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15 May 2017

Sent via email:
transparencyandtrust@beis.gov.uk

Dear Sirs

BEIS Call for Evidence on a Register of Beneficial Owners of Overseas Companies and Other Legal Entities that own UK Property (the "Register")

The Loan Market Association ("LMA") is the trade body for the syndicated loan markets in Europe, the Middle East and Africa ("EMEA") and was founded in December 1996 by banks operating in these markets. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 650 organisations across EMEA and consists of commercial and investment banks, institutional and other non-bank investors, law firms, rating agencies and service providers. Many of our members operate as lenders, investors or legal advisors in the real estate finance syndicated loan market. We have consulted with many of them to inform this response.

We welcome the opportunity to provide views on the Register and set out below some aspects of the Register on which it would be helpful to have clarification in the context of its impact on security agents and lenders in the syndicated loan market. Many of these issues are also being raised by our members separately with the Department for Business, Energy & Industrial Strategy ("BEIS").

By way of background, a syndicated loan is where more than one lender collectively lends to the same borrower(s) on common terms and conditions, which are documented in a single loan facility agreement, which is signed by all parties. An agent is appointed to act on behalf of the lenders. The obligations of the syndicate to lend under the loan facility agreement will be several (rather than joint or joint and several). However, decisions taken under the loan facility agreement (for example, to enforce any security) will be subject to either majority lender consent or all lender consent. Further information about syndicated lending is attached for your information at Annex I.

Where security is taken to secure the borrower's obligations under the syndicated loan, such security is usually held by a security agent who holds the security on behalf of the lenders from time to time. In this way, if a lender in the syndicate sells its portion of the loan this will generally not necessitate any changes to the registration of the security or amendments to the security documents. In a real estate finance context, the security agent (on behalf of the lenders) will take security over (amongst other things) the property in respect of which it is

Registered in England and Wales as a company limited by guarantee with registered number 3284544
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providing the financing. Since a syndicated loan could be offered to an overseas borrower seeking to acquire a UK property, lenders will need to ensure that overseas borrowers complete the Register and any other requirements as part of their due diligence requirements for providing the loan. We are therefore responding to the Call for Evidence from a lender perspective, to ensure that their interests are not adversely impacted either from a legal or practical perspective.

We would like to respond to the following questions:

Question 1 – Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements?

Regardless of what decision is taken regarding which legal forms fall within the scope of the Register, we would strongly recommend a staged approach to implementation. A large number of UK properties are held by foreign incorporated entities, and some of these are un-incorporated ownership structures such as REITs and partnerships, as well as incorporated vehicles. Consequently, the practical implementation of registration is likely to prove a challenge, potentially resulting in long delays to completions on property transactions and a possible cooling down of the property market. A phased approach would likely ease the burden and ensure a more timely transition.

Question 4 – Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?

Paragraph 31-33 (Defining a beneficial owner) proposes to align the definition of beneficial ownership under the Register with the existing definition that underpins the UK's Persons with Significant Control ("PSC") Regime. We very much agree that there should be consistency between the Register and the PSC Regime, but question whether it would be easier and ultimately more efficient to simply incorporate these requirements within the PSC Regime itself. This would ensure that any outstanding concerns raised by market participants in relation to the PSC Regime could be revisited, remove the possibility of inconsistency and undue administrative burden and enable the PSC Regime to be both strengthened and consolidated. If this is not done, we believe that there is potential for both confusion and unnecessary overlap, particularly because a UK property may be purchased by a limited liability company which is in effect a special purpose vehicle incorporated under English law. In such a situation, the UK property would be owned by a UK company and therefore not subject to the requirements of the Register. However, the UK company would be required to disclose its beneficial ownership via the PSC Regime. It would be much simpler if the two regimes were merged, especially since otherwise a group of companies could well fall within the remit of two entirely separate registers. It would therefore seem to us prudent to combine the two in a clear and consistent manner.

