UK House of Lords Rejects Public Beneficial Ownership Registers for British Overseas Territories

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On 17 January 2018, the House of Lords voted against an amendment to the proposed Sanctions and Anti-Money Laundering Bill that sought to create a publicly accessible register of the beneficial ownership of companies registered in six British Overseas Territories[1] ("OTs"), by 1 January 2020. The amendment's stated purpose was to "*bring transparency to the financial operations in the six British Overseas Territories that have financial centres*".

This article considers whether the Lords' vote represents a faltering step in the UK's commitment to combating the use of anonymous offshore shell companies in facilitating international corruption and money laundering.

The UK's Leading Role

The UK government has long been a vocal exponent of increased transparency of company ownership as a tool to combat illicit financial activity. At the 2013 Open Government Partnership summit, then Prime Minister David Cameron announced that an open-to-the-public central register of UK company beneficial ownership would be established, labelling transparency a "*vaccine against corruption*". The UK register was established in June 2016 (see earlier blog posts here and here) and the EU followed suit in December 2017, amending the Fourth Anti-Money Laundering Directive to require Member States to make publicly available the identity of beneficial owners of companies within the EU.

Whistleblowers Highlight Concerns

In the House of Lords debate, Baroness Stern highlighted how the release of the Panama Papers (in April 2016) and the Paradise Papers (in November 2017) laid bare the potential for offshore companies to be anonymous cloaks that could be used for the storage and transfer of illicit funds: at the end of 2016, Europol reported finding nearly 3,500 probable matches to organised crime, tax fraud and other criminal activities in the Panama Papers. As Baroness Kramer made clear, "*It is the disinfectant of transparency and light that is the best protection against the corruption that sits underneath and benefits from secrecy*".

Constitutional Questions

Part of the argument put forward against the proposed amendment was the UK Parliament's lack of constitutional competence in legislating directly for OTs, without their consent. Historically, this has occurred only where it pertains to the UK's international human rights obligations (e.g. the abolition of the death penalty and the decriminalisation of homosexuality). The counter argument - that the misery caused by corruption and money laundering amounts to an abuse of human rights - is weak and leads to the slippery slope by which any criminal conduct that has the effect of causing, even indirect, misery could be assessed a human rights violation. The constitutional proposition that financial services legislation should remain the domestic responsibility of the democratically elected OT governments is a sound one.

National "Self" Interest

Arguments of constitutional competence aside, the reasoning for rejecting the proposed amendment offered by some members of Parliament's second chamber suggests perhaps that certain of our lawmakers lack the desire to uphold the UK's commitment to taking the lead in international anti-money laundering efforts.

Lord Flight argued the amendment would be counterproductive, citing the Financial Action Task Force (FATF): "*Incomplete, unverified, out of date information in a public register is not as useful as law enforcement agencies being able to access the right information at the point they need it*". No doubt this is true but it does not address the potential benefit of the public availability of complete, verified, up-to-date information. Nor does it draw a necessary link between public registers and poor quality of information. Arguments against the poor implementation of public registers are not arguments against public registers per se. As the FATF itself has concluded, "*If governments, law enforcement agencies, regulators and businesses can get this right then there is real value in initiatives like public registries and automatic exchange of information*."

Lords Naseby and Hodgson demonstrated a more flagrant disregard for the government's transparency objectives, submitting that the failure of other countries to adopt public registers could put the UK at a competitive disadvantage, resulting in business flowing away from the OTs and towards the United States, Hong Kong and Singapore. Lord Hodgson portrayed the UK's drive towards a 'gold standard' of corporate transparency as a zero-sum game, "*If you raise standards or increase exposure and transparency in one area, you merely drive business to another corner of the world*".

Avoiding such action because it would only shift the locus of criminality elsewhere seems to be an objection the UK government can easily defeat. If the UK wishes to set the gold standard, it must take the lead and not hide behind the inaction of others. As Baroness Stern concluded, "[It is not] *acceptable to say that one has to carry on doing dodgy business because, if we do not do it, someone else will. If one followed that line, nothing would ever get better*".

Where Next?

The Bill will next go before the House of Commons, where questions of constitutional competence and how best to verify the information contained in the register will be vigorously debated. If the UK

is to achieve its aim of leading the world in international anti-money laundering initiatives, however, the government will need to be ready to address arguments motivated by fear of losing a commercial competitive advantage.

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[1] Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands.

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