently using the UK property market to launder money could simply use the 18 month transitional period provided under the Draft Bill to disperse their ownership to a collection of beneficial owners who fall below the 25% threshold requirement.

The result is that deliberate strategies to avoid PSC disclosure may be lost among hundreds of thousands of companies filing that they have no PSC. Financial Transparency Coalition members have previously identified examples where owning as little as 10% of a company raised serious red flags,[25] and even cases related to extractive industries where a 1% company stake is worth reporting – where company ownership can be extremely profitable and corruption risks are very high.

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[23] Global Witness' Response, June 2017.
[24] The Companies We Keep, pp 32-33.
[25] HM Treasury & Home Office, *National risk assessment of money laundering and terrorist financing 2017*, October 2017. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf

The European Commission stated in its own 2017 impact assessment that the "25% threshold is fairly easy to circumvent, leading to [the] obscuring of […] beneficial ownership [information]".[26]

In February 2017 the Nigerian Ministry of Justice identified the 25% threshold as one of the key challenges in the UK register, stating that "there is a strong argument for reduction of the threshold as it is suspected that this is being exploited by some businesses to avoid full compliance with the reporting rules."[27]

As outlined previously,[28] corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves. Our investigations expose many examples of allegedly suspect transactions involving a stake in the company of under 25%:

- In Moldova, newspapers reported that billions had been stolen from Moldovan banks by secretive offshore companies. It emerged that one factor that had helped facilitate the scheme was that none of the offshore companies owned more than 5% of any bank, keeping them below the threshold which would trigger greater Moldovan Central Bank scrutiny. Recently, Moldova lowered that threshold to 1% in the hope of driving out corrupt practices.[29]
- In Azerbaijan, a gold mine was awarded to a UK company which allegedly involved the daughters and wife of Azeri President Ilham Aliyev. They ultimately owned 11% of the company.
- In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25% of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown.
- A US company, Cobalt International Energy formed joint ventures in Angola with two companies, Nazaki Oil and Gas and Alper. Nazaki originally held 30%, later dropping to 15%. Alper held 10%. Nazaki was found to be owned by Angolan Vice President Vicente, Director of the National Reconstruction Office General Kopelipa and his advisor General Dino. Alper's ownership is also suspected to include officials. Cobalt was under an FCPA investigation until February 2017, when it was dropped.[30]
- Statoil's deals in Angola have also been under considerable scrutiny. In July 2005, Norsk Hydro (a company that later merged with Statoil) was awarded a 20% share in an oil licence in Angola. Two 15% slices were awarded to two Angolan private companies, Somoil and Angola Consultancy Resources. At the time, Norsk Hydro was "concerned about partnering with a company whose owners are unknown" but went ahead with the deal anyway.
- In 2005, a subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the 10% share held by "the relative of an Angolan Minister".[31]

These cases demonstrate that a beneficial ownership register which uses 25% threshold will not capture enough information to deliver the promised benefits of company transparency in terms of deterring the corrupt from investing in the UK property market.

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[26] European Commission, *Impact Assessment accompanying the 4th Money Laundering Directive*, July 2016. Available online: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0223&from=EN.

[27] Nigerian Federal Ministry of Justice, *Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief*, February 2017; p12. Available at: https://irp-cdn.multiscreensite.com/e0b6c17a/files/uploaded/Policy%20Brief%20on%20Beneficial%20Ownership%20FMOJ%20and%20IBLF%20Global%20Final.pdf.

[28] Global Witness' Response, June 2017.

[29] Organized Crime and Corruption Reporting Project, *Grand Theft Moldova*, July 2015. Available at: https://www.occrp.org/en/investigations/4203-grand-theft-moldova.

[30] Financial Times, *US prosecutors end corruption investigation into Cobalt International Energy*, February 2017. Available at: https://www.ft.com/content/f0e69381-08e4-3084-a16c-41d2cd600989.

