

# SANCTIONS AND ANTI-MONEY LAUNDERING BILL

## HOUSE OF COMMONS PUBLIC BILL COMMITTEE

The International Financial Centres Forum ('**IFC Forum**') is a not-for-profit trade organisation funded by its private-sector members. The Forum advocates responsible cross-border financial services intermediation, which supports trade, investment, economic growth, and international development. Members of the Forum include professional service firms and businesses based in Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Guernsey, and Jersey.

In this submission, we are limiting our comments to New Clause 1, in the name of Helen Goodman and Anneliese Dodds, concerning requiring the Overseas Territories (OTs) to create publicly-accessible registers of the ultimate beneficial owners (UBOs) of companies.

A similar amendment was rejected in the House of Lords by 211 votes to 201 on 17<sup>th</sup> January.<sup>1</sup> The House of Commons defeated an amendment requiring the *Crown Dependencies* (CDs) to introduce public registers by 301 votes to 180 in February 2017.<sup>2</sup> Since then, both OTs and the CDs have introduced government registers that although not publicly-accessible, are accessible to UK law enforcement and HMRC, and Parliament has legislated to review their effectiveness. We believe this is superior to public registers for the reasons below.

### **1. The difference between public registers and government registers**

- 1.1. There has been significant confusion in debate of this topic between *public* registers and *government* registers. While the UK has introduced a public PSC register, it is alone in the G20 in having done so. Instead, the G20 has endorsed *government registers* of beneficial ownership information.<sup>3</sup> This involves the creation of a central database or platform that is held by the jurisdiction's government, updated in real-time, and accessible instantaneously by law enforcement and tax authorities.
- 1.2. This apparatus is useful to provide law enforcement and tax authorities access to beneficial ownership information. In the case of the OTs, which have government registers, this permits full investigation of beneficial ownership without requiring the

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<sup>1</sup> [HL Deb 17 January 2018, vol 788, cols 703-705](#)

<sup>2</sup> [HC Deb 21 February 2017, vol 621, cols 957-960](#)

<sup>3</sup> IMF (2016): "[Communique: G20 Finance Ministers and Central Bank Governors Meeting](#)".

government to provide evidence of wrongdoing before making the enquiries and without requiring a warrant or court order.

- 1.3. It is for this reason that law enforcement and tax authorities tend not to support public registers, as they find that government-held registers provide all of the benefits that are required to combat crime and tax evasion, while public registers tend to be inaccurate. Australia's chief tax collector opposed a public register, telling the Australian Senate, "A register of beneficial ownership is just what someone says someone else owns, so it could be good, but it could be just a lot of 'stuff' that doesn't really help us. Because if people want to do the wrong thing, they'll be putting all sorts of different names in places, so I'm not sure it's a panacea as such."<sup>4</sup>
- 1.4. The OTs with large financial services industries, along with the CDs, have all had government registers since last year. As noted above, this information is accessible by the respective OT's government immediately.

## **2. Current standards in the Overseas Territories**

- 2.1. There is an inaccurate perception that the data collected by the OTs' systems and provided to the UK lags behind the rest of the world. However, the reality is that the OTs are at the fore of international best practice and provide more information to the UK than any other jurisdiction.
- 2.2. Beneficial ownership information in the OTs is *systematically verified* by licensed and regulated corporate service providers (CSPs), as international standards require. This ensures the information is accurate and prevents information being submitted in the wrong name, with the wrong date of birth, or with the wrong address: a practice that is obviously advantageous by criminals, but not permitted in the OTs. Verification rates in the OTs are among the highest in the world, with academic analysis showing 100% of attempts to circumvent these verification requirements being prevented in Cayman Islands, 94% prevented in BVI, 88% in Gibraltar, and 79% in Bermuda. This compares to 51% in the UK, 25% in the United States, and 22% in China.<sup>5</sup>
- 2.3. This verification is vital to law enforcement and tax enforcement. As David Lewis – head of the global standard-setter for combatting money-laundering FATF, and formerly of the National Crime Agency – said, "[Incomplete, unverified, out of date information in a public register is not as useful as law enforcement agencies being able to access the right information at the point they need it.](#)"<sup>6</sup> From the perspective of law

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<sup>4</sup> Gareth Hutchens (31 May 2017): "[Beneficial ownership register may be a waste of time, tax chief tells MPs](#)". *The Guardian*

<sup>5</sup> Michael Findley, Daniel Nielson, and Jason Sharman (2015): *Global Shell Games*. Cambridge: Cambridge University Press. Highlights can be viewed at [globalshellgames.com](http://globalshellgames.com).

<sup>6</sup> David Lewis (11 May 2016): "[Ending Impunity: Creating a level playing field by enforcing the conventions we have](#)". FATF

enforcement, the registers currently held by the OTs are superior to the public register maintained by the UK.

### **3. Overseas Territories' assistance to the UK**

- 3.1. Moreover, the OTs' registers can be accessed by British law enforcement and HMRC within 24 hours of a request being made and within 1 hour in the event of an emergency. No other jurisdictions give the UK similar access. The UK can access the information for any reason or without any reason, provided the NCA attests that it is required for law enforcement or tax purposes.<sup>7</sup> It may be used in criminal or civil proceedings.
- 3.2. The amendment's proposer claimed at Committee that the National Crime Agency needed a reason for access to the BVI register, but this is not correct.<sup>8</sup> All requests must be complied with within 24 hours – or 1 hour where the NCA says that it is urgent. However, the situation as described is the case with all territories other than the Overseas Territories and Crown Dependencies, with whom the UK's Tax Information Exchange Agreements do require *prima facie* evidence of wrongdoing.
- 3.3. The UK is already reviewing these systems' effectiveness to ensure the legal requirements highlighted above benefit the UK. The [Criminal Finances Act 2017, s9](#) requires the Government to report on the effectiveness of the OTs' retention of beneficial ownership information and the UK's ability to access it by July 2019. To legislate further would pre-empt this report and risk the introduction of a less effective regime than the one that the OTs already have.

