



**Campaign for
Legislation
Against
Money-laundering in
Property by
Kleptocrats**

Response to

Open consultation on

Property ownership and public contracting by foreign companies: improving transparency

Led by Department for Business, Innovation & Skills

4 April 2016

Campaign for Legislation Against Money-laundering in Property by Kleptocrats

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Open consultation on

Property ownership and public contracting by foreign companies: improving transparency

Led by Department for Business, Innovation & Skills

Part of: Corporate governance

Applies to: England and Wales

Title: Beneficial Ownership Transparency
Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK

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Preamble

ClampK welcomes the opportunity to contribute to this consultation and appreciates the urgency and seriousness with which the UK Government is addressing this major issue, which represents

- a threat to the quality of civic life in the UK,
- an unfortunate compounding factor in the the problematic domestic housing market and
- a loophole which facilitates the impoverishment of innocent people in many nations with less robust governance than in the UK.

ClampK welcomes the broad thrust of the consultation paper and believes the questions address the principal issues comprehensively. Our focus and expertise lie solely in the field of money-laundering through property transactions and, on this basis, we do not believe it is appropriate for us to respond to the questions regarding public procurement. This is restated in the answers below.

We echo the sentiments expressed in the opening pages of the consultation paper regarding the benefits, at home and abroad, of eliminating corruption for moral, fiscal and financial reasons.

ClampK will be happy to engage with the Department in any subsequent dialogue, public or private, that the Dept. may care to organise. We can be reached at 'campaigns@clampk.org' or you can contact Roman Borisovich, Committee Secretary, directly on 07767372011.

ClampK is an organisation created to highlight the scale of money-laundering in real estate and advocate for legislative changes to prevent it. The Committee was founded by people with direct experience of these at both the source and sink of the money flows. They have formed a coalition of like-minded organisations, activists, politicians and journalists and their activities have to date included production of TV documentaries, distribution of research and media materials, parliamentary briefings and the very well received 'Kleptocracy Tours', which have been reported on by UK, EU, US and Asian media across all platforms. The activities have been focussed in the UK to date but we are organising to develop campaigns and events in the EU and US.

Q1. UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?

Yes. The core principle of British civic life has, for a thousand years, been equality before the law. For corporate entities, which vary far more than their human counterparts, this has been cleverly expressed in a fluid legal and administrative model that varies proportionately to the capacity of the entity to sustain it while at the same time consistently applying a core set of principles. The current standards have evolved over centuries and are seen, globally, as a model to be emulated. Further, this model has fostered good governance and economic vibrancy wherever it has been well implemented. The introduction of the Persons with Significant Control legislation continues and further develops this exemplary model.

It is however an unfortunate reality, that the same expectations and obligations are not required of foreign corporate entities operating in England and Wales through property acquisition, public procurement tendering or any other activity. This mismatch of obligations with respect to participation in UK commercial life can easily be used to facilitate money-laundering and other criminal activity which, in both actuality and perception, is damaging to the citizens, corporations and government of the UK. This mismatch is acknowledged in Para. 28 of the Consultation document.

There is substantial evidence that the lack of transparency allowed to offshore companies has led to a recent spike of money-laundering transactions executed in the UK, mostly in real estate. In an interview featured in our *From Russia With Cash* documentary, aired on the 8th of July 2015, Donald Toon, the NCA's Economic Crime Commander, stated that the

NCA puts “the estimates of the totality of [money-]laundering through the UK in hundreds of billions [of pounds] per annum”.

In a further [interview to The Times](#) he stated that “[London property] prices are being artificially driven up by overseas criminals who want to sequester their assets here in the UK”. In the March 2015 research report Dark Matter, Deutsche Bank argues that “there is strong evidence that a good chunk of the UK’s GBP 133bn of hidden capital inflows” comes from illegal capital flight from Russia. Some of these flows of laundered money enter the UK via foreign companies purposely set up in a way that makes it impossible to trace the origin of their funds. Therefore, while there is substantial anecdotal evidence, the exact picture will not become clear until these companies are subject to the same - or even stricter - disclosure requirements applied to UK companies from June 1, 2016.

Q2. Do you have any views on the options for holding information set out above?

