



BRIEFING PAPER

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Shining a light on beneficial ownership: what's happening in the UK and elsewhere?

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Summary

The ongoing debate about transparency of ownership tends to highlight two separate (but related) issues:

- the **exchange of information** between government and law enforcement agencies and
- the **making public of information** about beneficial ownership.

The Financial Action Task Force (FATF) has defined a **beneficial owner** as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted (...)”.

There are longstanding concerns that, when companies, land or real property are bought through shell companies, so disguising their true ownership, the resulting lack of transparency may allow corruption or crime to flourish. It has been said, for example, that “dirty money” is being laundered through property purchases in prime areas of London.

Many commentators have argued that not only should information about beneficial ownership be gathered by government bodies concerned with tax, property ownership and kindred matters, that information should be published and easily accessible to the public. This latter point remains contentious, with very many jurisdictions not yet committed to the creation of public registers and some having explicitly ruled it out.

The international anti-corruption summit in May 2016

Working to increase transparency around beneficial ownership was therefore one of the themes of the international anti-corruption summit held in London in May 2016. No agreement emerged there about whether information about beneficial ownership, once obtained by tax or other government bodies, should be made public. The [summit communiqué](#) pledged firm collective action on beneficial ownership. It did not, though, offer a firm commitment to publication of registers of beneficial ownership but, rather, suggested that this *might* happen:

It may include establishing public central registers.

In April this year, [Transparency International](#) (an NGO concerned with the general area of corporate and political corruption) published an assessment of progress towards establishing public registers of beneficial interest and named the UK, Ukraine, Norway and the Netherlands as committed to public registers of beneficial ownership.

The *Guardian* [reported](#) after the summit that the number of countries which had committed to creating public registers of beneficial ownership had grown to six, which it named as the UK, Afghanistan, Kenya, France, the Netherlands and Nigeria (thus not naming Norway and Ukraine). The *Guardian's* report also summed up other summit commitments concerning beneficial ownership:

- **Eleven countries will join the now 29-strong group where lists of beneficial owners are drawn up and shared between governments**, although not publicly. Those countries include Cayman Islands, Jersey, Bermuda, the Isle of Man and the UAE.
- **The British prime minister used his opening speech to warn foreign companies that own around 100,000 properties in England and Wales that they will be required to disclose their ownership**, one of a number of measures aimed at cleaning up London as an international centre for money laundering.

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- **The US is one of the countries which did not sign up to the pledge to share registers of beneficial ownership**, and Cameron said he would keep pushing the Americans to be more accountable, as well as efforts to improve transparency on island tax havens like the British Virgin Islands, which also did not sign up to sharing information.

The countries considering moving towards public registers of beneficial ownership are [Australia](#), [New Zealand](#), [Jordan](#), [Indonesia](#), [Ireland](#), [Argentina](#) and [Georgia](#); their respective country statements released after the summit generally speak in terms of “exploring” feasibility.

[Public Finance International](#) suggested that the small number of countries pledging to create registers of beneficial ownership and make them public was a measure of the summit’s limited impact:

Barry Johnson, head of advocacy at ActionAid, said that as a result the summit will be “remembered for what has not been achieved”.

What’s happening in the UK?

In the UK, recent debate has centred on beneficial ownership of companies and beneficial ownership of land and real property.

Beneficial ownership of companies in the UK

The Government introduced provisions concerning transparency of beneficial ownership of companies through [part 7 of the *Small Business, Enterprise & Employment Act 2015*](#), which amended the [Companies Act 2006](#) to require companies to keep a register of “people who have significant control over the company”, often known as PSCs.

Companies were required to have a register of PSCs [from 6 April this year](#). That information must be declared to Companies House from 30 June 2016, with the company’s annual statement, and Companies House’s register should therefore be complete by 29 June 2017.

Companies House published several guidance documents for various types of company and partnership. Amongst them were

- a lengthy guidance document offering non-statutory [guidance for companies, societates europaeae and limited liability partnerships](#) and
- another offering [guidance for PSCs themselves](#) and
- the [PSC register summary guidance](#). This is an illustrative guide to how the PSC regime applies to some simple company structures (companies with more complex structures being covered in the full guidance).

The guidance on the [meaning of significant influence or control for companies](#) and the draft guidance on this [for limited liability partnerships](#) is statutory.

The Department for Business, Innovation and Skills’ (BIS) first consultation paper on beneficial ownership – [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#) – was published in March 2016. [Chapter 3](#) dealt with property and noted that there may be changes to the PSC legislation.

Beneficial ownership of land and real property in the UK

Regulation and guidance on beneficial ownership of land and real property is nowhere near as advanced.

Although other concerns have also been expressed - such as about the effects on the housing market and the undesirability (as some commentators see it) of having many properties, especially in central London, that are left empty – much of the concern about beneficial ownership of UK land and real property centres on links with organised crime and money laundering.

Is “dirty money” being laundered through the UK property market?

Of course, most property sales are legitimate and there may be valid reasons why property should be bought through an offshore company. Even so, it is widely accepted that some property in London is being bought with “dirty money”, obtained through corruption or other crime.

The London [Evening Standard](#) disclosed in October 2015 that law enforcement agencies in the UK had investigated property sales worth more than £180 million as likely involving the proceeds of crime.

[Chapter 6](#) of BIS’ consultation paper in March 2016 also drew attention to the apparent scale of the problem of offshore companies investing the proceeds of corruption in UK property:

Between 2004-2014, over £180m worth of property in the UK has been investigated by UK law enforcement as suspected proceeds of corruption. Moreover, over 75% of these properties use offshore corporate ownership. This is believed to be the tip of the iceberg in terms of the scale of the proceeds of corruption invested in UK property through offshore companies.

What does the Government intend to do?

[Chapter 6](#) of the BIS consultation paper set out the current position, the problems and the solutions as the Government sees them, which would entail extending the PSC regime to ownership of land and real property and increasing the information provided to the Land Registry and made public.

The Land Registry proposals would apply to England and Wales, but the paper [also sought views](#) on whether the Government should work with the devolved administrations to ensure a UK-wide approach. The closing date for responses was 4 April 2016.

One further question is whether public access to the register would be free of charge. The consultation in March 2016 on the [possible privatisation of the Land Registry](#) set out how charges are currently prescribed and might be prescribed in the future.

What happens next?

BIS is currently [analysing the feedback](#) received in response to the Land Registry consultation and the first consultation on enhancing transparency.

That consultation was seeking agreement to the principle of establishing a register. There will be a second consultation (probably later in 2016) on some of the detail of how it should be done, such as who should hold the register and what the sanctions for non-compliance should be.

It is probable that the register would need to be introduced through primary legislation, as it would deal with companies currently not covered by the *Companies Act 2006*.

Is foreign investment in UK property driving up property prices?

Much of the debate around the effects of foreign investment on the London property market is conjectural, as it is hard to separate the effects of that investment from other factors which might also be in play.

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The Government has not conducted any specific studies into the potential impact of foreign investment on property prices.

Is foreign investment in the London property market likely to remain at current levels?

[Money Week](#) has argued that the supply of foreign investors may be drying up and the increasing supply of prime property is forcing down prices. An article in the [Spectator](#) remarked that prime London property had long been “held aloft” by overseas investors and that a decision to leave the EU would make little difference to non-EU investors, who were the majority of overseas investors.

Does London benefit from foreign investment in property?

Some commentators point to the benefits for London of foreign investors buying property. The business organisation London First has published a [briefing note](#) arguing that London is an international business city and that some of its housing investment is financed by selling property overseas. It argues too that the building of new properties enables the creation of affordable homes and the financing, through a levy, of infrastructure projects such as Crossrail.

What’s happening in the Crown Dependencies and British Overseas Territories?

