BIS | Department for Business Innovation & Skills

A LONG-TERM FOCUS FOR CORPORATE BRITAIN
Call for Evidence Response Form

A copy of the consultation available at: http://www.bis.gov.uk/consultations.

Responses to the Consultation should be received by 14 January 2011.

Completed copies of the response form should be returned:

Via email to: clgconsultations@bis.gsi.gov.uk

Via post to:

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Please tick the box from the following list of options that best describes you:

	Quoted company
	Other company
	Investor or investment manager
	Business representative organisation
	Investor representative organisation
X	**Non governmental organisation (NGO)**
	Trade Union
	Lawyer or accountant

☐ **Other (e.g. consultant or private individual)**

The Board of Directors

<u>Question 2:</u> Does the legal framework sufficiently allow the boards of listed companies to access full and up-to-date information on the beneficial ownership of company shares?

1. Global Witness is a non-governmental organisation based in London that works to expose the corrupt exploitation of natural resources, to drive campaigns that end impunity, resource-linked conflict, and human rights abuses. We were co-nominated for a Nobel Peace Prize in 2003 for our work on conflict diamonds. Our reports can be found at www.globalwitness.org.

2. In March 2009 Global Witness published *Undue Diligence: How banks do business with corrupt regimes*.[1] The report argues that there are still problems with the global anti-money laundering (AML) framework. It reveals a number of alarming examples of major banks doing business with corrupt regimes in natural resource-rich countries and key weaknesses in how banks' identify – or fail to identify – the beneficial owner of their customers. The banks discussed included Barclays, Deutsche Bank and HSBC. Global Witness understands that a number of financial institutions worldwide are now using the report as training material for their compliance officers. The report demonstrated how corrupt politicians can use shell companies to hide their identities and therefore their assets.

3. This report was followed by *Risky Business: Kazakhstan, Kazakhmys Plc and the London Stock Exchange*, published in July 2010, which raised concerns about lack of information about the ownership and control structure of the FTSE 100-listed mining company Kazakhmys. Global Witness is concerned that Kazakhmys' listing prospectus omitted crucial information about the influence of the President of Kazakhstan over the company.[2] This issue has already received substantial media coverage.[3]

    - Kazakhmys plc listed in September 2005. The company only revealed that its senior managers owned 98.8% of its shares when it issued its listing prospectus, weeks before the IPO itself. This had not been public knowledge before. There was also

[1] The full report can be found here: http://www.globalwitness.org/library/undue-diligence-how-banks-do-business-corrupt-regimes
[2] The full report can be found here: http://www.globalwitness.org/sites/default/files/gw_riskybusiness.pdf
[3] For example: Ruth Sutherland, 'Solving Kazakh mysteries', *Daily Mail*, 6 October 2010; Richard Orange and Rowena Mason, 'FTSE miners face Kazakh power grab', *The Telegraph*, 6 October 2010; and Alistair Dawber, 'Kazakhmys accused over Astana government links', *The Independent*, 14 July 2010

very little information in the listing prospectus about how these men acquired these shares.

- Information in the prospectus about Kazakhmys' beneficial owners in the years leading up to the IPO was not comprehensive and the situation left opaque. At least 10% of the company was owned at the end of 2003 by offshore companies with no information as to their beneficial ownership. There were also discrepancies, including three varying accounts of the shareholder structure of Kazakhmys at the end of 2002.

- After the company listed, the ownership of Kazakhmys plc seemed more transparent: in company literature, Kazakhmys plc states that its Chairman Vladimir Kim owns shares in the company through various offshore structures. Yet Kim's ownership of these offshore entities (featuring several layers of companies in Malta, Netherlands and Liechtenstein) cannot be verified by publicly available corporate documents. Investors therefore have to take it on trust that Vladimir Kim is indeed the owner of these Kazakhmys plc shares.

- Global Witness has seen other examples of listed companies which obscure the ownership of sizeable parts of the main company through two or three shareholders whose owners are not disclosed because each possesses less than 5% of the listed company.

4. In October 2010 Global Witness published *International Thief Thief: How British banks are complicit in Nigerian corruption*, which exposed how high street banks, including Barclays, RBS and HSBC had accepted millions of pounds of suspect deposits from two corrupt Nigerian politicians.[4]

5. Global Witness is concerned that at present it is difficult for interested parties to gain access to accurate and up-to-date beneficial ownership information. This applies to boards of listed companies who wish to understand their shareholders, but it is also applicable to others. In particular, law enforcement can find it difficult to understand the control and ownership structure of a corporate vehicle that they suspect of illicit activity, including money laundering.

6. The economic advantage that comes with limited liability is now being abused to hide identity for the purposes of tax evasion, bribery and embezzlement, organised crime, insider trading, fraud. Corporate vehicles are one of the

[4] The full report can be found here: http://www.globalwitness.org/library/british-banks-complicit-nigerian-corruption-court-documents-reveal

most used methods by money launders to hide their identity and therefore their assets.

7. As early as 2001 the OECD recognised the extent to which corporate vehicles and trusts can be misused, stating that "almost every economic crime involves the misuse of corporate entities".[5] In many jurisdictions, including the UK, corporate vehicles are quick and easy to set up. Often companies do not have to list who is the beneficial owner, and shares can be held in trust. This can make it very difficult for financial institutions, regulators and law enforcement to trace the ownership of corporate vehicles.

8. The global anti-money laundering standard setter, The Financial Action Task Force (FATF), raised concerns about the abuse of corporate vehicles in a 2006 report on the misuse of corporate vehicle, however, as an APG/FATF report on corruption from 2007 notes, nothing was done about this issue after the report was presented to the FATF plenary in February 2007. "As long as no action is taken, this crucial vulnerability will persist."[6]

9. *The Other Side of the Coin*, a parliamentary report into the UK's role in facilitating corruption and money laundering, argued that the lack of information legally required to register a company in the UK hampers law enforcement investigations into the role played by UK registered companies, service providers and individuals in criminal activity.[7]

10. BIS, and the UK government, should examine how the lack of transparency over the beneficial ownership of British companies undermines effective communication between the board and shareholders. The government should also revisit how corporate ownership secrecy facilitates corruption, money laundering and other forms of criminality.

11. Global Witness recommends that the UK should have a national system of registration which records the required ownership and control details for all companies and other legal persons and arrangements registered here. Changes in ownership and control information would need to be kept up to date. Ideally this would be in a publicly available format. The UK should also push for this to be an international standard.

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[5] OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 2001, p.3
[6] FATF, *The Misuse of Corporate Vehicles, including Trust and Company Service Providers*, 13 October 2006; Chaikin and Sharman, *APG/FATF Anti-corruption/AML/CFT research paper*, p. 30
[7] Africa All Party Parliamentary Group, *The Other Side of the Coin: The UK and Corruption in Africa*, March 2006, pp. 50-51