The proposed mechanism of using Companies House for storage and processing of Foreign Corporate Entity and Person with Significant Control (PSC) data for foreign companies is the most efficient and equitable solution. It will support and reinforce the ‘equality before the law’ principle while placing the administrative burden within an existing and efficient centre of excellence.

Having foreign companies supply the same information on their corporate governance - as UK companies will be obliged to provide from June 1, 2016 - will be sufficient for money-laundering checks and other diligence procedures. Companies House is well equipped to process PSC information of its existing 3 million plus corporate clients and can easily collect and process the same information on the 40,000 plus foreign companies holding properties in England and Wales. Foreign companies forming a separate register maintained by Companies House will be then subject to the same regulatory and administrative regime enforced by BIS at par with the UK companies.

Interaction between Companies House and the Land Registry is the most easily implementable solution to the problem: the Land Registry should require every corporation wishing to register its ownership of a property in the UK to provide a Companies House registration number - whether from the UK register or an offshore one. Such system would make it impossible for companies to register a property title without complying with all corporate disclosure procedures.

The alternative of a new and separate ‘Companies House for Foreign Entities’ would be a duplication of effort and a waste of expertise while at the same time possibly allowing for administrative lacunae to develop. The alternative of asking the market to supply a service has all of the above disadvantages with an additional one of different cultures and structures fostering further lacunae.

Q3. Are there any additional considerations for where and how the information is stored that we should consider at this stage?

Yes. The key consideration here is that the PSC information for foreign companies should be freely accessible by “law enforcement agencies, regulators, legitimate businesses and general public”. This would be fully satisfied if the proposal for the creation of a foreign companies register administered by Companies House is materialised.

Q4. What information about their beneficial ownership should foreign companies be asked to provide?

Similarly to UK companies, foreign corporations should provide PSC details: the individual’s name, date of birth, nationality, address and details of their interest in the company. Companies controlled by other companies should furnish information on full ownership chain/control - just as UK corporations are obliged to do. Additionally, overseas companies could be subject to stricter requirements when it comes to Ultimate Beneficial Owners (UBOs): they could be required to provide deeds of incorporation or shareholder certificates. The PSC information should be submitted to the foreign companies

register once a year. Any intentional manipulation of PSC data by the foreign companies (like changing UBOs over the reporting date, etc.) should be qualified as an act of fraud and carry criminal penalties.

The above requirements can be satisfied by direct submission of data to the Companies House foreign companies register or provision of the local company registration number, if, in the view of the UK government, the country of origin fulfills the following criteria:

1. is fully compliant with provisions of the 4th Money Laundering Directive of the EU (4MLD), and
2. has its companies register PSC information open to general public.

Q5. Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?

The requirement to provide UBO information should be applied to all foreign companies irrespective of whether they already own property in the UK or are in the process of acquiring some. This requirement should be introduced as a complex of amendments to the Companies Act 2006, Land Registration Act 2002, and other acts as a forward-looking change of corporate administration regime, i.e. coming into force on a certain date in the future, introducing new reporting and disclosure requirements and applying to all subjects of the law regardless of their national identity.

Given the anti-money-laundering spirit of the proposed change, leaving the existing foreign corporate owners outside of the new law will be equivalent to grandfathering proceeds of crime and rewarding wrongdoers in certain cases. Indeed, if existing foreign companies were somehow excluded from the disclosure requirement, this could give existing and future wrongdoer-UBOs a sizeable windfall profit. From the standpoint of supply and demand, it would allow them to sell their interests in their 'vested' foreign companies to other wrongdoers at a premium, creating a market in an exclusive, limited group of UK properties which continue to be available as vehicles for hiding proceeds from illegal activities. To avoid such a scenario, the disclosure requirement must be applied across the board, indiscriminately, to all foreign companies invested in UK property – current and future alike

The new law requires all companies in the UK to provide their PSC details, and not only the ones registered after it came into force. Similarly, all foreign companies should be subject to the new information provision requirements, and not only the ones registered after it came in force. This new obligation on existing companies to disclose ownership does not constitute a governmental taking or other deprivation of rights, but rather just a uniform disclosure obligation which will apply to all investors across the board (existing and new alike), without discrimination.

The alternative solution to Q2 that has been mentioned among other options - requiring foreign companies to set up UK branches for the purpose of ownership of UK land/properties would be very difficult to apply to the existing corporate owners. It could be potentially successfully challenged in the English courts and we strongly recommend staying away from this option.