The Cabinet Office and Foreign and Commonwealth Office (FCO) have published a [compendium](#) of the arrangements between the UK and Crown Dependencies and British Overseas Territories for the sharing of information about beneficial ownership. Lord Ashton of Hyde [confirmed](#) on 26 May 2016 that all the Crown Dependencies and British Overseas Territories would be sharing information with the UK.

Given that some of the Crown Dependencies and British Overseas Territories have already (as set out below) said very firmly that they will not be creating public registers, it seems likely that any further negotiation towards such registers will not be easy.

Registers of legal and beneficial ownership: how public are they?

Crown Dependencies

- [Guernsey](#) has committed to do further work (in consultation with Alderney and Sark) on gathering beneficial ownership information. Proposals will be put forward for parliamentary approval, but these will not include a public register.
- The Companies Register in the **Isle of Man** is [searchable](#). It also provides information about [local legislation on beneficial ownership](#). The Isle of Man has [rejected the proposal](#) for a public register, noting that most respondents to its consultation did not support the creation of a central register, regardless of whether it was public.
- The current [Companies Register](#) in **Jersey** is searchable. Jersey’s stance on public registers was set out in [Jersey Finance Ltd’s response to the BIS consultation](#) on enhancing transparency around ownership of land and real property, where it was suggested that a public register could be both a disproportionate response – from which Jersey ought to be exempt - and a deterrent to legitimate investment.

British Overseas Territories

- **Anguilla** has agreed to the establishing of the [“Anguilla platform”](#) for sharing beneficial ownership information with national enforcement agencies.
- [Bermuda](#) has a long-established central register of company beneficial ownership.

- The responses to a consultation on creating a public register of beneficial ownership in the **British Virgin Islands** were [decisively against the proposal](#).
- The [register of beneficial ownership in the Cayman Islands](#) will be neither central nor public.
- **Gibraltar** is committed to implementing the 4th money laundering directive, including its provisions relating to a register of beneficial ownership.
- The **Turks and Caicos Islands** will establish the “Turks and Caicos platform”. It [was reported](#) in April 2014 that the Turks and Caicos government was considering a creating a central register and making it public and it [was reported](#) last month that the government was inviting views on how to adopt the international standard.

How have other countries with dependent territories dealt with these issues?

An [IMF report in 2013](#) observed that **France** had strengthened its arrangements for advising and liaising with its overseas departments and territories:

The [United States’ government’s statement](#) following the international anti-corruption summit mentioned (amongst many other things) new rules on transparency and beneficial ownership of companies formed within the United States. Last month, the [White House blog](#) discussed what President Obama had done to increase transparency and disclosure.

The [Tax Justice Network](#) has drawn attention to a July 2015 [report from the IME](#), which highlighted shortcomings in the US approach to transparency and disclosure of beneficial ownership. The Network has also alleged that “outrageous” things are happening in the US’ own territories:

And the U.S. seems to be hosting and tolerating outrageous activities on its own territories, such as Guam. A new “[Guam trust incentives program](#)”, for example, boasts 100 percent tax-free trusts. Coupled with the fact that [the US Department of the Treasury’s Financial Crimes Enforcement Network] won’t even bother to investigate these things, we have the makings of yet another toxic cocktail, courtesy of Uncle Sam.

US policy on international tax avoidance is discussed in a [briefing from the Congressional Research Service](#). Examining tax evasion within and outside the US, the briefing remarks that past programmes have not required beneficial ownership to be disclosed. The briefing goes on to consider the options for improving compliance, such as requiring the disclosure of beneficial ownership.

Beneficial ownership elsewhere: how will the registers work?

- In its [country statement](#) following the international anti-corruption summit, **Afghanistan** committed (amongst other things) to increasing transparency and publishing and sharing information on beneficial ownership.
- **France** [committed itself](#) to the “most advanced standards”. Its registers for trusts and legal persons would, it said, be public, but the statement made no mention of France’s overseas departments and territories.
- In its [country statement](#), **the Netherlands** set out its commitment to a public register. The [Financial Transparency Coalition](#) website has also described how the register will work in the Netherlands, but questions whether the register will be open data:
- **Kenya** [said](#) that the summit’s focus on beneficial ownership was consistent with its anti-corruption trajectory and offered some firm commitments, including that it

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would “take measures in line with her new Companies regulatory framework to establish public central registers of company beneficial ownership information”.

- Similarly, **Nigeria**'s [country statement](#) set out its commitment to transparency about beneficial ownership, including a central, public register.
- In its [country statement](#) after the summit, **Norway** pledged to explore creating central public registers of information on beneficial ownership. The Norwegian Parliament has already voted in favour of a register and has set out its views of how it should work. The [Tax Justice Network](#) website describes the background.
- **Ukraine**, following the summit, pledged to improve the quality of its information on beneficial ownership. English language sources describing in any more detail the Ukrainian system for handling beneficial ownership information appear to be few but, in a [factsheet](#), the Extractive Industries Transparency Initiative has commented on how the register has been working and some of its limitations. A [European Commission report](#) last December outlined anti-money laundering measures in Ukraine.

The Commons Library [briefing on the May 2016 international anti-corruption summit](#) (CBP 07580, 20 May 2016) offers a brief history of UK legislation on beneficial ownership in the context of the summit and what has so far emerged from it.

The Commons Library briefing [Foreign investment in UK residential property](#) (CBP 07723, 3 October 2016) asks whether overseas investment is a problem and examines whether it affects (for example) affordability or availability of housing.

Other Commons Library briefings on related topics are available on Parliament's topic pages for [financial services](#) and [financial institutions](#), in particular:

[Transparency, corruption and bribery](#) (SN 03806 19 December 2013)

[Tax avoidance: a General Anti-Abuse Rule](#) (SN 06265, 19 April 2016)

[Evolution of UK money laundering law](#) (SN 02592, 21 April 2016)

[Corporate economic crime](#) (CBP 07359, 2 November 2015) and

[Banking services: reform and issues](#) (CBP 07234, 20 April 2016)

1. What do we mean by beneficial ownership?

The ongoing debate about transparency of ownership tends to highlight two separate (but related) issues:

- the **exchange of information** between government and law enforcement agencies and
- the **making public of information** about beneficial ownership.

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction and whose recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard. It defines beneficial ownership thus:

Beneficial owner

Beneficial owner refers to the natural person(s) who ultimately¹ owns or controls a customer² and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[1] Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

[2] This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.

FATF, *Glossary of the FATF Recommendations*, 2012

Practical Law sets out the differences between **legal** and **beneficial ownership** in England and Wales:

The ownership of land in England and Wales is dealt with in two ways: the legal ownership and the economic benefit, which is also commonly referred to as the beneficial ownership.

The legal ownership is separate from the beneficial ownership and the legal owner or owners will not necessarily be the same as the beneficial owner or owners.

The legal owner is said to hold the beneficial interest in the property on **trust** for the beneficial owner.

The beneficial owner of the land will have a right to the income from the property or a share in it, and a right to the proceeds of sale of the property or part of the proceeds.

A beneficial interest in property is an equitable interest.¹

¹ [Beneficial interest](#), *Practical Law* (undated)

1.1 Public registers of beneficial ownership: starting from a low base?

The Tax Justice Network's Financial Secrecy Index in July 2015 recorded that there were

- no jurisdictions with published information on beneficial ownership
- only one jurisdiction - New Zealand - with published information on legal ownership available at no cost
- a further five - Australia, Estonia, Isle of Man, Italy and Jersey - with legal ownership information available at a cost below US\$10, €10 or £10 and
- 96 jurisdictions with no published ownership information.²

Global Witness and Christian Aid in November 2014 published a [beneficial ownership scorecard](#) which recorded the outcome (where known) of territories' consultations on creating public registers of beneficial ownership.³

The Department for Business, Innovation and Skills' (BIS) first consultation paper on beneficial ownership – [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#) – was published in March 2016. In the foreword, junior minister Baroness Neville-Rolfe said that the UK would be the first G20 country to establish a publicly-accessible register:

The UK Government has legislated to ensure that, from June 2016, we will be the first G20 country to establish a publicly accessible central registry showing who really owns and controls UK companies. This will open up a new era of corporate transparency in Britain and will help us to tackle corruption, money laundering and terrorist financing.⁴

In April this year, Transparency International (an NGO concerned with the general area of corporate and political corruption) published an assessment of progress towards establishing public registers of beneficial interest:

The United Kingdom, Ukraine, Norway and the Netherlands have decided not only to require companies to report and update the information on who is really in control of companies incorporated in those jurisdictions but also to publish that information in a public register.