We would also highlight that we have specific concerns on the current form of existing definition of PSC and want to ensure that the same issues do not arise in the context of the Register. These concerns (particularly those relating to the provisions of Schedule 1A that determine how jointly held rights or shares and joint arrangements are dealt with) have been voiced to HM Treasury in its consultation on the transposition of the Fourth Money Laundering Directive and we would welcome their consideration in the creation of the Register, to the extent appropriate. Our principal concern in this regard is that, whilst the PSC Regime provides an exemption in relation to rights attached to shares held by way of security, it does not provide a specific exemption for shares which are held as security by a

security agent. If the security agent takes an English law legal mortgage or a Scottish law share pledge, it becomes the registered holder of the shares. In such cases, if the security agent takes registered title to more than 25% of a borrower's shares as part of the security package, it could satisfy the first of the "specified conditions" for being a PSC in relation to the borrower, even though it would not be treated as holding the voting rights because of paragraph 23 of Schedule 1A, CA 2006. Of even greater concern in the context of this response, therefore, is that, because the Call for Evidence relates to overseas companies that own UK property, the definition of PSC could ultimately be widened even further, so as to include share security taken over foreign, as well as UK, companies. By widening the scope of the PSC Regime, an even larger number of security agents could be caught and then subject to disclosure requirements under PSC. We would therefore stress the overarching need to ensure that legitimate lenders do not become registrable persons by virtue of their taking security over shares or other ownership interests in an overseas entity that owns UK property. We believe that this is particularly important since, if a third party lender or investor were to be required to disclose its interest on a register in place of the actual owner, the underlying rationale of the policy will have been thwarted.

A copy of our response to HM Treasury in respect of the PSC regime may be found at Annex 2 of this response.

Question 7 – What methods of raising awareness would be most effective?

Those who finance real estate (i.e. financial institutions and other types of investor) will be directly impacted by the introduction of the Register. We therefore recommend that steps are taken to make the finance community aware of these changes. We would be happy to work with our members and other real estate associations such as CREFC Europe and the BPF to raise the necessary awareness.

Question 9 – What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)?

Real estate finance in the UK (by which we mean genuine arm's length financing by legitimate lenders) is a vital contributor to economic growth. We would therefore urge that any impact assessments consider how the Register will impact the provision of finance and the supply of investment to UK property. In particular, genuine third party lending and security arrangements should be appropriately and clearly carved out, and compliance with the Register should not create any undue burden from a time, cost or administration perspective. We would highlight that, should there be any risk (direct or implied) of sanctions against parties involved in the provision of finance on genuine arm's length terms, this could have a severely detrimental impact on the availability of finance to the UK real estate sector.

Question 16 – Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?

As we highlighted in our response to Question 4, we very much agree that there should be consistency between the Register and the PSC Regime. One additional observation we would make relates to paragraph 79 of the Call for Evidence, which proposes that overseas entities should check the information with their beneficial owners prior to disclosing it to the Register. We would recommend that further clarification be given in relation to this process to ensure that the information received is accurate and agreed by all relevant parties. Under the PSC

Regime, for example, the company has one month to write to a potential PSC/RRLE, who then has one month to respond. The statute presently allows for this notification to go to third parties. Whilst on the one hand this does give important flexibility, we are aware of one instance, in Scotland, where in practice it became problematic when lawyers for a lender/agent were served with a draft PSC register (as part of the package of documents required to satisfy the conditions precedent for a loan ("**CPs**")) which included reference to that lender/agent. The lawyers confirmed that the register was accurate, without discussing the practical ramifications with their client. As a result, the lender/agent, by confirming overall satisfaction with the CPs, was deemed to have provided confirmation for its name to be included on the PSC register (and will be required to go to court should it wish for its name to be removed). Whilst it may be the case that this result came about from a lack of communication between the lender and its lawyers, it does illustrate how easily mistakes can occur, which are then extremely difficult to rectify.

Question 21 – Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?

