A joint briefing by
OpenOwnership and Global Witness

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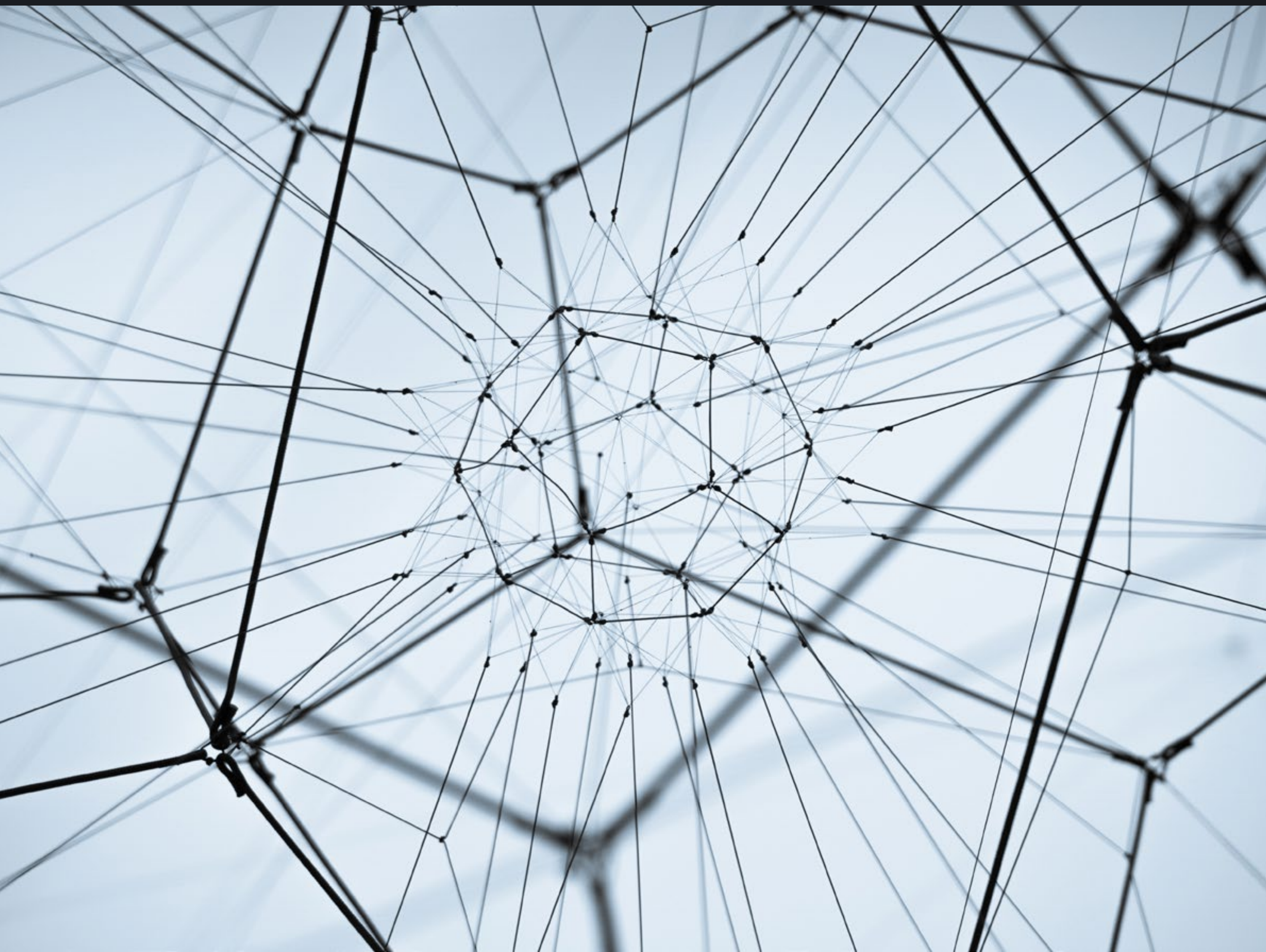
global witness

October 2017

Learning the lessons from the UK's public beneficial ownership register



I. Intoduction

In 2016 the UK became one of the first countries to create a public register of the beneficial owners of companies.[1] The UK register, called the register of Persons with Significant Control (PSC), has both demonstrated the feasibility of public registers and set new standards in publishing the data as open data, allowing others to analyse the data in bulk.[2] While the UK register has been pioneering, there is much that can be learnt - both to improve the UK register and for others considering or establishing public beneficial ownership registers.