Transparency International applauds these countries' major steps in accountability. We believe citizens, investors, law enforcement, journalists and other companies have a "legitimate interest" in knowing this information. European Union countries are currently

² Tax Justice Network, Financial Secrecy Index: [Key Financial Secrecy Indicator 4: Public Company Ownership](#), 22 July 2015: Table 1 and Graphs 1 and 2.

³ Global Witness and Christian Aid, [Overseas Territories and Crown Dependencies Beneficial Ownership Scorecard](#), November 2014

⁴ BIS, [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#), March 2016: page 3

debating this issue of "[legitimate interest](#)" and whether the latest EU Anti-Money Laundering Directive should be public or not.⁵

The international anti-corruption [summit communiqué](#) last month pledged firm collective action on beneficial ownership. It did not, though, offer a firm commitment to publication of registers of beneficial ownership but, rather, suggested that this *might* happen:

It may include establishing public central registers.⁶

The *Guardian* [reported](#) after the summit that the number of countries which had committed to creating public registers of beneficial ownership had grown to six (although, contrary to what Transparency International had indicated, the *Guardian* did not name Norway or Ukraine amongst these six):

Six countries, Britain, Afghanistan, Kenya, France, the Netherlands and Nigeria, have agreed to publish registers of who really owns companies in their territories, a so-called register of beneficial ownership. This is a key goal of anti-corruption groups. Six more, including Australia, will consider doing so.⁷

The report also summed up other summit commitments concerning beneficial ownership:

- **Eleven countries will join the now 29-strong group where lists of beneficial owners are drawn up and shared between governments**, although not publicly. Those countries include Cayman Islands, Jersey, Bermuda, the Isle of Man and the UAE.
- **The British prime minister used his opening speech to warn foreign companies that own around 100,000 properties in England and Wales that they will be required to disclose their ownership**, one of a number of measures aimed at cleaning up London as an international centre for money laundering.
- **The US is one of the countries which did not sign up to the pledge to share registers of beneficial ownership**, and Cameron said he would keep pushing the Americans to be more accountable, as well as efforts to improve transparency on island tax havens like the British Virgin Islands, which also did not sign up to sharing information.⁸

Public Finance International suggested that the small number of countries pledging to create registers of beneficial ownership and make them public was a measure of the summit's limited impact:

But just five nations made firm commitments to join the UK in publishing the true identity of the owners of foreign companies operating in their countries. Transparency on beneficial ownership

⁵ Maggie Murphy, [Secret company ownership: a global solution for a global challenge](#), 4 April 2016

⁶ [Anti-corruption Summit, London 2016: Communiqué, 12 May 2016](#): paragraph 4

⁷ Jessica Elgot, "[World leaders pledge to tackle corruption at London summit – as it happened](#)", *Guardian* online, 1 May 2016

⁸ *Ibid*

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is considered the “gold standard” in fighting tax evasion and corruption by Cameron and campaigners alike.

[Afghanistan, France, the Netherlands and Nigeria](#) all agreed to [commit to the measures](#) and Kenya has now also agreed to establish a register of beneficial ownership.

A further six nations, including Australia, Ireland and Norway, have said they will explore similar measures.

(...)

Barry Johnson, head of advocacy at ActionAid, said that as a result the summit will be “remembered for what has not been achieved”.⁹

The countries considering moving towards public registers of beneficial ownership are [Australia](#), [New Zealand](#), [Jordan](#), [Indonesia](#), [Ireland](#), [Argentina](#) and [Georgia](#); their respective country statements released after the summit generally speak in terms of “exploring” feasibility

⁹ Emma Rumney, “[Anti-Corruption Summit concludes but few sign up to beneficial ownership pledge](#)”, *Public Finance International* online, 13 May 2016. .

2. Beneficial ownership of companies in the UK

2.1 People with significant control over companies in the UK

The Government introduced provisions concerning transparency as part of the [Small Business, Enterprise & Employment Act 2015](#) - specifically [part 7 of the Act](#).¹⁰ Section 81 and schedule 3 amend the [Companies Act 2006](#) to require companies to keep a register of “people who have significant control over the company”, often known as PSCs.¹¹

Companies were required to have a register of PSCs [from 6 April this year](#). That information must be declared to Companies House from 30 June 2016, with the company’s annual statement, and Companies House’s register should therefore be complete by 29 June 2017.¹²

Companies House published several guidance documents for various types of company and partnership. Amongst them was a lengthy guidance document offering non-statutory [guidance for companies, societates europaeae and limited liability partnerships](#)¹³ and another offering [guidance for PSCs themselves](#).¹⁴ The guidance on the [meaning of significant influence or control for companies](#)¹⁵ and the draft guidance on this [for limited liability partnerships](#)¹⁶ is statutory.¹⁷

A comparatively brief guide comes in the [PSC register summary guidance](#).¹⁸ This is an illustrative guide to how the PSC regime applies to some simple company structures (companies with more complex structures being covered in the full guidance). It sets out what a company needs to do:

4. An officer of the company is required to:

UK law is couched in terms of *persons with significant control* over the company

The Commons Library [briefing on the May 2016 international anti-corruption summit](#) offers a brief history of UK legislation on beneficial ownership (CBP 7580, 20 May 2016).

¹⁰ The Commons Library briefing for the second reading of the [Small Business, Enterprise and Employment Bill](#) provides further background (RP 14/39, 10 July 2014).

¹¹ Some aspects of the *Companies Act 2006* are discussed in the Commons Library briefing [Corporate economic crime](#) (CBP 7359, 2 November 2015).

¹² BIS, [News story: ‘People with Significant Control’ register comes into force](#), 6 April 2016

¹³ BIS, [Register of People with Significant Control: Guidance for Companies, Societates Europaeae and Limited Liability Partnerships](#), Version: 4, 11 April 2016

¹⁴ BIS, [Register of People with Significant Control: Guidance for People with Significant Control Over Companies, Societates Europaeae and Limited Liability Partnerships](#), Version: 2, 11 April 2016

¹⁵ BIS, [Statutory Guidance on the meaning of “significant influence or control” over companies in the context of the Register of People with Significant Control](#), 14 April 2016

¹⁶ BIS, [Draft Statutory Guidance on the meaning of “significant influence or control” over Limited Liability Partnerships in the context of the Register of People with Significant Control](#), 14 April 2016

¹⁷ For a discussion of the status and nature of statutory guidance, see (for example), [“When is guidance ‘statutory’ and does it matter?”](#), *Local Government Lawyer*, 10 May 2013

¹⁸ BIS, [Summary guide for companies –register of people with significant control](#) (undated)

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1. Identify the people with significant control (PSCs) over the company and confirm their information (see paragraph 9);
2. Record the details of the PSC on the company's own PSC register;
3. Provide this information to Companies House as part of the annual Confirmation Statement (formerly the Annual Return); and
4. 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.¹⁹

The guidance also sets out how to identify a PSC:

5. A PSC is an individual who meets one or more of the following conditions:

	Condition:	What you need to consider:
(i)	An individual who holds more than 25% of shares in the company.	Review your company's register of members and identify shareholdings of over 25%.
(ii)	An individual who holds more than 25% of voting rights in the company.	Review your company's register of members, articles of association, and identify people with voting rights (often attached to shares) over 25%.
(iii)	An individual who holds the right to appoint or remove the majority of the board of directors of the company.	Look at your company's constitution, including articles of association, and identify whether anyone has this right. If there is only one director and someone has the right to appoint them, then they would meet this condition.
The following conditions apply only in limited circumstances and are explained in Statutory Guidance –available here.		
(iv)	An individual who has the right to exercise, or actually exercises, significant influence or control over the company.	You would consider this where an individual does not meet one of conditions (i) to (iii) but does exercise 'significant influence or control' over the company. The statutory guidance sets out principles and situations where an individual would be a PSC.
(v)	Where a trust or firm would satisfy one of the first four conditions if it were an individual. Any individual holding the right to exercise, or actually exercising, significant influence or control over the activities of that trust or firm .	If one of the above conditions is met by a trust or firm (without legal personality), read the relevant section in the statutory guidance to identify who should be included in the PSC register.