As part of this assessment, we would recommend that BEIS consider any impact on lenders, particularly with regards to existing assets in respect of which finance may have already been provided under existing loan agreements. Above all, we would urge that security taken over real estate owned by overseas entities, which was granted in connection with facilities agreed before the Register comes into force, is entirely carved out from the regime. This is to prevent potentially severe problems occurring in respect of historic transactions. For example, if a Lender has an existing charge registered against a property owned by an overseas entity and needs to re-take the charge (e.g. to correct an error in the security, or to refresh it for another reason) a newly placed restriction appearing on the title in the interim period could prevent that lender from dealing with its interest in the property.

Question 26 – How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?

Whilst it is encouraging from a lender perspective that BEIS has outlined third party protections in paragraphs 117-120 for lenders providing a loan to an overseas entity secured against a UK property (in particular, giving them the ability to sell the property during enforcement even if the overseas entity has not complied with the Register) it is not clear how this would work from a legal perspective. For example, the Call for Evidence does not specifically confirm that a receiver (acting on behalf of the lenders) can sell a property in a distressed scenario, without restriction, or that a lender can deal with the property in any other way it needs to in order to maximise recovery (such as through letting it, selling part of the property, etc). In summary, because of the variety of routes that a lender may choose to go down to recoup its financial interest in a property, we would suggest a more granular analysis is needed to ensure that any system is workable, and that the lender is in no way prejudiced from exercising its chosen exit strategy without unnecessary cost or delay. We, along with our members, would be happy to contribute to this process.

Finally, we would urge that lenders who provide finance on an arm's length basis should not be required to fulfil additional and time consuming requirements in order to show that they are not merely acting under the guise of a lender to circumvent the registration requirements. We would also emphasise in this regard that many security agents (who hold security on behalf of a group of lenders) are not necessarily lenders themselves (or banks or financial institutions) and therefore trying to establish a definition of the type of entity that should be

permitted to enforce would be difficult, also risking the creation of further grey areas within the transparency framework. Furthermore, as has been illustrated in the past with other regulatory and policy initiatives (the PSC Regime being one such example), the creation of uncertainty manifests itself as market disruption. It can also lead to the implementation of additional checks during the lending process, all of which result in an increase in the time and cost incurred in completing a transaction. It is our strong desire to avoid this from occurring in the real estate finance market and we would therefore urge that lenders be in a position to enforce security in an unfettered manner.

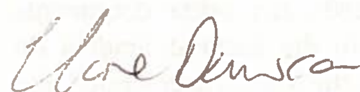
Other observations – Prevention of transfer triggered at the end of a sale

Under paragraph 52 of the Call for Evidence, if an overseas entity does not comply with the Register, the prevention of transfer is only triggered at the end of the process of a sale, leaving the seller to hold the property on trust for the overseas entity.

This means that if a lender financing the acquisition of a property by an overseas purchaser had not verified that the borrower had obtained its registration number as part of its due diligence processes, there is a possibility that funds could have been advanced to the purchaser's solicitor on exchange of contracts and prior to title to the property being transferred at the Land Registry. A lender could therefore find itself in a situation where it had advanced funds to a purchaser for the purpose of buying a property, but the purchaser cannot register its title until it has complied with the register. Whilst it is understood that the overseas purchaser, as beneficial owner, would still be entitled to receipt of income in respect of the property (and therefore be in a position to service its loan with its lending group), the fact that it is in breach of its statutory obligations, could (depending on the wording of the facility agreement) put it in technical default under the loan agreement. In a syndicated lending arrangement, where numerous lenders advance funds to one borrower or group, we are concerned that different lenders might have different reactions to such an occurrence, and that this could cause unnecessary confusion and uncertainty for borrowers and lenders alike. As stated above, we therefore consider it important that the requirements of the Register are widely publicised and clearly understood by both the borrowing and lending community, to avoid situations arising where disputes over minor matters can generate widespread disruption.