There are currently at least three countries implementing public beneficial ownership registers for companies [3], at least 12 countries committed to doing so, and 20 countries planning public registers for extractive industries [4]. In addition, the EU is considering the establishment of public registers of beneficial ownership for companies across all 28 EU Member States as part of the negotiations for the 5th Anti-Money Laundering Directive.

What led to the creation of the UK register?

The UK committed to introduce a register of beneficial ownership as part of a raft of measures to tackle corruption and tax dodging at the UK-hosted G8 summit in June 2013, and then committed to make the register publicly accessible in October that year.

The government had been considering introducing a public register for over 10 years but only made the commitment after a sustained campaign by a broad coalition of civil society organisations in the lead up to the summit. This campaign connected issues of corruption, tax dodging and international poverty and used a wide range of tactics, including organising a petition from small business owners, mass public mobilisations and engagement with the mainstream media.

In 2002, the UK government carried out a cost-benefit analysis different models of collecting beneficial ownership data, including public registries.[5] Global Witness commissioned the same consultant to update the cost figures in 2013.[6] This found that the savings in police time in having this information publicly available would be more than double the combined cost to the public sector of running the database and the cost to the private sector of submitting the data – let alone the other wider benefits to the public sector and to businesses. The cost-benefit analysis was crucial in securing government support for a public register.

[1] For background on beneficial ownership, anonymous companies, and why public registers of beneficial ownership are important see these briefings from Global Witness and Open Ownership.
[2] For more on open data see the International Open Data Charter Principles.
[3] UK, Ukraine, Denmark. [4] List of EITI countries introducing public registers for extractive industries available here
[5] HM Treasury/DTI, 'Regulatory impact analysis - Disclosure of beneficial ownership of unlisted companies' July 2002. Available here.
[6] John Howell & Co. Ltd, 'Costs Of Beneficial Ownership Declarations', April 2013. (Commissioned by Global Witness).

The support of business groups also helped ensure government buy-in. The UK's Institute of Directors stated that "so-called 'anonymous companies', in which the corporate veil is used to conceal illegal activities, have no place in a modern economy and bring the entire business sector into disrepute."[7] The European Banking Federation also supported the introduction of public beneficial ownership registers across Europe.[8]

What the data shows

The information on the register is made freely available by the UK's Companies House both as a searchable web interface as well as structured data in machine-readable format.[9] Crucially this data is available under an open data licence which means that it can be reused by other organisations and individuals without any restrictions.

Publishing the registry as open data allows journalists or civil society organisations to analyse the database as a whole, rather than just viewing each company individually. In November 2016 Global Witness, DataKind UK, OpenCorporates, Spend Network and OCCRP worked with 30 volunteer data scientists to undertake an initial analysis of the first 1.3 million companies that had submitted ownership data to the UK registry[10].

This analysis allowed these organisations to identify signs of non-compliance with the law. For example, 9,800 companies listed their beneficial owner as a foreign company. This is possible if the foreign company was listed on one of the stock exchanges deemed equivalent to the UK system (e.g. the US, EU and Japanese exchanges). However, of these companies almost 3,000 listed their beneficial owners as companies with addresses in tax havens. This is not allowed under the rules.

The registry could also be compared to other data sets. Initial findings suggest 19 senior politicians (known as politically exposed persons), 76 people from the U.S. sanctions list and 267 disqualified directors were listed as beneficial owners. However, these matches were based on name and month and year of birth so are not conclusive.