Q6. Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?

Given the leadership shown and the prevalence experienced by the English and Welsh administration of the relevant issues, we believe the Devolved Administrations can be left to implement the system improvements adopted in England and Wales as and when they see fit.

Q7. What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into public contracts?

The costs of participating in English and Welsh commerce and community should be borne proportionately by all participants. The data required for registering companies is data that they hold already in furtherance of their operations. Given that the cost of data replication and transmission are increasingly low then the additional costs to the registering companies will be insignificant, especially in proportion to the benefits of access to these markets and opportunities. There will be no additional costs imposed on English and Welsh native companies. Given that the cost of registering will be so proportionately low, then this regulatory obligation will not serve as any kind of impediment to potential legitimate investment or transactional flows to the economies of England and Wales.

The costs of administering this initiative will be very low as well. The proposed foreign companies registry will include PSC data on 40,000 existing foreign corporate owners of property and land plus, assuming an unchanged pace of foreign purchases, approximately 10,000 new entries per year. Together they represent just over 1% of the 3,400,000 UK companies serviced by Companies House today. It is therefore expected to add a temporary spike of about 1% additional workload for Companies House the year the new regulation is introduced while going forward the increase in workload would be negligible. The cost to the Land Registry will be also minor - a one-off task of inserting a single number into 100,000 existing title records of the properties owned by foreign companies in England and Wales. It is on this basis that we maintain that the Companies House / Land Registry solution proposed for the consultations is technocratically the most efficient and elegant option.

English and Welsh business, economy and society will significantly benefit from implementation of the proposal submitted for consultations:

- UK property is widely seen as a safe haven and a good investment asset class. It attracts both legitimate and less-legitimate buyers. If property ownership is made public, legitimate buyers would not be deterred from buying UK property. However, investors with dubious sources of funds will be deterred, which means that transparency of property ownership will create a level playing field for UK investors, individual and corporate, who are required to disclose their property ownership. Currently, they are disadvantaged as they may be competing for the same properties with “hot” money of uncertain, possibly criminal origin.
- Property buyers coming to London with laundered money, more than others, consider their real estate as an investment asset rather than as a place to live. This significantly aggravates the “lights out London” phenomenon: destroys local communities, decreases borough’s employment, undermines the sustainability of small businesses serving residents, diminishes business tax receipts by councils.
- We live in a society which places an increasingly high value on transparency and accountability of government, private sector and individuals. Among other things this trend includes reducing opportunities for tax evasion, money laundering, financial flows from suspicious activities (corruption in foreign countries, arms and drugs trade, etc.). The proposal assures that these values are not eroded from within by foreign companies left outside of the law.
- Abolition of anonymity in property ownership has to be seen in the context of the global effort to make financial transactions and markets more transparent. It behoves the UK, which aspires to continue as the globally preeminent financial centre, to be contributing to this work domestically as well as through its participation in the EU, OECD and FATF organisations. On the obverse, there is also a considerable reputational benefit of not being called “world’s largest laundromat”.
- Transparency of ownership will allow law enforcement, media and civil society both domestically and abroad to do certain policing of foreign financial flows into the UK property market, and bring specific cases to attention of the relevant government authorities, something that the UK government may have not enough resources to do in foreign countries. It will accelerate the cleanup process allowing the society to get rid of criminal elements.

Q8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

The Department of Business, Innovation and Skills should enforce the requirements to provide PSC data of foreign companies just as it is responsible for enforcing this vis-a-vis UK companies. The same principles should apply - financial penalties for the companies and criminal responsibility for the directors. However enforcement of these measures on foreign soil is difficult, costly and positive results are far from guaranteed. Enforcement of criminal charges against foreign company officers is possible, but will require extradition procedures conducted in cooperation with Interpol or local law enforcement authorities. Enforcement against foreign companies will be fully dependent on the local courts and legal system. In some countries the authorities could refuse to cooperate due to local data protection laws. Moreover, some regimes of state-sponsored corruption - such as Russia or Venezuela - can intentionally pass laws making it illegal for their companies to disclose UBO information to foreign authorities. Therefore it is absolutely critical that a workable enforcement mechanism be created for foreign companies, or the legislation will lack effective teeth. We believe that the only effective mechanism would be that after some reasonable notice/cure period, where a foreign company continues to evade disclosure, the UK authorities should be entitled to have recourse to the land/property itself. The message should be clear: disclose or you are out of the market!