We would be happy to discuss any aspect of this response with you in more detail and to meet with you as required. If we can be of any further assistance, please do not hesitate to contact my colleague Amelia Slocombe by email at amelia.slocombe@lma.eu.com or by telephone on 020 7006 4114.

Yours faithfully,



Clare Dawson
Chief Executive
Loan Market Association

Annex I

What is a syndicated loan?

A syndicated loan facility may be a term loan, a revolving loan, a standby letter of credit facility, a guarantee facility or some other similar arrangement. In each case, it involves two or more institutions contracting to provide credit to a particular corporate or group. Under a syndicated loan, the borrower will typically appoint one or more entities as "arranger(s)" which will then proceed to sell down parts of the loan to the other lenders, whilst retaining a proportion of the loan itself/themselves. The arrangement is put together under one set of terms and conditions, usually following LMA recommended form template documentation, but each institution's liability is limited to the amount of its participation. As a result, the syndicated loan market facilitates the sharing of credit risk, and it is therefore possible for a large number of investors to participate in facilities of various amounts, well in excess of the credit appetite of a single lender.

To facilitate the process of administering the loan on a daily basis, one bank from the syndicate will be appointed as facility agent, acting on behalf of the other lenders. The agent has a number of important functions, including the transfer of funds advanced by the lenders to the borrower, the transfer of all interest, principal and other fees payable by the borrower under the loan agreement to the lenders, acting as the point of contact for the borrower, monitoring the borrower's compliance with the terms of the facility agreement and taking receipt of all notices, compliance certificates and other information from the borrower (and distributing it to the lenders).

The role of trusts and syndicated loans

Although some syndicated loan facilities are unsecured (particularly when such loans are extended to better quality investment grade borrowers) the majority of mid-market, M&A, real estate, asset finance and project finance syndicated lending is, in some way, secured against some or all of the borrower's assets.

If the syndicated loan is to be secured, a lender from the syndicate will usually be appointed to act as a **security trustee**, to hold the security on trust for the benefit of a defined class of beneficiaries (i.e. the lenders or the finance parties), as follows:

The objective of this arrangement is to ensure that: (1) a single entity is responsible for the administrative aspects of the security (such as holding title deeds and other documents relating to the charged property) and for making distributions to the secured lenders on enforcement (i.e. when a borrower defaults on its loan repayments, the loan is accelerated and the secured assets are sold to repay the loan); and (2) where a lender assigns or transfers its interest to another entity, the new lender will benefit from the existing security package, without the need for the security to be re-registered or for new security to be granted. This enables the lenders within a syndicate to fluctuate freely, as new lenders join and existing lenders transfer part of all of their interest in the loan.

Annex 2

LMA Response to HM Treasury Consultation on the transposition of the Fourth Money Laundering Directive (the "Directive")

The fight against money laundering and terrorist financing is of fundamental importance to the members of the Loan Market Association (the "**LMA**"). The LMA strongly supports the objectives of the proposed Directive and, in particular, the objectives of ensuring greater transparency to the authorities and obliged entities of information on beneficial ownership. That said, we believe that there are a number of points that would benefit from further clarification in order to ensure that they operate effectively, are appropriately targeted, and do not create disproportionately burdensome reporting requirements which are of little or no practical use to supervisory authorities.

The LMA is the trade body for the EMEA syndicated loan market and was founded in November 1996 by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 660 and consists of banks, non-bank investors, law firms, rating agencies and service providers. The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the European loan market vis à vis lenders, borrowers, regulators and other interested parties.

Summary

We wish to state that there are certain instances whereby the obligation to disclose the beneficial ownership of legal entities needs to be clarified in order to avoid disruption to legitimate corporate and retail activities that use these structures. We would like to highlight the following:

10.A: Question 60

We welcome the opportunity to provide views on the People with Significant Control ("**PSC**") regime. We have set out below some aspects of the PSC regime on which it would be helpful to have clarification in the context of its impact on security agents and lenders in the syndicated loan market. Many of these issues are also being raised by our members separately with the Department for Business, Energy & Industrial Strategy.

