



BENEFICIAL OWNERSHIP

WHO BENEFITS FROM THE COMPANY BEHIND THE COMPANY? THE PUBLIC HAS A RIGHT TO KNOW. WITHOUT FULL TRANSPARENCY, WE CANNOT FOLLOW THE MONEY, WE CANNOT SCRUTINISE COMPANIES WITH POOR TRACK-RECORDS, AND WE CANNOT KNOW WHO ULTIMATELY BENEFITS FROM IMPORTANT CONTRACTS. WITHOUT TRANSPARENCY WE CANNOT HOLD PEOPLE ACCOUNTABLE, AND WE CANNOT STOP CORRUPTION.

Australia needs a publicly accessible, transparent list of the whole chain of owners of Australian companies, and other legal entities such as foundations and trusts. This is important for Australians, who deserve a healthy well-functioning democracy that has zero tolerance for corporate crime; and it is important for the role we play in the global community – because Australia is a major destination of dirty money from around the world.

There is no quick fix to stopping money laundering, but we can make it much harder. An open register of beneficial owners helps shine a light on where the money goes, and who benefits. This makes it a lot harder for criminals to prosper, or public individuals and contractors to hide questionable conduct.

To achieve this, the Australian Government should:

- **Modernise our existing company registers** by making them interconnected, and ensuring the process and the data is presented in a clear, accessible and machine-readable way;
- Allocate **more resources to verify the data** in the company register;
- Introduce **robust identifiers** for individuals in the register, such as Director Identification Numbers;
- Require all companies and trusts to **disclose their beneficial owners** to the company register;

- Ensure this requirement covers all domestic entities and trusts, as well as foreign entities and trusts when they acquire property in Australia, or a significant stake in an Australian business;
- Ensure the **data in the register is publicly available in open-data format** and implement the Beneficial Ownership Data Standard to ensure disclosure meets global standards¹;
- Ensure that regulations **clearly define beneficial owners**, providing for the collection and verification of appropriate information and effectively sanctioning those who do not comply;
- **Prohibit nominee shareholders** and the non-disclosure of beneficial owners; and
- Prohibit non-financial institutions and professions, or so-called DNFBPs (such as real estate agents, accountants and lawyers), to proceed with transactions if they cannot identify the verified beneficial owner of their customer.

¹ As developed by OpenOwnership. See more in Tim Davies (2017) 'Introducing the Beneficial Ownership Data Standard'.

PROBLEM

70 per cent of Grand Corruption cases reviewed by the World Bank involved anonymous entities transferring funds.² The United Nations Office on Drugs and Crime estimates between US\$800 billion and US\$2 trillion of illicit money is laundered every year, much of it through anonymous entities.³ It is the most common method for laundering dirty money worldwide.

Anonymous legal entities and secret relationships also hide conflicts of interest and obscure the level of influence a company or an individual might exert on a political decision. Transparency International's research on mining deals found this to be a major flaw in the process of approving a mine in many countries.⁵ For example - if a Minister for Mines granted a mining permit to a company in which he owns significant shares, could we reasonably assume this decision was made in the public's best interest?

Australia and other G20 countries are major destinations for illicit financial flows from around the world. Australia, like other democracies, has an obligation to strengthen the integrity of our global financial system and stop the flow of dirty money. When countries step up to the task of closing the loopholes that allow criminals to prosper; and work together as an international community to establish rigorous standards for accountability, we will be able to combat corruption more effectively.

Definition of Beneficial Ownership

A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust and the income it generates. The term is used to contrast with legal persons, nominee company owners or trustees, all of whom might be registered as legal owners of an asset without actually possessing the right to enjoy its benefits.

Assessing who actually controls or has significant influence over a company can be difficult but useful guidance has been developed abroad, which provides a basis for Australian regulation.⁴

BACKGROUND

In 2014, Australia worked with other G20 countries to develop the **G20 High Level Principles on Beneficial Ownership Transparency**,⁶ a commitment by the world's

wealthiest countries to reform the legal structures that allow anonymous companies, trusts and other legal entities to transfer and hide money.

In 2016, Australia agreed to improve its Beneficial Ownership Transparency framework through its **Open Government Partnership National Action Plan**,⁷ a detailed suite of commitments to improving the openness and accountability of our democracy.

In 2016, Australia committed to join the Extractive Industries Transparency Initiative (EITI), a global gold standard that promotes open and accountable management of oil, gas and mineral resources, which has specific requirements for beneficial ownership transparency.

In 2018, Transparency International published its second review of G20 countries' progress in implementing the **High-Level Principles**.⁸ Despite Australia's leadership in establishing these principles, it has not taken strong enough action to implement them. Australia has improved our score from 'weak' to 'average' between 2015 and 2018. However, this comes in contrast to the achievement of our peers: since the G20 commitment, France, Italy and the United Kingdom have introduced new legislation and achieved a 'very strong' rating from TI's review. Despite the Australian Government's commitments, we still do not have a register of beneficial owners and we have not yet joined the EITI.

While Australia is dragging its feet, the world is moving forward:

- European Union countries have agreed to establish public and interconnected registers of beneficial owners so that the 28 member countries can efficiently share information and improve mechanisms for verifying that information.⁹
- 21 governments in the EITI have pledged to publish extractive company beneficial ownership data by 2020.¹⁰
- The OECD is helping states to collect and exchange beneficial ownership information to fight tax evasion and money laundering.¹¹
- 21 governments pledged to explore or establish beneficial ownership registers at the UK Anti-Corruption Summit in May 2016.¹²

Australia clearly needs to catch up.

² van der Does de Willebois, Emile; Halter, Emily M.; Harrison, Robert A.; Park, Ji Won; Sharman, J.C. (2011), 'The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It'.

³ UNODC, 'Money-Laundering and Globalization'.

⁴ For example the UK has separate guidance for identifying BOs of companies, LLPs and Scottish partnerships: Department for Business, Energy & Industrial Strategy, 'PSC requirements for companies and limited liability partnerships'. (The guidance refers to persons with significant control (PSCs), as BOs are known in the UK.)

⁵ TI (2017) 'Combating corruption in mining approvals: Assessing the risks in 18 resource-rich countries'.

⁶ G20 (2014) 'G20 High-Level Principles on Beneficial Ownership Transparency'.

⁷ Department of the Prime Minister and Cabinet (2016) 'Australia's Open Government National Action Plan', Commitment 1.2 - Beneficial ownership transparency.

⁸ TI (2018) 'G20 Leaders or Laggards?'.

⁹ Directorate-General for Justice and Consumers (2018) 'Strengthened EU rules to prevent money laundering and terrorism financing', European Commission.

¹⁰ EITI, (2017) 'Road to 2020'.

¹¹ OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (2017) 'Tax Transparency 2018: Report on progress'.

¹² TI (2016) 'Was It Worth It? Assessing Government Promises at the 2016 Anti-Corruption Summit'.