¹⁹ BIS, [Summary guide for companies – register of people with significant control](#) (undated). For a brief description of company confirmation statements, see Companies House, [News story: The Small Business, Enterprise and Employment Act is here](#), updated 27 March 2016.

6. Conditions (i) to (iii) might be met directly or indirectly. A condition is met indirectly where an individual holds their rights through, for example, another company. This guide does not include information on what you need to do when rights are held indirectly; see Chapters 2 and 7 of the full guidance for further information.

7. These conditions may also be met under a number of less typical circumstances. For example, where there are agreements to vote or exercise rights jointly and the total combined value of the shares or rights exceed 25%. These conditions are explained in more detail in Chapter 7 of the full guidance.

8. Different rules apply where a company is owned or controlled by another entity, such as a parent company, instead of an individual. This guide does not include information on this situation; see Chapter 2 of the full guidance for further information.

9. If you do not immediately know the identity of a PSC, you must take reasonable steps to identify them for the PSC register. Details of what this might involve are set out in Chapter 2 of the full guidance

Example:

A company is owned by a brother and sister. They both have equal ownership and voting rights in the company. This means they each meet:

1. *Condition 1 – They own more than 25% of the shares; and*
2. *Condition 2 – They hold more than 25% of the voting rights.*

Both siblings must be entered on the company's PSC register (see paragraph 10 for information to be recorded on the register).²⁰

[Chapter 3](#) of BIS' consultation paper dealt with property and noted that there may be changes to the PSC legislation.²¹

²⁰ BIS, [Summary guide for companies – register of people with significant control](#) (undated).

²¹ BIS, [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#), March 2016: page 7

3. Beneficial ownership of land and real property in the UK

The [UK country statement](#) released in May 2016 after the international anti-corruption summit said that the UK would create a public register of beneficial ownership of foreign companies owning or buying property in the UK.²²

3.1 What's the problem?

Although other concerns have also been expressed - such as about the effects on the housing market, especially in central London, and the undesirability (as some commentators see it) of having many properties left empty – much of the concern about beneficial ownership of UK land and real property centres on links with organised crime and money laundering.

3.2 Is “dirty money” being laundered through the UK property market?

The London [Evening Standard](#) disclosed in October last year that property sales worth more than £180 million had been investigated as likely to have involved the proceeds of corruption:

The Metropolitan Police this year revealed that British property purchases worth more than £180 million were being investigated as the likely proceeds of corruption — almost all bought through offshore companies.²³

BIS' [consultation paper](#) drew attention to the apparent scale of the problem of offshore companies investing the proceeds of corruption in UK property and gave the same estimate:

Between 2004-2014, over £180m worth of property in the UK has been investigated by UK law enforcement as suspected proceeds of corruption. Moreover, over 75% of these properties use offshore corporate ownership. This is believed to be the tip of the iceberg in terms of the scale of the proceeds of corruption invested in UK property through offshore companies.²⁴

In response to a PQ from [Tulip Siddiq](#) in April 2016, Anna Soubry, the minister for business and enterprise, confirmed that these figures had come from Transparency International and the Metropolitan Police:

Paragraph 15 of the discussion paper refers to information from the 2015 Transparency International Report “Corruption on your Doorstep”. The Metropolitan Police’s Proceeds of Corruption Unit provided the information to inform the report prior to their joining

The Commons Library briefing [Foreign investment in UK residential property](#) (CBP 07723, 3 October 2016) asks whether overseas investment is a problem and examines whether it affects (for example) affordability or availability.

²² [Anti-Corruption Summit - London 2016: UK Country Statement](#) on gov.uk website

²³ Pippa Crerar and Jonathan Prynn, “[Revealed: How foreign buyers have bought £100bn of London property in six years](#)”, *Evening Standard* online, 21 October 2015

²⁴ BIS, [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#), March 2016: page 7

the National Crime Agency to form the International Corruption Unit.²⁵

3.3 What does the Government intend to do?

Following his statement about the Panama papers, the Prime Minister, David Cameron, was asked by [David Lammy](#) how he was going to stop dirty money “propping up” the London property market. The Prime Minister remarked that the additional stamp duty on properties whose ownership was not clear was already raising money:

That has been a massive money raiser, providing money to spend on public services, and a huge disincentive for that sort of behaviour. However, I want to go further; ..., we need to have more information about who owns what in our country.²⁶

[Chapter 6](#) of the BIS consultation paper on enhancing transparency dealt with purchase of land or real property. This set out the current position, the problems and the solutions as the Government sees them, which would entail extending the PSC regime to ownership of land and real property and increasing the information provided to the Land Registry and made public:

45. Under this proposal a foreign company will only be able to register its ownership of land or property by providing the Land Registry with a unique identification number obtained from the foreign companies beneficial ownership register. The Government needs to consider how to apply sanctions to foreign companies who provide false information or fail to keep the initial information provided up to date. Provision of false PSC information by UK companies is a criminal offence. As discussed elsewhere in this document, there are challenges to UK authorities being able to effectively apply the same sanctions against foreign companies. The Government also needs to consider how to enforce a requirement to register beneficial ownership information against companies that already own property in England and Wales, if it is decided that the proposals will apply in those circumstances.²⁷

The Land Registry proposals would apply to England and Wales, but the paper [also sought views](#) on whether the Government should work with the devolved administrations to ensure a UK-wide approach. The closing date for responses was 4 April 2016. BIS is currently [analysing the feedback](#) received in response to the consultation.

One further question is whether public access to the register would be free of charge. The consultation on the [possible privatisation of the Land Registry](#) set out how customer fees are currently prescribed and might be prescribed in the future:

52. At present, the fees payable by customers for core statutory functions are prescribed in Fee Orders made by the Secretary of State with the consent of HM Treasury and approved by

²⁵ [PO 35755, 27 April 2016](#)

²⁶ [HC Deb 11 April 2016 c41](#)

²⁷ BIS, [Beneficial ownership transparency: Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#), March 2016: pages 13-4

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Parliament. This ensures that the customer fees are transparent, predictable and fair. Under a contract-based approach, fees would still be prescribed in fee orders made by the Secretary of State and set before Parliament. Under a regulator-based approach, fees would be controlled by the regulator.²⁸

BIS is currently [analysing the feedback](#) to this consultation too.

In the Lords last month, [Lord Howarth of Newport](#) asked what guarantees there would be of transparency and public access, if the Land Register were in private hands. In reply, Lord Ashton of Hyde insisted that the UK was leading the way:

As I say, we will be the first country to insist on a public register of beneficial ownership by foreign companies for property and, as I said, that will apply to existing properties, not just new ones. We are leading the way in the world in opening this up to transparency.²⁹

3.4 What happens next?

The first BIS consultation was seeking agreement to the principle of establishing a register. There will be a second consultation (probably later in 2016) on some of the detail of how it should be done, such as who should hold the register and what the sanctions for non-compliance should be.