By way of background, a syndicated loan is where more than one lender collectively lends to the same borrower(s) on common terms and conditions, which are documented in a single loan facility agreement, which is signed by all parties. An agent is appointed to act on behalf of the lenders. The obligations of the syndicate to lend under the loan facility agreement will be several (rather than joint or joint and several). However, decisions taken under the loan facility agreement (for example, to enforce any security) will be subject to either majority lender consent or all lender consent. Further information about syndicated lending is attached at Annex I.

Where security is taken to secure the borrower's obligations under the syndicated loan, such security is usually held by a security agent who holds the security on behalf of the lenders

from time to time. In this way, if a lender in the syndicate sells its portion of the loan this will generally not necessitate any changes to the registration of the security or amendments to the security documents.

Legal mortgages / Scottish share pledges

Whilst paragraph 23 of Schedule 1A, Companies Act 2006 ("**CA 2006**") provides an exemption in relation to rights attached to shares held by way of security, it does not provide a specific exemption for shares which are held as security by a security agent. If the security agent takes an English law legal mortgage or a Scottish law share pledge, it becomes the registered holder of the shares. In such cases, if the security agent takes registered title to more than 25% of a borrower's shares as part of the security package, it could satisfy the first of the "specified conditions" for being a PSC in relation to the borrower, as it would hold more than 25% of the shares, even though it would not be treated as holding the voting rights because of paragraph 23 of Schedule 1A, CA 2006.

Notwithstanding that paragraph 23 only refers to rights, paragraph 7.4.15 of the Guidance for Companies, Societas Europaeae and Limited Liability Partnerships on the PSC regime published by the Department for Business, Innovation & Skills (now the Department for Business, Energy & Industrial Strategy) on 11 April 2016 (the "**Non-Statutory Guidance**") suggests that paragraph 23 applies to shares as well as rights. As paragraph 23 and the Non-Statutory Guidance are not fully aligned, we would welcome clarification that a security agent that has taken registered title to shares as part of its security package is not to be treated as meeting condition 1 by virtue of holding more than 25% of the shares. In particular, it would be helpful if the exemption in paragraph 23 is extended to specifically include shares as part of the implementation of the Directive.

Joint arrangements

A joint arrangement is defined in paragraph 12 of Schedule 1A, CA 2006 as an arrangement between the holders of shares or rights that they will exercise all or substantially all their respective rights together, in a way that is pre-determined by the arrangement in question.

We would welcome clarification that where a certain percentage or number of people has to vote in favour in order to exercise a right, that this does not constitute a joint arrangement under paragraph 12 of Schedule 1A, CA 2006 in circumstances where there is no agreement between the relevant people as to how they should vote (i.e. they each vote independently).

In the context of a syndicated loan, the lenders will be required to vote on certain decisions subject to certain thresholds (usually majority or all lender consent) depending on the type of decision; however, the lenders may vote as they choose. We would suggest that this does not constitute a joint arrangement just from the fact that the voting threshold arrangement exists as each lender acts independently when making their decision. There would need to be a pre-determined arrangement that they will also exercise their rights (or substantially all their rights) jointly (i.e. in the same way) when voting in order for there to be a joint arrangement.

Joint interests

Under paragraph 11 of Schedule 1A, CA 2006, if two or more persons each hold a share or right jointly, each of them is treated as holding that share or right. We would welcome clarification that, where a security agent holds security over shares or rights on behalf of a

syndicate of lenders, the lenders would not be considered to hold the shares or rights jointly under paragraph 11 of Schedule 1A, CA 2006.

We assume that this is not the intention as a syndicate of lenders is not akin to a partnership or members recorded as jointly holding shares on the share register. Each lender does not have an indivisible right to all the shares or rights like partners in a partnership or members recorded as jointly holding shares on the share register. It would be helpful if this could be confirmed.