Making the data publicly available can greatly enhance accuracy by allowing users of the data - be they private sector, civil society, or public sector - to review and report errors in the data. In the case of the UK public company registry, the UK's Companies House confirmed that within the first six months they were following up on multiple contacts from the public highlighting inaccuracies in the data.[11]

[7] Government Opportunities, 'IoD welcomes consultation on trust and transparency' 16 July 2013. Available here.
[8] EBF, 'Position on the European Commission Proposal for a 4th EU Anti-Money Laundering Directive', April 2013. Available here.
[9] The beneficial ownership register is held by Companies House, which also provides the register of all UK companies. Beneficial ownership information can be found by searching for a company, navigating to 'People', then 'Persons with significant control'. The bulk data is available as JSON files or as an API.
[10] Robert Palmer and Sam Leon, 'What does the UK beneficial ownership data show us?' 22 November 2016. (Global Witness Blog).
[11] Companies House – Email Correspondence with Global Witness – 9 February 2017.

II. A model of best practice

In setting up the public register, the UK has set standards for what a good register of beneficial ownership look like that should be replicated.

Publishing as open data

Open data is digital "structured" or "machine-readable" data that is made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed by anyone, anytime, anywhere. Any user of open beneficial ownership data should be able to access the data, search it freely and/or download it as structured data - for example a spreadsheet - and use it for any purpose. The UK register has adopted this approach, making the data searchable for free, and making the whole register available to access and use as open data.

This comes with clear benefits for users, as well as implications for the policy goals of stemming corruption and encouraging business integrity:

- Open data can be more easily linked with global beneficial ownership data: As the World Bank has noted, when corporate structures are used to launder money, this often involves adding layers of "legal distance" between the beneficial owner and their assets. These layers are placed strategically in a number of jurisdictions because of the difficulty to investigators of accessing information that crosses national boundaries.[12] That is why the ability to link beneficial ownership information from around the world is essential to realizing beneficial ownership data's potential to expose transnational networks of illicit financial flows.

- Open data can be linked with other useful data sets: This linkability doesn't just bear fruit when it's across borders, but also across different areas of government. For instance, linking beneficial ownership data to procurement is a powerful way to track who wins public contracts and for how much. This would bring needed transparency to the area of government that is also its highest corruption risk.[13] A similar benefit would accrue if beneficial ownership was linked with licensing data and processes.

- Open data can improve data quality and data usage: In the UK, company registry data use has grown exponentially to over 2 billion data searches a year [14] since the data was made free and open. This compares with just over 6 million access requests a year for paid information during 2014-15.[15] As a result of this massive increase in

[12] Emile van der Does de Willebois, et al, "The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It," Stolen Asset Recovery Initiative (2011).

[13] Chris Taggart and Gavin Hayman, 'How a global register of beneficial ownership can help end secrecy', (2016).

[14] Companies House, "Annual Report and Account 2016/2017" (2017).

[15] Companies House, "Annual Report and Accounts 2014/15" (2015).

> users, the number of people looking at the data has increased by several orders of magnitude leading to quality improvements using the 'many eyes' principle. Moreover, Companies House's "overall attention to technological innovation and efficiency has yielded significantly lowered company registration costs, contributing to a steady upward growth in company registration."[16]

The more people use the data, and the simpler it is to compare it with other datasets, the more likely inconsistencies or potential wrongdoings will be identified. In a discussion of the publication of income and asset declarations of public officials, the World Bank has noted that "public disclosure of AD [asset declarations] information enables an AD system to enlist civil society in supporting the verification of declarations, potentially enhancing enforcement, and thereby increasing the credibility of the system as well."[17]

All beneficial ownership data should be published as open data

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Case-by-case exemptions for personal security

Increasingly, data protection and security of beneficial owners have being cited as arguments for not publishing beneficial ownership data.[18] To address these concerns, the PSC register provides the public with a limited amount of information to identify an individual: the month and year rather than the full date of birth of the person, and a contact address for the company.

Additionally, there is a rigorous process for exempting information for publication. This process works on a case-by-case basis, where individuals apply for their data not to be published, and offers no blanket exemptions for any group of people. Individuals are only able to claim an exemption from publication where they can provide evidence proving a serious risk of violence or intimidation due to the nature of their company's operations. Of over one million companies that had provided beneficial ownership information in the first six months of the register's operation, only 270 individuals applied to have their information withheld on the basis that it would put them at risk, and of these only 5 had been granted. [19]

Procedures should be put in place to allow exemptions from publication, assessed on a case-by-case basis on the basis of evidence.