It is probable that the register would need to be introduced through primary legislation, as it would deal with companies currently not covered by the *Companies Act 2006* and so secondary legislation, such as regulations under that Act, would not be possible or appropriate.³⁰

²⁸ BIS, [Consultation on moving Land Registry operations to the private sector](#), 24 March 2016: page 16

²⁹ [HL Deb 26 May 2016 cc507-8](#)

³⁰ As the [House of Commons Background Paper: Statutory Instruments](#) explains in more detail, Acts of Parliament (primary legislation) often confer powers on Ministers to make more detailed orders or regulations by means of statutory instruments (SIs), also known as secondary, subordinate or delegated legislation. They are as much a part of the law as an Act. Many SIs are not subject to any parliamentary procedure, and simply become law on the date stated. Whether they are subject to parliamentary procedure, and if so which one, is determined by the parent Act. (SN 06509, 18 December 2012).

4. Beneficial ownership in Crown Dependencies and British Overseas Territories

As the Commons Library [briefing on the international anti-corruption summit](#) discusses at more length, the Cabinet Office and Foreign and Commonwealth Office (FCO) have published a [compendium](#) of the arrangements between the UK and Crown Dependencies and British Overseas Territories for the sharing of information about beneficial ownership.³¹

Lord Ashton of Hyde confirmed on 26 May 2016 that all the Crown Dependencies and British Overseas Territories would be sharing beneficial ownership information with the UK:

[What] are we doing about public registers of beneficial ownerships, particularly in our Overseas Territories? First, we should acknowledge that we made huge progress in getting them to have registers at all in some cases. All the Overseas Territories and Crown dependencies will share information with our tax and law enforcement agencies.³²

4.1 Can the UK compel Crown Dependencies and British Overseas Territories to make their registers public?

As the Commons Library briefing on the summit also discusses, it has [been argued by some](#) that the UK could or should decide to compel the overseas territories to disclose information about company ownership, but this could raise constitutional issues, in particular those of self-determination and (qualified) constitutional autonomy.

The Government continues to maintain that it prefers the approach of encouragement rather than compulsion, as the answers recently given by Cabinet Office Minister Matthew Hancock to questions from [Mike Gapes](#) and [Helen Hayes](#) illustrate:

All the overseas territories have signed up to beneficial ownership registers, and we urge them to make them public.

(...)

We have made huge progress in ensuring that we have registers of beneficial ownership in the overseas territories. (...) The progress that has been made in the overseas territories is the greatest under any Government in history, which perhaps is one reason Transparency International said that the summit had been a good day for anti-corruption.³³

Given that some of the Crown Dependencies and British Overseas Territories have already (as set out below) said very firmly that they will

³¹ CBP 7580, 20 May 2016. Cabinet Office/FCO, [Beneficial ownership: UK Overseas Territories and Crown Dependencies](#), 21 April 2016.

³² [HL Deb 26 May 2016 c506](#)

³³ [HC Deb 15 June 2016 cc1744-5](#)

not be creating public registers, it seems likely that any further negotiation towards such registers will not be easy.

4.2 Registers of legal and beneficial ownership: how public are they?

The sections below draw on available material to summarise whether each territory has or will have a register of legal or beneficial ownership and whether it will be public.

The Commons Library does not routinely gather material on law and policy outside the UK.

Crown Dependencies

Guernsey

The [letter from the Chief Minister of Guernsey](#) sets out the current arrangements:³⁴

Guernsey has already shown leadership on this agenda. Since it was established in 2000, our regulatory framework for trust and corporate service providers' supervision has been demonstrably successful in practice. Trust and corporate service providers in Guernsey are required to meet global anti-money laundering and countering the financing of terrorism obligations, and Guernsey's company law requires local resident agents to hold accurate and verified beneficial ownership information. We would be pleased to share our extensive practical experience with the UK authorities in order to enable them to regulate this area of practice and raise standards.

Further work will be done (in consultation with Alderney and Sark) and proposals will be put forward for parliamentary approval, but these will not include a public register:

Following our own technical consultation in Guernsey, those recommendations will not include a register which is publicly accessible as we do not believe that would allow us to demonstrate the information is secure, which is a material domestic concern. However that approach will not inhibit the fundamental requirements of timeliness or verifiability.

Isle of Man

The [agreement between the UK and Isle of Man governments](#) on sharing beneficial ownership information outlines how the register will work:³⁵

4. The Government of the Isle of Man will establish and maintain a central Isle of Man Database of Beneficial Ownership ("Isle of Man Database") to be held and maintained by the Isle of Man Companies Registry and overseen by the Isle of Man Financial Services Authority. This will contain adequate, accurate and current beneficial ownership information on corporate and legal entities incorporated in the Isle of Man.

5. The Isle of Man Database will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

³⁴ [Letter to the Rt Hon David Cameron MP, Prime Minister from Jonathan P Le Tocq, Chief Minister of Guernsey](#), 4 April 2016

³⁵ [Exchange of notes between the Government of the UK and the Government of the Isle of Man in respect of the sharing of beneficial ownership information](#), 12 April 2016

The existing companies register is [searchable](#).³⁶ It also provides information about [local legislation on beneficial ownership](#).³⁷

The Isle of Man has [rejected the proposal](#) for a public register, noting that most respondents to its consultation did not support the creation of a central register, regardless of whether it was public. The Isle of Man will devise its own way forward:

Whilst concluding that a public register will not be introduced, the Isle of Man Government has been carefully considering ways in which the Island's current beneficial ownership systems could be improved to provide more timely and relevant information whilst keeping essential safeguards in place.

After careful assessment of a number of options, the Isle of Man Government has identified a preferred way forward considering the ever increasing need to ensure the Island is not used for money laundering or the financing of terrorism, while at the same time being mindful of the needs of the Isle of Man's economy.³⁸

Jersey

The [agreement between the UK and Jersey governments](#) on sharing beneficial ownership information outlines how the register will work:³⁹

4. The Government of Jersey will maintain a central Jersey Database of Beneficial Ownership ("the Companies Register") to be held and maintained by the Companies Registry overseen by the Jersey Financial Services Commission. This will contain adequate, accurate and current beneficial ownership information on corporate and legal entities incorporated in Jersey.

5. The existing Jersey Database will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

The existing [Companies Register](#) is searchable.⁴⁰

Jersey's stance on public registers was set out in [Jersey Finance Ltd's response to the BIS consultation](#) on enhancing transparency.⁴¹ Jersey Finance Ltd suggested that a public register could be both a disproportionate response – from which Jersey ought to be exempt – and a deterrent to legitimate investment:

4.2 The extent to which corrupt funds are actually being used to purchase UK property has yet to be properly ascertained and, as such, it is impossible to assess whether the proposed response is proportionate;

4.3 The figures outlined in the Discussion Paper appear to be premised on conjecture, personal opinion and data which has yet

³⁶ [Companies Registry](#), Isle of Man government website

³⁷ [Beneficial ownership](#), Isle of Man government website (undated)

³⁸ Isle of Man government, [Responses to consultation on the transparency of the beneficial ownership of companies released](#), 24 February 2016

³⁹ [Exchange of notes between the Government of the UK and the Government of Jersey in respect of the sharing of beneficial ownership information](#), 13 April 2016

⁴⁰ [Companies Registry](#), Jersey Financial Services Commission

⁴¹ Jersey Finance Ltd is a not-for-profit organisation representing and promoting Jersey as an international finance centre of excellence, funded by members of the local finance industry and the States of Jersey Government.