Indirect interests

A restrictions notice may be issued to any person who has a relevant interest in a UK company with a PSC register (a "**PSC Company**") if that person fails to comply with notices from that PSC Company within the requisite timeframes. Pursuant to paragraph 2(1) of Schedule 1B, CA 2006, a person has a relevant interest in a PSC Company if the person holds shares, voting rights or board appointment rights in that company. Accordingly, it appears from paragraph 2(1) that the only interests which can be restricted are the shares/rights in the PSC Company and not any indirect holding (e.g. the direct holding the person has in another company which directly holds the shares in the PSC Company).

However, paragraph 8.4.4 of the Non-Statutory Guidance states that a relevant interest is any share or right in the PSC Company held or controlled directly or indirectly by the individual or legal entity the PSC Company is trying to contact.

Schedule 1B, CA 2006 and the Non-Statutory Guidance therefore appear to differ on whether "indirect interests" are relevant interests capable of being restricted. We would welcome confirmation that the provisions in Schedule 1B prevail, i.e. indirect interests cannot be restricted. The Non-Statutory Guidance also refers to "any share or right". It would be clearer if "rights" referred to voting rights and board appointment rights.

If it is the intention that indirect interests can be restricted, we would welcome clarification on how this would be possible, and also which interests can be restricted when someone who has an indirect interest in a PSC Company fails to comply with the information obligations. We assume it is not the indirect interest itself, i.e. the direct interest in the intermediate company. This could be difficult in practice, e.g. if it is shares in a foreign company. However, if it is the shares in the PSC Company itself this would be unfair for the direct holder of the shares who would be punished for the failure of a company further up its corporate chain to respond to notices from the PSC Company. Further, if the direct holder of shares is granting security over its shares in the PSC Company to a security agent and the shares are restricted as a result of a failure to respond by a company further up its corporate chain which the holder of shares may have no control over, the security would not be able to be granted.

Restrictions notices and rights of third parties

Under paragraph 1(6) of Schedule 1B, CA 2006, the PSC Company must have regard to the effect of a restrictions notice on the rights of third parties. We would welcome clarification that this includes third parties who have security over the shares which are the subject of the relevant interest, e.g. a security agent.

It would be helpful if paragraph 8.4.5 of the Non-Statutory Guidance stated that a PSC Company should not issue a restrictions notice in relation to shares it knows or has cause to believe are subject to security under a legitimate arm's length arrangement, on the basis that the restrictions would have an unfair effect on the person with security, e.g. the syndicate of lenders. Although a security agent or lenders could presumably obtain a court order to lift any notice upon enforcement, speed of enforcement is often critical and any delay may adversely affect the amount recovered on enforcement.

Interaction with financial collateral arrangements

We would welcome confirmation on the following two questions in respect of the interaction of the PSC regime with the Financial Collateral Arrangements (No 2) Regulations 2003 (as amended):

- If shares that are the subject of a security financial collateral arrangement are restricted, can the security taker (e.g. security agent) still exercise its right under the Financial Collateral Arrangements (No 2) Regulations 2003 (as amended) to appropriate the shares upon its security becoming enforceable?

- Do the Financial Collateral Arrangements (No 2) Regulations 2003 (as amended), as an implementation of EU legislation (the Financial Collateral Directive (2002/47/EC), take priority over Part 21A and Schedules 1A and 1B, CA 2006?

Reasonable steps

Section 790D, CA 2006 requires a PSC Company to take reasonable steps to find out the identity of any registrable PSCs and registrable relevant legal entities ("**RLEs**"). Paragraph 1(3) of Schedule 1B, CA 2006 states that, in certain circumstances, a PSC Company "may" issue a restriction notice. We would be grateful if you could provide some clarification as to whether there could be a conceivable situation where a PSC Company (e.g. a borrower) would be required to issue a restriction notice in order to satisfy its "reasonable steps" duty.

