

Closing loopholes in Companies House: Disclosure of Nominee Shareholders

The UK is a renowned financial centre, with legal and banking professionals respected around the world. But over the past few decades, our country has become a hub for dirty money, primarily due to opaque and secretive financial and corporate services. Our best guestimate places the cost of fraud and money laundering at **£350 billion**, which is equivalent to our annual **health and education budgets combined**.

Successive leaks, such as the Pandora Papers or the Paradise Papers, have showcased how wealthy individuals around the world were able to use Britain's economy to launder their ill-gotten gains. By abusing our opaque corporate register, individuals can conceal the true ownership of shell companies, the origins of their wealth, and their connections to criminal networks or authoritarian regimes.

In response to the invasion of Ukraine, the Government introduced the Economic Crime and Corporate Transparency Bill to reform the powers of Companies House and prevent organised criminals, fraudsters, and kleptocrats from using corporate entities to abuse the UK's open economy. However, these provisions fall short of minimum industry practice and international standards, as they do not require to confirm that the individual recorded as the 'owner' on paper, is, *in fact*, really the owner.

Recommendation: Lord Vaux's Amendment aims to increase the quality and accuracy of shareholder information, by requiring a person or firm holding shares of 5% or more as a nominee to declare it, and to provide the details of the person or persons on whose behalf, or under whose control the shares are held. The Government has proposed an alternative amendment, introducing a regulation making power to allow them to strengthen the rules around the disclosure of nominee arrangements. If this alternative proposal is robust enough, Lord Vaux will withdraw his amendment.

Nominees: A loophole for concealing ownership

Current provisions in the Bill do not require to perform any checks on whether individuals presented as beneficial owners actually hold that status. 'Nominee shareholder' services - whereby a corporate service provider's name is hired to feature on documents, are common practice, allowing individuals to conceal their identity behind a proxy.

Nominees are a loophole in the Bill that criminals and kleptocrats can and will continue to use to conceal their control of companies. Neither Companies House nor the third-party agents setting up companies must verify that shareholders do, in practice, hold their shares. This reduces the reliability of shareholder information published by Companies House, and in turn the accuracy of the corporate register as a whole. This means that shareholder information in the register will remain incomplete, making it difficult to identify the real owners of a company.

Why nominee transparency matters

Requiring nominees to declare whether or not they are holding the shares on behalf of, or subject to the direction of another person would close this loophole in our company register, which enable economic crime and prevent investigations.

Transparency over shareholder information is key to preventing abuse of companies. Requiring shareholders to flag when they are acting as nominees (and on whose behalf they are acting) would increase transparency over company ownership.

Nominees are often used by criminals and kleptocrats, as shown by the Savaro Ltd case.

In August 2020, tonnes of ammonium nitrate exploded in portside Beirut, flattening the surrounding area and killing over 200 people and wounding thousands more. The reported owner of these dangerous chemicals was a UK-registered private limited company called Savaro Ltd. Savaro Ltd.'s real owner was only revealed after substantial research by the Organized Crime and Corruption Reporting Project (OCCRP), the identity of whom had been hidden behind complex layers of nominees.

Transparency is good for business. It is also regarded by the World Bank as being critical for creating a 'business-enabling' environment that promotes growth by creating equality of opportunity and ensuring a sustainable economy.

Why the Government resists this amendment and why it should be maintained

The Government has **three main objections** to requiring shareholders to disclose if they are acting as nominees:

1. Government Ministers have opposed the proposed amendment on the basis that existing provisions on **Person of Significant Control (PSC) framework** already require the disclosure of a beneficial owner. Companies are technically required to obtain and verify this information, but **do not fulfil this requirement in practice**. PSCs are required to register as such, but too many evade these transparency requirements.

- The PSC register is **currently a failed register**, as the information it holds is not verified. For instance, **4 thousand beneficial owners** are listed under the age of 2, including one who has yet to be born. This Bill goes a long way towards improving the quality of this data.
- However, Companies House will verify the PSC's *identity*, not their *status* as a PSC – in other words, if they are in effect the beneficial owner of the company. There could still be someone who should be listed as a PSC but **fails to register as one**.
- So, requiring nominees to disclose their status makes a significant improvement to the current framework, as it makes it harder for PSCs to simply ignore their duty to register. By **putting the onus on anyone acting as a nominee** to disclose who they are acting on behalf of, undeclared PSCs would be revealed.

2. The Government also argues that this might place a disproportionate burden on legitimate actors and would most likely be ignored by illegitimate actors. Minister Johnson, in correspondence, asserted that officials had not yet estimated a concrete number, but that aggregate drag on the economy could easily be **over £100 million per year**.

- Firstly, it would be helpful to understand where the costs that make up this figure come from, given that the **number of existing nominee arrangements is entirely unknown**.
- Ticking one additional box per shareholder could hardly be considered a 'substantial burden' when private companies have an **average of two shareholders**.
- These **costs must be considered against the benefits gained** by collecting this information. For instance, disclosure of nominees would help create a more transparent and accurate register, which is needed to prevent criminals and kleptocrats **laundering an estimated £100 billion pounds** every year through the UK or through UK corporate structures.

3. The proposal would be **difficult to enforce** and certainly it would be impossible for Companies House to routinely verify such a volume of additional data.

- The question of enforcement is a critical one. Though one could argue that the current framework which relies on **enforcing undisclosed and unknown nominee arrangements** is more challenging for Companies House. More information on potentially criminal nominee arrangements can only be beneficial to Companies House's enforcement efforts.