### **4. Global standards**

- 4.1. International standards for anti-money laundering and tax information collection and exchange are set by FATF and the OECD Global Forum respectively. Neither requires – or supports – public beneficial ownership registers. The OECD's head of tax Pascal Saint-Amans told the APPG on Responsible Tax that ['public registers can do a lot of damage if you have a number of financial institutions relying on the register, and the same for the public'](#).<sup>9</sup>
- 4.2. However, international standards *do* require verification. FATF requires law enforcement to have access to ['adequate, accurate and timely information on the beneficial ownership and control of legal persons'](#).<sup>10</sup> As noted, the UK does not meet

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<sup>7</sup> Cabinet Office (2016): ["Beneficial ownership: UK Overseas Territories and Crown Dependencies"](#).

<sup>8</sup> Virgin Islands Beneficial Ownership Secure Search System Act, 2017

<sup>9</sup> Emma Rumney (15 June 2016): ["Time not right for public registers of beneficial ownership, says OECD tax chief"](#). *Public Finance International*

<sup>10</sup> Financial Action Task Force (November 2017): ["The FATF Recommendations"](#)

this, leading to it being rated only '[Partially Compliant](#)'<sup>11</sup> with FATF's requirements, while most OTs and CDs are rated fully 'Compliant': the highest ranking. Sporadic checks by the public are no substitute for the systematic checks required by FATF.

- 4.3. The development of multiple standards without raising global standards more generally hurts multilateralism. As the OECD reported to the 2013 G8 meeting, at which the UK announced its own plan, "[A proliferation of inconsistent models is in nobody's interest](#)".<sup>12</sup> The OECD and FATF's multilateral approaches to raising international standards are undermined by the application of varying standards, such as public registers, rather than negotiating with other jurisdictions to ensure they are adopted voluntarily.

## **5. Problems created by public registers**

- 5.1. Non-public government registers – let alone public registers – are themselves far from universal. Rival financial centres – such as the United States, Hong Kong, and Singapore – have decided against introducing even these non-public government registers. Forcing the OTs to go beyond international standards risks driving business into less well-regulated centres that cooperate less with the UK: reducing, rather than increasing, the information at UK law enforcement's disposal.
- 5.2. By contrast to the OTs' central registers, whose content is verified, public registers are meant to be checked by the public under a 'many eyes' approach. However, with large databases – with millions of companies in the UK alone – this is impractical, leading to inaccuracy and fraud. The [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'.<sup>13</sup> [The Times](#) has reported how an 85-year-old was fraudulently listed as a director to facilitate securities scams.<sup>14</sup>
- 5.3. Moreover, it is possible that under-reporting takes place in jurisdictions with public registers, as people report less candidly than when information is available only to public authorities. The OECD's report *Keeping It Safe* states that to '[comply with their obligations under the law, taxpayers need to have confidence that the often sensitive financial information is not disclosed inappropriately](#)'.<sup>15</sup> However, with public registers, this information is disclosed, making it more likely that taxpayers do not report fully and honestly.
- 5.4. Indeed, quite the opposite from preventing crime, public registers may also facilitate identity theft and kidnapping. The Information Commissioner's Office has warned

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<sup>11</sup> Financial Action Task Force (29 June 2007): "[United Kingdom of Great Britain and Northern Ireland Third Mutual Evaluation Report](#)"

<sup>12</sup> OECD (June 2013): "[A Step Change in Tax Transparency: OECD Report for the G8 Summit](#)"

<sup>13</sup> Jim Armitage (17 July 2017): "[Occupation: Fraudster. Address: Street of 40 Thieves' – how Italians mocked UK company rules](#)." *Evening Standard*

<sup>14</sup> Danny Forston (11 December 2016): "[How can one 85-year-old woman set up 25,802 companies?](#)" *The Times*

<sup>15</sup> OECD (23 July 2012): "[Keeping It Safe](#)"

that registers put beneficiaries at '[real risk of identity theft if made public](#)'.<sup>16</sup> The *Financial Times* has reported that directors are twice as likely to be victims of identity theft, due to Companies House's public register of directors.<sup>17</sup> The *Financial Times* has also written about public registers raising the risk of kidnapping of beneficial owners and their families.<sup>18</sup> Making beneficial ownership public would necessarily increase fraud and risk of kidnapping.

## **6. Conclusion**

- 6.1. The United Kingdom has worked closely with the Overseas Territories – as well as the Crown Dependencies – to ensure they are world-leaders in implementing international standards. Thanks to this cooperation, the OTs and CDs have introduced government registers of beneficial ownership that will be accessible to UK law enforcement. These puts them at the fore of international standards and gives the UK access to more – and more accurate – information than it receives from any jurisdiction.

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<sup>16</sup> Information Commissioner's Office (12 April 2017): "[Response to HM Treasury's consultation on Money Laundering Regulations 2017](#)".

<sup>17</sup> Aime Williams (14 June 2017): "[Fraudsters target UK directors through Companies House](#)". *Financial Times*

<sup>18</sup> Lucy Warwick-Chung (13 September 2017): "[Is my family vulnerable to kidnapping?](#)" *Financial Times*