Providing & updating the information

Before the register was introduced, some commentators questioned the compliance burden that would be placed on businesses in identifying their beneficial owners. However the findings from the first 1.3 million companies that filed beneficial ownership information shows that only 2% of them struggled to identify their beneficial owners (see the Annex for the UK's beneficial ownership tests).[20] This mirrors the government's own estimates that for 99% of UK companies their beneficial owners are the company shareholders,[21] and demonstrates the ease of compliance for most businesses that do not have complex ownership chains.

Initially companies only had to provide information about any changes in its beneficial ownership on an annual basis, as part of the company's annual

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[16] Companies House Official Statistics, "Incorporated companies in the UK: October to December 2016" (2016).
[17] Ruxandra Burdescu, et al., "Income and Asset Declarations: Tools and Trade-offs," Stolen Asset Recovery Initiative (2009).
[18] Examples below for the UK and Germany. Robert Lee, Tax-News.com, 'UK Register of Companies Raises Privacy Concerns' 18 June 2015. Die Familienunternehmer, 'Familienunternehmer fordern Augenmaß beim Transparenzregister', 7 February 2017.
[19] Global Witness Freedom of Information request - 304/12/16 Question about security exemption applications.
[20] November 2016 analysis of PSC register data by Global Witness, DataKind UK, OpenCorporates, Spend Network and OCCRP.
[21] HM Treasury/DTI, 'Regulatory Impact Analysis - Disclosure Of Beneficial Ownership Of Unlisted Companies', July 2002.

confirmation statement. However, as part of the implementation of the Fourth Anti Money Laundering Directive companies are now required to update the central register within 28 days of any change to its beneficial ownership.[22] The move to event-driven reporting for companies has given a major boost to proactive compliance and the ability for UK authorities to follow up on companies failing to report or taking too long to identify their beneficial owners.

Companies should be required to update any changes to their beneficial ownership within a short timeframe to ensure the register is accurate.

Collaboration with registry users

Companies House adopted a collaborative approach to working with end users, including civil society, to ensure that the register was effective and met users' needs. This included establishing a data users' reference group and an online community developers' forum which regularly updates technical users on development schedules. The Companies House technical team regularly fields questions from the developer community in an open and collaborative manner. Companies House also collaborated with Global Witness in the data analysis of the registry undertaken in November 2016, including actively supplying additional data products that are not readily available from their website to support this project.

The agencies holding beneficial ownership registers should collaborate with users to ensure the register meets users needs.

Penalties

To ensure effective compliance with the register, there are significant potential penalties for non-compliance. Failure to provide accurate information on the register and failure to comply with requests for information from a company are both criminal offences and may result in a fine and/or a prison sentence of up to two years.[23] It is very likely that these would not be the first response to companies that fail in their obligations to Companies House, but it is vital that these strong sanctions are available and enforced against repeat offenders.

Robust sanctions are required to ensure effective compliance.

[22] Companies House – news story: 'Changes to UK anti-money laundering measures', last updated 23/6/17.
[23] Companies House, 'Guidance: PSC requirements for companies and limited liability partnerships', last updated 23/6/17.

III. Areas for improvement

The UK's public register was pioneering in many ways, and while many parts of the register set new standards, there are areas where there is room for further improvement.

Thresholds

The UK only requires beneficial owners to report themselves as such if they control 25% of the shares or voting rights in a company.[24] This threshold creates a risk that significant interests in a company may not be represented in the register; after all, 20% of a company can be a large and lucrative stake. In extractives, for instance, where company ownership can be extremely profitable and corruption risks are very high, even a 1% stake in a company is a relationship worth reporting. Global Witness has identified multiple examples where owning as little as 10% of a company has raised serious red flags.[25]

The Nigerian Ministry of Justice identified this 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."[26] In Ghana, the amended Companies Act does not set any threshold percentage for defining beneficial ownership.[27]

Countries should consider defining a beneficial ownership threshold lower than 25%.