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to be released into the public domain or subjected to objective scrutiny;

4.4 Invoking a major policy change on the basis of such evidence is questionable, particularly where the policy outcome could prompt a major re-assignment of capital investment away from the UK;

4.5 If, upon further rigorous assessment of the evidence, it was demonstrated that UK property was being extensively used to facilitate corruption, and if registration of foreign corporate beneficial ownership was deemed to be the only feasible solution (rather than, for example, requiring any foreign purchaser to use a licensed or regulated entity when purchasing UK property), then such information should not be made publicly available;

4.6 In any event, in order to maintain current levels of foreign capital investment, jurisdictions (such as Jersey) that operate systems which collect and collate adequate, accurate and timely corporate beneficial ownership data in accordance with international standards should be exempted from any additional UK requirement.⁴²

In a letter to TI UK disputing some of their research findings and attached to the consultation response, Jersey Finance Ltd pointed out that FATF does not demand that registers of beneficial ownership should be public:

The FATF Recommendations are currently and (it is thought) will continue to be seen as the global standard. However, they do not go so far as to require public registers of beneficial ownership.⁴³

British Overseas Territories

Anguilla

The [agreement between the governments of the UK and Anguilla](#) sets out how the “Anguilla platform” will work:⁴⁴

4. The Government of Anguilla will establish and maintain an electronic platform (“the Anguilla Platform”) that will allow it to immediately access adequate, accurate and current beneficial ownership information on corporate and legal entities incorporated in Anguilla.

5. The Anguilla Platform will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

Bermuda

The [agreement between the UK and Bermuda governments](#) remarks that Bermuda has a long-established central register of company beneficial ownership.⁴⁵ The agreement goes on:

⁴² Jersey Finance Ltd, [Enhancing transparency of beneficial ownership information of foreign companies - response form](#) (undated): Introduction and Summary

⁴³ *Ibid* page 17

⁴⁴ [Exchange of notes between the Government of the UK and the Government of Anguilla in respect of the sharing of beneficial ownership information](#), 19 April 2016

⁴⁵ [Exchange of notes between the Government of the UK and the Government of Bermuda in respect of the sharing of beneficial ownership information](#), 9 April 2016

4. It also recognises that Bermuda has a long established central register of company beneficial ownership. The Bermuda Police Service has arrangements with law enforcement both internationally and with the United Kingdom. Given Bermuda's existing central register, there are no legislative arrangements required in order to provide information pursuant to this Arrangement, although Bermuda plans to make legislative changes as part of its ongoing programme to ensure compliance with the global standards, and in particular, the Financial Action Task Force 40 Recommendations, in preparation for its Anti-Money Laundering National Risk Assessment.

British Virgin Islands

The [agreement between the governments of the UK and British Virgin Islands](#) (BVI) summarises the work already in hand in the BVI to improve beneficial ownership information:⁴⁶

4. It also recognises the Virgin Islands' commitment on international cooperation matters, including the recent reforms to its legislative regimes on beneficial ownership and its commitment to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the signing of 28 Tax Information Exchange Agreements and enactment of legislation to implement the USA FATCA, UK FATCA and OECD Common Reporting Standards. The Participants further recognise that the Virgin Islands is in the process of having beneficial ownership information of corporate and legal entities updated to ensure their adequacy and the process is expected to be completed at the end of 2016.

The responses to a consultation on creating a public register of beneficial ownership in the BVI were, though, decisively against the proposal, as the Premier announced in February this year:

I therefore advise Honourable Members that of the total responses received, over eighty one (81) percent of the respondents did not support the BVI establishing a central register, preferring the current regime which has been shown to work. Seventy nine (79) percent of the respondents rejected the idea of allowing public access to a register of beneficial ownership.

Some of the key reasons cited against the establishment of a central register essentially relate to compliance costs that could actually damage the competitive position of the BVI vis-à-vis other international finance centres (the call for the establishment of a central register of beneficial ownership – and one that is accessible to the public – is not an imperative international standard); concerns about data security; the increased potential for fraud and the infringement of constitutional rights to privacy

⁴⁶ [Exchange of notes between the Government of the UK and the Government of the Virgin Islands in respect of the sharing of beneficial ownership information](#), 8 April 2016

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(in circumstances where a register of beneficial ownership is made public).⁴⁷

Cayman Islands

The [agreement between the UK and Cayman Islands governments](#) similarly sets out how the “Cayman islands platform” will work:⁴⁸

4. The Government of the Cayman Islands will establish a centralised platform of beneficial ownership information to be maintained by the General Registry (“the Cayman Islands Platform”). This will provide timely access to adequate, accurate and current beneficial ownership information on corporate and legal entities, as specifically defined in the Fourth Money Laundering Directive, incorporated in the Cayman Islands.

5. The Cayman Islands Platform will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

The register will be neither central nor public:

As previously indicated this is not a central registry as beneficial ownership details will remain with the service providers managing them, but rather information will be accessed via a central technical platform. And it certainly will not be available publically or available directly by any UK or non-Cayman Islands agency.⁴⁹

Gibraltar

The [agreement between the UK and Gibraltar governments](#) observes that Gibraltar is committed to implementing the 4th money laundering directive, including its provisions relating to a register of beneficial ownership:⁵⁰

4. It also recognises that Gibraltar is fully compliant with all its EU obligations and that Gibraltar, as a Territory to which the Treaties establishing the EU apply with only certain exceptions, has already made it clear that it is committed to implement the European Union 4th Money Laundering Directive, which contains specific provisions on the establishment of a central register of beneficial ownership information.”

Turks and Caicos Islands

The [agreement between the UK and Turks and Caicos Islands governments](#) sets out how the “Turks and Caicos Islands platform” will work:⁵¹

⁴⁷ [Statement by the Premier and Minister of Finance Dr. The Honourable D. Orlando Smith, OBE during the third sitting of the fourth session of the Second House of Assembly of the Virgin Islands](#), 12 February 2016

⁴⁸ [Exchange of notes between the Government of the UK and the Government of the Cayman Islands in respect of the sharing of beneficial ownership information](#), 8 April 2016

⁴⁹ Cayman Islands government, [Premier's Statement, Cayman and UK to Enhance Sharing of Beneficial Ownership Information](#), 11 April 2016

⁵⁰ [Exchange of notes between the Government of the UK and the Government of Gibraltar s in respect of the sharing of beneficial ownership information](#), 11 April 2016

⁵¹ [Exchange of notes between the Government of the UK and the Government of the Turks and Caicos Islands in respect of the sharing of beneficial ownership information](#), 10 April 2016

4. The Government of the Turks and Caicos Islands will establish and maintain an electronic platform ("the Turks and Caicos Islands Platform") that will allow it to immediately access adequate, accurate and current beneficial ownership information on corporate and legal entities incorporated in the Turks and Caicos Islands.

5. The Turks and Caicos Islands Platform will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

It [was reported](#) in April 2014 that the Turks and Caicos government was considering a creating a central register and making it public.⁵²⁻

Junior Foreign Office minister James Duddridge confirmed in November last year that the Government was in discussion with the Turks and Caicos Islands government about a central register:

We are in discussions with the Turks and Caicos Islands authorities on [a central register of company beneficial ownership, or similarly effective system] and are offering technical assistance as they develop their proposals.⁵³

It [was also reported](#) last month that the Turks and Caicos government was inviting views on how to adopt the international standard.⁵⁴

4.3 Action at the European level

A recent article from the Law Societies' Brussels office discusses how the leak of the Panama papers has galvanised opinion on increasing transparency, especially around beneficial ownership. It suggests that the EU's measures will be given greater urgency:

In the EU, the revelations have given further impetus to new proposals and the issue of beneficial ownership has now come back to the EU policy agenda. It is likely to be discussed in the context of the transposition of the 4AMLD⁵⁵ and there has been further discussion regarding whether there is already a need to begin work on a 5th ALMD.⁵⁶

The Commons Library [briefing on the anti-corruption summit](#) discusses the implications of the Panama papers leak (CBP 7580, 20 May 2016).