[31] Global Witness, *Assessment of EITI Beneficial Ownership pilots*, March 2015; p7. Available at: https://www.globalwitness.org/documents/18014/Beneficial_Ownership_Report_March_24_FINAL.pdf.

We believe that the voting and ownership thresholds should be lowered to 10% or lower. This would ensure that the register aligns with both the U.S. Foreign Account Tax Compliance Act (FATCA)[32] and with the European Commission's initial proposal[33] for the 5AMLD, which argued for the threshold for declaring a beneficial interest to be lowered to 10%[34] for specific higher risk entities. Lowering the ownership and voting threshold in both registers to 10% would also ensure that the UK continues to set and lead global standards on beneficial ownership transparency as it has done since 2015. We feel that the UK should aim to maintain its position at the forefront of best practice in this regard.

One of the main arguments against lowering the threshold is that companies would find it very difficult to identify their beneficial owners. However, DataKind and Global Witness's analysis revealed that this has not been a problem for the majority of companies appearing in the PSC register. In fact, in only 2% of cases did companies say they were struggling to identify a beneficial owner or collect the right information.[35]

Not only is the threshold too high, but there are also challenges resulting from the banding of ownership stakes in a range from 25% to 50%, 51% to 75%, or 76% to 100%. 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 PSCs' holdings of shares or voting rights in exact percentages.

At the very least, the government should make a public commitment (set down in legislation) that the thresholds that apply in both the PSC and Property Registers will form part of the 2019 review of the UK PSC regime.

## 5. *Scope of the prohibitions to certain dispositions relating to land*

*Question 5.1: Do you agree that the inhibition in Northern Ireland shouldn't capture the granting of leases for less than 21 years without occupation (noting the inhibition also currently doesn't capture leases for less than 21 years with occupation)? If not, please provide evidence of why.*

*Question 5.2: Are there any unintended consequences if applications for registration as a proprietor by a "prescriptive claimant" in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not a "registered overseas entity" within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a "registered overseas entity"? Please provide evidence.*

No comment.

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[32] FATCA requires certain non-U.S. financial institutions to identify U.S. customers and provide information on them to the U.S. authorities. Under FATCA a substantial U.S. owner is defined as "any foreign corporation, any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of such corporation (by vote or value)".

[33] See page 17 of *Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC*, July 2016. Available at: http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0450/COM_COM(2016)0450_EN.pdf.

[34] European Parliament, *Report on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC(COM(2016)0450–C8- 0265/2016 – 2016/0208(COD))*, March 2017. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8- 2017-0056%2b0%2bDOC%2bPDF%2bV0%2f%2fEN.

[35] Global Witness, *What does the UK Beneficial Ownership Data show us?*, November 2016. Available at: https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/

### *6. Power to disapply the effect of the prohibitions placed on land*

*Question 6.1: Do you consider the Bill should include provisions to allow an "appeal" of the effect of the prohibitions placed on the property, and/or a power by the Secretary of State to "disapply" the effect on a case-by-case basis? If so, in what scenarios should this be used, and what evidence should be required? Given the concept of owner's powers is unique to England and Wales, should any such provisions only apply in England and Wales?*

We cannot foresee grounds on which the appeal or disapplication of the Draft Bill. Certainly, if appeal and disapplication are allowed in any sense, they should be subject to stringent standards and reporting requirements, in line with the PSC exemptions regime. If any grounds are created, they will be the subject of a process of parliamentary scrutiny after the tabling of the Bill.

### *7. Exceptions to prohibitions placed on land*

*Question 7.1: Are there other exceptions, in respect of England and Wales, Scotland or Northern Ireland that you consider should be included in the Bill? If so, please explain why and provide evidence. What type of evidence could be provided to demonstrate exception?*

We do not consider that any additional exceptions should be included in the Draft Bill. If any are created, they will be the subject of a process of parliamentary scrutiny after the tabling of the Bill.