Another lesson learned from the UK is the potential challenges raised by the banding of ownership stakes. Beneficial owners report their stake as existing on a range from 25% to 50%, 51% to 75%, or 76% to 100%. One issue is that this is imprecise, and no additional burden is presented by asking the filer for a specific percentage. Another is that it makes it challenging to compare data across jurisdictions, unless that data is modelled in precisely the same way, with matching bands.

Beneficial owners should be required to report their holding of shares or voting rights in exact percentages.

Unique identifiers

One limitation of the register is that by only providing the name and month and year of birth it can make it difficult to ascertain which records refer to the same person when there are many people with the same name. This is a challenge both to compare within the UK registry where individuals are beneficial owners of more than one company and to be able to compare against other data sets.

[24] See Annex for the rules on how a PSC is defined.
[25] Global Witness, 'Assessment of EITI Beneficial Ownership pilots', p.7, March 2015.
[26] Federal Ministry of Justice of Nigeria and IBLF Global, 'Improving the business environment in Nigeria through transparency in the management of beneficial ownership - a policy brief', Feb 2017.
[27] Republic of Ghana, 'Ghana EITI Beneficial Ownership Road Map' 1/10/2016.

One solution would be for the register to allocate unique identifiers to individuals that would allow the registry to link records where individuals are beneficial owners or company officers (e.g. directors or secretaries) of more than one company and help users of the data to match records against other data sets. This unique identifying number should be specific to the database, not a piece of personal data such as a personal ID or passport number. Companies House already links some records for company officers across companies, a functionality which should be expanded to include all company officers and beneficial owners.

The use of unique identifiers to connect individuals within corporate research has been shown to have been enormously powerful. In 2015 Global Witness published a ground-breaking report revealing the network of military elites, US-sanctioned drug lords and crony companies controlling Myanmar's multi-billion dollar jade industry. Without unique identifiers to connect individuals, particularly in a context where some names are very common, this analysis would not have been possible.[28]

Registers should use unique identifiers in addition to personal data such as name and month and year of birth.

Data validation at data entry

How users are allowed to enter information into the registry can have a huge impact on the quality and accuracy of the resulting data. For example, people submitting information to the UK register were asked to type their nationality into the relevant field, resulting in over 500 spellings of 'British' and 10 beneficial owners listing their nationality as Cornish (a county in South West England).[29] The resulting data is poorer quality, more difficult to disambiguate, and generates lower confidence from users. This particular issue is easily resolved by replacing the free text input with a choice from a pre-populated list of recognised countries, which Companies House now intends to implement imminently to a new Companies House and HMRC service for incorporating certain company types. This will then be rolled out to other incorporation services later this year before being extended to other filings in 2018. This same approach could also be used for other standardised, canonical data fields, such as UK postal address validation.

The lack of data validation on the date of birth field also allowed 2,160 beneficial owners to provide their date of birth as 2016 and others as far into the future as 9988. Following the findings of the data analysis exercise in November 2016, Companies House has now included a prompt within the PSC Register when users provide a date of birth which is below age 16 or over 100 and preventing people entering an age over 110 through the online system.

Basic data validation systems such as multiple choice fields should be used to improve data quality.

Verification

One of the most significant weaknesses of the UK register is that the data submitted is not verified, it is solely self-reported data from companies. This means that data can be submitted that does not comply with the requirements of the register or is inaccurate.

Analysis of the UK register found multiple examples of potential non-compliance, including listing companies based in tax havens as beneficial owners or reporting looped ownership where companies appear to own themselves.[30] In February 2017, Companies House identified 4,500 companies that

[28] Open Corporates, 'How open company data was used to uncover the powerful elite benefiting from Myanmar's multi-billion dollar jade industry', 27/10/2015.
[29] November 2016 analysis of PSC register data by Global Witness, DataKind UK, OpenCorporates, Spend Network and OCCRP
[30] November 2016 analysis of PSC register data by Global Witness, DataKind UK, OpenCorporates, Spend Network and OCCRP.

had reported a company located in a tax haven as their beneficial owner. Companies House decided to run a pilot targeting approximately 250 suspected non-compliant companies, alerting them to their non-compliance and asking them to review their details after which approximately 70% of these companies corrected their PSC entries in the register.[31]

Companies House should expand these initial pilots to undertake regular systematic analysis of the registry to identify and pursue potentially non-compliant companies.