The government should also consider the fact that Companies House does not perform any upfront checks during the initial registration period. We believe that this fact, and the difficulties of enforcement on foreign soil, call for stricter version of due diligence conducted by Companies House upfront when dealing with countries which - in the view of the UK government - are not fully compliant with 4MLD provisions. These could include submission of originals/wider range of documents and various checks and certifications to be performed by UK government-authorized bodies. From this perspective it is absolutely critical to have the PSC data on foreign companies open to the general public, so that all interested parties holding relevant data can spot errors and falsifications in the registered entries. It is vital that the open access, low fees and transparency provided by the Companies House methodology be extended to this register, so that the widest range of civil authorities, professional agents, businesses, media and other investigators be empowered to contribute to the AML initiative in the UK and abroad.

Q9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:

a) in the case of new foreign companies acquiring land or property in England and Wales; and

Foreign companies intending to acquire land/property in England and Wales will need to supply their corporate information including PSC data to the foreign register of Companies House in order to complete registration procedure and obtain the registration number. Without this number, new purchases of land/property will not be registered by the Land Registry. This system in itself will ensure initial compliance with the requirement for any new purchases of land/properties in corporate names. Any subsequent violations of the new regulations to provide ownership information will be enforced in the manner suggested in b) below.

b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

In the case of foreign companies already owning land/properties in England and Wales not submitting PSC information or its annual updates or submitting false information, the only efficient enforcement will be the one which allows BIS to have potential recourse to the land/property. After a deadline for submission of data has passed, severe financial penalties should be imposed on the companies refusing to disclose PSC data or present additional evidence in the case that their disclosure is being questioned. All their UK assets also should be frozen until the matter is fully resolved. We believe that the option suggested in the consultation paper of daily accruing fines would be the most appropriate measure in this case. Should the foreign company not comply with the requirements after

a certain period, the daily accruing fine should step-up drastically and again in perpetuity. Once the amount of fines due from a foreign company exceeds a certain threshold, the UK Government should be entitled to claim the moneys in the English courts following the standard commercial debt recovery procedure. This is a well-tested, robust and fully enforceable procedure which will not require any input from foreign or international authorities. If the court finds the claim acceptable it will issue a money judgement in favour of the government, appoint a liquidator and, if the foreign company still does not pay up and present required UBO information, it will order the liquidator to sell the property. The past due fines will be paid from the liquidations proceeds and the balance will go into the Court Funds Account awaiting the legitimate UBO to claim it.

Foreign companies violating the UBO disclosure regulations will not be able to “pay their way out” by simply settling the penalties. The UK Government should not accept payments of any kind from an unknown source such as a foreign company with an unclear UBO structure. Therefore the fines will continue accruing on the daily basis until the required and satisfactory PSC information disclosure has been made. In the case that the foreign company declares bankruptcy the English courts will still place moneys owed to the UK Government ahead of other creditors. If during the period the company changes control the new owners will be liable for the accrued fines and will still have to disclose their identities in order to unfreeze their corporate assets in the UK.

General response to Questions 10-18 re Public Procurement

ClampK was founded to campaign on the specific issue of combating money-laundering through residential property purchases. As such we have no expertise in or knowledge of how current UK public procurement processes may be vulnerable to facilitating money-laundering. On this basis we do not feel it appropriate to make any responses to the relevant questions. We do commend the UK Government for being thorough and complete in its review of all potential sources of money-laundering transactions.

Q19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

Absolutely. It is setting a very high standard of transparency and enforcement which could be easily copied by other governments should they be serious about fighting crime and corruption. Having the foreign companies register PSC data that is open to the general public will enable foreign anti-corruption bodies - governmental and civil society - to track the financial flows from their nations and prosecute wrongdoers should they find such evidence. Finally, should the new regulation result in high-level prosecutions or liquidations in the UK, the message to foreign criminals would be very clear: soon there won't be any safe havens for proceeds of crime anywhere.

Q20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

Foreign governments will not be required to do anything under the proposed regulation. The onus of information provision sits squarely with the owners of the foreign companies, i.e. the people benefitting from the privilege of open access to UK property markets.