4.4 How have other countries with dependent territories dealt with these issues?

France

An [IMF report in 2013](#) observed that France had strengthened its arrangements for liaising with its overseas departments and territories:

In discussions with the assessors, the [Autorité de Contrôle Prudentiel, which supervises the banking and insurance sectors in France] detailed how the (relatively few) issues affecting banking raised in the 2010 FATF report were being dealt with. In particular

⁵² ["TCI Considers Public Beneficial Ownership Register"](#), TaxNews.com, 25 April 2014

⁵³ [PO 16080, 23 November 2015](#)

⁵⁴ ["Turks and Caicos to solicit public input on beneficial ownership information exchange"](#), *Caribbean News Now*, 24 May 2016

⁵⁵ 4th Anti-Money Laundering Directive. The directive is discussed in the Commons Library briefing [Money laundering law](#) (CBP 02592, 20 April 2016).

⁵⁶ Law Societies Joint Brussels Office, ["Whither tax and anti-money laundering regulations? The aftermath of Panama Papers revelations on beneficial ownership"](#), *Brussels Agenda*, May 2016

ACP has appointed a counsellor for overseas departments and territories to deal with local authorities and is increasing the focus and priority to AML/CTF issues in those areas. Additional on-site work is also planned.⁵⁷

United States

The [United States' government's statement](#) following the international anti-corruption summit mentioned (amongst many other things) new rules on transparency and beneficial ownership of companies formed within the United States:

Beneficial Ownership

- The United States announces new rules to increase transparency and disclosure requirements that will enhance law enforcement's ability to detect, deter, and disrupt money laundering, terrorist finance, and tax evasion.

Corporate Transparency

- The United States announces that the Administration has submitted to Congress new proposed legislation that would require all companies formed within the United States to file adequate and accurate "beneficial ownership" information with the U.S. Department of the Treasury, helping law enforcement prevent and investigate financial crimes.

Financial Transparency

- The United States announces a new regulation on "Customer Due Diligence" that enhances transparency by requiring financial institutions to know and verify the identities of the natural persons (also known as beneficial owners) who own, control, and profit from companies when those companies open accounts.⁵⁸

Last month, the [White House blog](#) discussed what President Obama had done to increase transparency and disclosure:

First, the Treasury Department finalized its "customer due diligence" rule, which requires financial institutions – such as banks, mutual funds, and other financial institutions – to find out and verify who actually owns and profits from the companies that make use of their services, i.e, the "beneficial owner." Under this rule, if an entity (like a shell company) opens an account at a financial institution, that institution will be required to identify and verify the real people actually behind that entity. And law enforcement can then seek out that information from those institutions.

(...)

Now, while the beneficial owners of shell companies often exploit weak rules in offshore tax havens, gaps also exist in U.S. tax rules that foreigners can currently exploit to set up and hide their assets or financial activity in an anonymous shell company in the United States.

⁵⁷ IMF, *France: Financial Sector Assessment Program—Detailed Assessment of Observance of Basel Core Principles for Effective Banking Supervision*, IMF Country Report No. 13/180, June 2013

⁵⁸ [U.S. Statement of Commitments: UK Summit: May 12, 2016](#)

So the second step Treasury took today is to propose a rule that would plug this gap by requiring certain foreign-owned companies to obtain a tax identification number from the IRS, thereby requiring these entities to report ownership and transaction information to the IRS.

Taken together, these steps go a long way in helping to combat money laundering and tax evasion, but additional tools are needed to promote transparency and strengthen law enforcement. And only Congress can help on that front.⁵⁹

The Tax Justice Network has drawn attention to an [IMF report](#) highlighting shortcomings in the US approach.⁶⁰ “Outrageous” things are happening in the US’ own territories, the Network alleges:

The International Monetary Fund (IMF) said on Tuesday that the United States was moving too slowly to prevent the use of shell and front companies to hide ownership.

(...)

The IMF said US regulators had made little progress toward the need to require that banks know who ultimately is behind the companies for which they handle money.

(...)

And the U.S. seems to be hosting and tolerating outrageous activities on its own territories, such as Guam. A new “[Guam trust incentives program](#)”, for example, boasts 100 percent tax-free trusts. Coupled with the fact that Fincen won’t even bother to investigate these things, we have the makings of yet another toxic cocktail, courtesy of Uncle Sam.⁶¹

US policy on international tax avoidance is discussed in a [briefing from the Congressional Research Service](#).⁶² Examining tax evasion within and outside the US, the briefing remarks that past programmes have not required beneficial ownership to be disclosed:

⁵⁹ Tanya Somanader, [President Obama's Efforts on Financial Transparency and Anti-Corruption: What You Need to Know](#), White House blog, 6 May 2016. See also Department of the Treasury, [Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion](#), 5 May 2016 and Department of Justice, [Press release: Justice Department Proposes Legislation to Advance Anti-Corruption Efforts](#), 5 May 2016

⁶⁰ IMF, [United States: Financial Sector Assessment Program: Financial System Stability Assessment](#), IMF Country Report No. 15/170, July 2015

⁶¹ Tax Justice Network, [IMF: US isn't doing enough to curb financial secrecy](#), 8 July 2015. [Fincen](#) is the US Department of the Treasury's Financial Crimes Enforcement Network.

⁶² [Tax havens: international tax avoidance and evasion](#), R40623, Congressional Research Service, 15 January 2015

Individual evasion of taxes may take different forms, and they are all facilitated by the growing international financial globalization and ease of making transactions on the Internet. Individuals can purchase foreign investments directly (outside the United States), such as stocks and bonds, or put money in foreign bank accounts and simply not report the income (although it is subject to tax under U.S. tax law). There has been little or no withholding information on individual taxpayers for this type of action. They could also use structures such as trusts or shell corporations to evade tax on investments, including investments made in the United States, which may take advantage of U.S. tax laws that exempt interest income and capital gains of non-residents from U.S. tax. Rather than using withholding or information collection the United States has largely relied in the past on the Qualified Intermediary (QI) program where beneficial owners are not revealed. To the extent any information gathering from other countries is done it is through bilateral information exchanges rather than multilateral information sharing. The European Union had developed a multilateral agreement but the United States does not participate.

New developments in information exchange may affect individual tax evasion both in the United States and abroad. In 2010, Congress enacted the Foreign Account Tax Compliance Act (FATCA) as part of the Hiring Incentives to Restore Employment Act (HIRE; P.L. 111-147).⁶³ FATCA recently become effective and requires foreign financial institutions to report information on asset holders or be subject to a 30% withholding rate. Its effectiveness is yet to be determined, although revenue projections when enacted did not predict a significant effect.

The briefing goes on to consider the options for improving compliance, such as requiring the disclosure of beneficial ownership.⁶³

⁶³ *Ibid*: pages 35 to 39

5. Beneficial ownership elsewhere

5.1 How will the registers work?

Afghanistan

In its [country statement](#) following the international anti-corruption summit, Afghanistan committed (amongst other things) to increasing transparency and publishing and sharing information on beneficial ownership:

1. Establishing public central registers of company beneficial ownership information ,
2. Ensuring that law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction,
3. Implementing bilateral arrangements that will ensure law enforcement in one partner country has full and effective access to the beneficial ownership information of companies incorporated in the other partner country,
4. Taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting.⁶⁴

France

France, in its [country statement](#), committed itself to the “most advanced standards”. Its registers for trusts and legal persons would, it said, be public:

France is committed to the most advanced standards with respect to central beneficial ownership registers, covering companies and all types of entities and legal arrangements, including trusts.

France will establish as soon as possible beneficial ownership registers for legal persons as well as for trusts, that will be made accessible to the public. This will ensure that information on beneficial owners of companies, trusts, foundations, shell companies and all other entities and arrangements are fully available for tax administrations, law enforcement authorities and financial intelligence units of any partner.

Consistently with the former paragraph, France will participate to the pilot initiative for **automatic exchange of beneficial ownership information**. To this end, we call on the OECD and the FATF to develop proposals for a new global standard for exchange of beneficial information between countries.