Systems should be put in place to identify potential non-compliance and pro-actively pursue companies that report non-compliant data.

To verify or improve the accuracy of the data there are a range of approaches that could be taken, including:

- Requiring entities that conduct customer due diligence to file reports to the register, regulators or law enforcement if the beneficial ownership data they find does not match the public register. This has been proposed by the European Parliament for the revision of the Anti-Money Laundering Directive.[32]

- Requiring the submission of proof of identity or documented proof of ownership / control of the company. Denmark - which has recently also set up a public register of beneficial ownership for companies - requires beneficial owners to submit a scanned copy of their passport or other national ID, limiting the possibilities for false registrations.[33]

- Cross-checking data against other government data sets.

- Establishing systems for members of the public to easily highlight or report suspected inaccurate data in the registry.

It is important to note that all but one of these measures are only possible when the information is available as structured data, and that two are only possible when that data is available to members of the public to use and re-use.

The resources for these activities should be proportionate to the scale of the risk of abuse and the impacts caused by abuse of corporate vehicles through hidden beneficial ownership. The UK's AML NRA identifies that 70% of money laundering cases being investigated by HMRC used company structures for money laundering, shifting a total of £800 million.[34] Much of the costs for identifying non-compliance with the register could be recovered from the proceeds of financial penalties.

As part of the implementation of the Fourth Anti-Money Laundering Directive, the UK is considering what additional measures may be needed to improve the quality of the data.[35]

A range of systems should be established to improve data quality or verify data.

[31] Meeting with Companies House, Cardiff, September 2017.

[32] 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/E', 9/3/2017.

[33] Lexology - Bech-Bruun, "Mandatory Registration of Beneficial Owners", 31 May 2017.

[34] HM Treasury/ Home Office, 'UK national risk assessment of money laundering and terrorist financing' October 2015.

[35] HM Treasury, 'Consultation outcome - Money Laundering Regulations 2017', 26/6/2017.

IV. Conclusions

The UK register has demonstrated that it is possible to establish a public register of company beneficial ownership that is workable, effective and balances the legitimate needs of vulnerable individuals for privacy against the wider benefit of placing beneficial ownership information in the public domain. The register has also set the standard for publishing this data as open data, improving data quality and maximizing the value to business and society.

As with all ground-breaking initiatives there is always room for improvement, and reducing the ownership thresholds and improving data validation and verification could have a huge impact on increasing robustness of the register.

As other countries look towards setting up their own public registers of company beneficial ownership information – including across the EU and countries engaged in the Extractive Industries Transparency Initiative – there is much that can be learnt from the UK register to ensure these registries make the most value out of this data.

Annex: The UK register's beneficial ownership disclosure requirements

The beneficial ownership register, known as the register of people with significant control (PSC), was introduced through amending the Companies Act in 2015. Under the Act, companies are required to:

- Identify the people with significant control (PSCs) over the company and confirm their information
- Record the details of the PSC on the company's own PSC register
- Provide this information to Companies House as part of the annual Confirmation Statement (an annual statement provided by all companies to Companies House)
- Update the information on the company's own PSC register when it changes, and update the information at Companies House when the next Confirmation Statement is made

Under the guidance for the register, a PSC defined as an individual who:

1. Holds more than 25% of shares in the company;
2. Holds more than 25% of voting rights in the company - for example as defined in articles of association.
3. Holds the right to appoint or remove the majority of the board of directors of the company.
4. Has the right to exercise, or actually exercises, significant influence or control over the company.
5. Holds the right to exercise, or actually exercises, significant influence or control over a trust or firm that would satisfy one of the first four conditions if it were an individual.

The following information is publicly disclosed for PSCs in the register:

- Name
- Correspondence address (not home / residential address)
- Month and year of birth
- Date of latest notification to Companies House
- Nationality & country of residence
- Nature of control - using the categories 1-5 above, and for categories 1 & 2 the extent of their holdings of shares or voting rights, either 25-50%, 50-75% or over 75%