10.A: Question 64

Our discussions with HMT and the European Commission towards the end of 2014 resulted in trustees being limited to only providing information to a central register in cases where a trust "generates tax consequences". Had that position not been achieved, the trustees of many of the trusts used in a commercial context (such as security trusts for loan transactions) would have had to disclose certain information about the security trust on a publically accessible central register. Such a proposal would have necessitated large investment in systems for trustees to be able to pass daily updates of changes in each and every identified beneficiary, even if they only had a trivial interest under the trust (in contrast, for companies, generally information is only required on 25% ownership and above). This would have been a particular burden in the context of a secured syndicated loan, since it would have required the trustee of that security trust to update the register each and every time the loan was traded, which would have been unnecessarily onerous, particularly given that the information provided would be of no relevance to the supervisory authorities. In addition, given that loan agreements are private contracts between the lenders and the borrower, there would have been a danger that in some cases, disclosure of the existence of a security trust could have resulted in commercially confidential information being released into the public domain.

Helpfully, Article 31 now requires that only those trusts which "generate tax consequences" hold beneficial ownership information on a central register, whilst bare/simple trusts (e.g. security trusts) must hold "adequate, accurate and up-to-date information" on beneficial ownership of the trust.

By way of reminder the strong rationale for this is:

Trusts (and legal arrangements similar to trusts)[1] are used in a wide range of financial transactions throughout the global financial markets for legitimate purposes ("**Financial Trusts**"). For the vast majority of Financial Trusts, the person acting as trustee will be an obliged entity under the Directive.

Since the trustee is likely to be an obliged entity under the Directive, it will already have undertaken customer due diligence (as required under the Directive) on the beneficiaries of the trust.

For this reason, Financial Trusts are inherently low-risk: in addition to the trustee being an obliged entity, Financial Trusts are simple, transparent vehicles used to enable the obliged entity to either hold assets on behalf of a customer, or hold security interests on behalf of a group of investors who have taken security over particular assets (usually as a condition to providing financing to a borrower).

Financial Trusts are used for a wide variety of transactions across the global financial markets and across a variety of jurisdictions (indeed, in jurisdictions such as France, Germany and Poland where trusts are not recognised, they are still likely to use arrangements that are "similar to trusts").

Consequently, we would urge the government to bear the above in mind when considering how the extent to which such information should be made available to supervisory authorities, and on what basis. In particular we would suggest that HMT confirms that it will not require information to be provided that is in excess of that which is held by the trustee as part of its internal record keeping procedures (e.g, lender lists, in the case of syndicated loans).

In addition, we believe that the requirements for obliged entities that are trustees should be consistent with the customer due diligence standards applied under the Directive. For example, the Directive requires Member States to ensure that obliged entities apply customer due diligence measures, but these are subject to a number of adjustments to ensure that the requirements are proportionate and risk-based, in particular as regards simplified due diligence and reliance on third parties. The proposed transparency requirements for trusts appear to impose a separate requirement on obliged entities that act as trustees for customers to obtain and hold information on beneficial ownership which could duplicate or go beyond the requirements for customer due diligence. Consequently, we would suggest it is made clear that, for obliged entities, these requirements do not go beyond the requirements imposed by the customer due diligence standards set out in the Directive. This will be particularly important where an obliged entity is a trustee of a trust where the immediate beneficiary is another obliged entity, which holds the interest on trust for underlying beneficiaries, where the customer due diligence measures may allow simplified due diligence or reliance on the intermediary.

[1] For example, parallel debt provisions, used in those jurisdictions where trusts are not recognized – see Annex I for further details on how these structures operate and how they could potentially be caught under the Directive.

We would be happy to discuss any aspect of this response with you in more detail and to meet with you as required. If we can be of any further assistance, please do not hesitate to contact me via email at nicholas.voisey@lma.eu.com or by telephone on 020 7006 5364.

Yours faithfully,

Nicholas Voisey
Managing Director
Loan Market Association