(...)

France has signed up to the **Common Reporting Standard** initiative and we commit to implement this standard by 2017. France has also joined the **Africa Initiative of the Global Forum** and the **Addis Ababa Tax Initiative** from the beginning. In

⁶⁴ [Anti-Corruption Summit – London 2016: Islamic Republic of Afghanistan: Country Statement](#), May 2016

addition, we commit to promote beneficial ownership transparency which is key to fight against tax fraud.⁶⁵

The statement did not make any mention of France's overseas departments and territories.

Netherlands

In its [country statement](#), the Netherlands set out its commitment to a public register:

The Netherlands commits to establishing public central registers of company beneficial ownership information. The Netherlands commits to ensuring that law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction. The Netherlands will take steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. The Netherlands welcomes the pilot initiative for automatic exchange of beneficial information.⁶⁶

The [Financial Transparency Coalition website](#) describes how the register will work in the Netherlands. The coalition questions, though, whether the register will be open data:

The single most worrying aspect of this communication from the Government to the Parliament, however, is that there is no mention of having the register in an open data format. The Dutch government can be seen as a champion in this field, and it would be interesting to hear from them if the omission of this is accidental, or if there is more to it. Simultaneously, the UK's Companies House is pressing forward with its equivalent register of persons with significant control, and this will be offered as open data, which they feel will make it more business-friendly.⁶⁷

Kenya

Kenya, in its [country statement](#), said that the summit's focus on beneficial ownership was consistent with its anti-corruption trajectory:

As such, this Summit's focus on issues of ultimate beneficial ownership and enhanced standards for professional services resonate well with Kenya's new anti-corruption trajectory. Indeed, we have recently enacted new Company laws that incorporate beneficial ownership disclosure requirements. At the same time we are enhancing regulatory reforms targeting private sector corruption in line with UNCAC and OECD anti-bribery legislation. Our transformative Constitution is the bedrock of this enterprise, entrenching the principles of transparency and accountability in a robust manner, and requiring that public participation and open government is secured in line with some of the Summit's target areas.⁶⁸

It offered some firm commitments:

⁶⁵ [Anti-Corruption Summit - London 2016: France Country Statement](#), May 2016

⁶⁶ [Anti-Corruption Summit - London 2016: The Netherlands Country Statement](#), May 2016

⁶⁷ Financial Transparency Coalition, [Dutch government plans to grant public access to beneficial ownership register](#), 12 February 2016

⁶⁸ [Kenya Country Statement at the London Anti-Corruption Summit](#), May 2016

- Kenya will take measures in line with her new Companies regulatory framework to establish public central registers of company beneficial ownership information.
- Kenya commits to ensuring that international and domestic law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction.
- Kenya welcomes the establishment of transparent central registers of foreign and local companies bidding on public contracts and buying property, and will pursue options for taking similar action.⁶⁹

Nigeria

Similarly, Nigeria's [country statement](#) set out its commitment to transparency about beneficial ownership:

I. Nigeria is committed to establishing a public central register of company beneficial ownership information. (The President of Nigeria has presented a draft Money Laundering Prevention and Prohibition Bill to the National Assembly in February, 2016. This Bill has defined Beneficial Ownership in line with FATF standards.)

II. Nigeria has a database of registered companies, charities and trustees and provides access to lawyers and law enforcement agencies to beneficial ownership information for companies and other legal entities registered within our jurisdiction.

III. We are committed to implementing bilateral arrangements that will ensure law enforcement in one partner country has full and effective access to the beneficial ownership information of companies incorporated in the other partner country.

IV. We are taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. Nigeria is already collating this information through the Extractive Industry Initiative process and would extend it to other sectors.

V. Nigeria will establish a transparent central register of foreign companies bidding on public contracts and buying property.⁷⁰

Norway

In its [country statement](#) after the summit, Norway pledged to explore creating central public registers of information on beneficial ownership:

We commit to exploring the establishment of public central registers of company beneficial ownership information.⁷¹

The Norwegian Parliament has already voted in favour of a register and has set out its views of how it should work. The Tax Justice Network website describes the background:

On the 5th of June, a unanimous Norwegian Parliament voted for establishing a beneficial ownership registry.

Some background: Last year [the Parliament voted](#) to establish a publicly available shareholders registry, but not on beneficial owners. Foreigner shareholders were till allowed to invest anonymously through «nominee accounts». The Norwegian

⁶⁹ [Kenya Country Statement at the London Anti-Corruption Summit](#), May 2016

⁷⁰ [Country Statement from Nigeria, London Anti-Corruption Summit](#), 12 May 2016

⁷¹ [Anti-Corruption Summit - London 2016: Norway Country Statement](#), May 2016

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Central Registry for Companies (Brønnøysundregistrene) issued a report where they suggested what the new registry should look like. But in the report they suggested serious restrictions to whom should access the information, and restrictions on searching functionality.

This got journalists, academics, NGOs and a lot others furious. In the meantime, FATF also issues a report evaluating Norway's efforts combating money laundering. They concluded that Norway had serious weaknesses, especially in that they did not ensure information about the real owners of foreign owners in a timely manner.

The debate that followed, culminated in two Parliamentary members making a proposal to make sure that the new registry really would be a registry of beneficial owners with real access for the public. The text was even more strengthened in the comments made by a unanimous Finance Committee in Parliament on the 28 of May.

The approved text includes both the proposal from the two parliamentarians and the comments from the Finance Committee. The text instructs the Ministry of Finance on the directions the new registry should take.⁷²

Ukraine

In its [country statement](#), Ukraine pledged to improve the quality of its information on beneficial ownership:

i) Putting in place mechanisms to verify the accuracy of the Beneficial Ownership information provided by companies and enforce compliance with the obligation to submit this information by June of 2017.

(...)

iii) Punish corruption by preventing corrupt bidders and those who seek to hide their beneficial owners from accessing public contracts and procurement by establishing accessible central databases and address ways of sharing information on corrupt bidders across borders.⁷³

English language sources describing the Ukrainian system for handling beneficial ownership information in any more detail appear to be few but, in a [factsheet](#), the Extractive Industries Transparency Initiative has commented on how the register has been working and some of its limitations:

Ukraine has launched a beneficial ownership register, but is still working to improve the comprehensiveness of the information.

(...)

Ukraine passed a law in 2014 requiring an upfront disclosure of beneficial ownership of companies to the Ukrainian authorities. All companies previously registered in Ukraine are required to disclose their ultimate beneficiaries in a public register. The EITI Report comments on this effort, noting that 66 of the 120 extractive companies covered by the EITI Report have disclosed

⁷² Sigrid Klæboe Jacobsen, [Norwegian Parliament votes for public registry of ownership](#), Tax Justice Network, 5 June 2015

⁷³ [Anti-Corruption Summit – London 2016: Ukraine Commitments](#), May 2016

their beneficial owners in the public register at the Ministry of Justice.⁷⁴

A [European Commission report](#) last December outlined anti-money laundering measures in Ukraine. This too mentioned the register:

The National Bank of Ukraine (NBU) took measures against banks which do not disclose ultimate beneficial ownership and ensure effective client identification. As of 5 October 2015, 132 out of 135 commercial banks had disclosed their ownership in line with the new regulations. A special unit was created in the NBU, to monitor beneficial owners. By the end of December 2015, the NBU planned to finalise a risk-based off-site and on-site anti-money laundering supervisory tools focusing on risk related to domestic politically exposed persons.⁷⁵

⁷⁴ Extractive Industries Transparency Initiative, [Fact sheet: Beneficial ownership: revealing who stands behind the companies](#), 2016: pages 2-4

⁷⁵ [Report from the Commission to the Council and the European Parliament: Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation](#), COM(2015) 905 final, 18 December 2015

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