10 Reasons Why Public Register Arguments Are Flawed

Tuesday 20 November 2018

The end of October marked five years since former UK PM David Cameron announced plans for the UK to adopt a public register of beneficial ownership.

Clearly, a lot has changed in the past five years, but interestingly, one thing that hasn't changed much at all is the lobbying for publ registers as the primary solution to combatting financial crime.

Fittingly, late October also saw the International Anti-Corruption Conference (https://iaccseries.org/) (IACC) take place in Copenhagen, attended by around 1,000 people from 100 countries, at which a joint-statement was published on the issue of beneficial ownershi

> "We welcome measures that improve transparency in the beneficial ownership of companies, consistent with the principles of the Financial Action Task Force (FATF)... We encourage all countries t prepare adequate laws and enforce these, and ensure that competent authorities have access to adequate, accurate, and timely beneficial ownership information. We commit to exploring ways to improve the implementation of the FATF guidance on beneficial ownership, which may include public registries."

Meanwhile, with the UK Budget earlier this month confirming that the government would publish an updated offshore tax complian strategy in the new year and with the UK's Economic Crime and Security Minister launching in the same week a new Serious and Organised Crime Strategy, debates around how to crack down on financial crime will continue.

And quite right too, because financial crime and corruption are amongst the most challenging aspects of international trade and finance today, undermining trust and impacting ordinary people all over the world. We need to have sensible, joined-up conversations around how to combat them effectively.

However, debates around public registers are, to my mind, an example of a disjointed global approach to tackling financial crime – the statement from the IACC suggests, standards around the world in this area differ wildly.

Jersey has had a register containing all the beneficial ownership of entities registered there for three decades and it shares information on it with authorities around the world. It's proven to work and it's in line with the FATF standards referred to at the IACC. And, as the IACC statement recommends, Jersey has explored ways to improve on its system by committing to exchanging information on its register in up to an hour in certain cases. Not many other places can do that.

In Jersey, we think there is a very workable, and superior solution to public registers – here are ten reasons why we think arguments around public registers are flawed:

1. **What's the problem**: public registers are often put forward as the solution to cutting off illicit money that is alleged to flow through IFCs – but this narrative makes no distinction between IFCs. And there's no evidence of swathes of illicit flows through IFCs anyway, it's based on speculative assumptions. Often IFCs have better regulatory controls than other larger countries.
2. **No evidence**: it's often claimed that public registers help deter criminal activity, but there is little evidence to back this up – in f most evidence supports systems where data is verified.
3. **Inaccurate data**: in cases like the UK, public registers are self-reporting meaning that the data is not checked. So there is no guarantee that the information is accurate, or that it helps individuals know who they are doing business with.
4. **Ineffective policing**: public registers don't necessarily deter dishonest declarations, as is often claimed. It might be a criminal offence to provide false information, but if no-one is ever prosecuted for doing so, there is no real incentive to ensure the information is accurate and criminals involved in grand corruption will have no qualms about providing false information. To date, there has been only one successful prosecution for filing inaccurate beneficial ownership information: 65-year-old businessman, Kevin Brewer (https://www.independent.co.uk/news/uk/home-news/companies-house-fraud-whistleblower-prosecuting-kevin-brewer-vince-cable-a8307246.html), who acted to uncover a loophole and has been prosecuted for his troubles.
5. **No added value**: public registers don't add anything to ensuring governments are enforcing tax rules and other laws. Under tl OECD's Common Reporting Standard (CRS), relevant authorities in 100 countries around the world are already exchanging information – so this information is already available to those who need it.
6. **Leave it to the experts**: supporters for public registers make the assumption that the general public is somehow better place than specially trained law enforcement officers to review, analyse and assess information, which simply cannot be the case. In fa those pursuing civil cases, even with the best of intentions, may well jeopardise investigations being pursued by the authorities.
7. **Further criminal activity**: putting too much information in the public domain potentially opens up the potential for further criminal activity – the risk of identity theft or even, in some places, kidnap or extortion.
8. **No level playing field**: the public register model only works if other countries are doing the same, otherwise other countries g

the benefit of publicly available data without the expense of doing it themselves, and data quality will vary significantly. At prese there is no international standard that requires public registers, so the playing field won't be level. Jersey follows the FATF standard.

9. **Risk to due diligence**: businesses could use the register to do their own due diligence checks on new customers or creditors but if information isn't vetted or accurate, this poses a number of knock-on risks.
0. **Conflicting objectives on privacy**: it's not at all clear how the raft of information that would potentially be made available through public registers would comply with the requirements of data protection legislation, in particular the EU's GDPR.

Jersey stands side by side and ready to work with all countries and parties to clamp down on financial crime – but we believe that doing so should be coordinated and based on thorough, independent research and in full knowledge of the facts.

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