



A STRONGER CORPORATE REGISTRY

AUSTRALIA HAS INADEQUATE CORPORATE REGULATORY SYSTEMS. THIS ENABLES PEOPLE WHO HAVE BEEN INVOLVED IN CORRUPTION AND OTHER ILLEGAL ACTIVITIES TO REGISTER COMPANIES IN AUSTRALIA.

Corporate Register: There are currently 31 business registers and the Australian Business Register administered by the Australian Securities and Investments Commission (ASIC).

INTRODUCTION:

Individuals can register a company without adequate due diligence checks, beneficial ownership disclosure, identification of potential links to politically exposed persons, or a robust assessment of their business activities and legitimacy, both in Australia and transnationally. This lack of transparency and verification makes it too easy for companies and directors with dubious reputations to hide, and any history of corruption, misconduct and crime, including money laundering, fraud, and embezzlement to not be checked.

A stronger corporate regulatory system requires greater transparency and proper due diligence checks into the integrity, character and track record of directors and entities and their operations in both Australia and abroad.

Beneficial Owner: A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust and the income it generates.

Politically Exposed Persons (PEPS): An individual who holds a prominent public position or role in a government body or international organisation. Immediate family members and/or close associates of these individuals are also considered PEPs.

WHAT IS THE PROBLEM?

Australia's Corporate Register System currently has:

- *31 different commonwealth business registers:* This makes good governance and due diligence almost impossible, provides an opportunity for individuals to set up companies with opaque business structures and questionable motives to thrive, and provides little reliability for people who are genuinely interested in undertaking due diligence and 'knowing their customer'.
- *No verification or cross referencing of data:* The ASIC undertakes only basic data entry functions on the corporate register.
- *No requirement for beneficial ownership disclosure:* Australia's corporate register system has no trust register. This makes ultimate beneficiary ownership confirmation impossible.
- *High usage costs:* Australia's corporate register is one of the most expensive in the world to access.¹

Factors contributing to the problem are:

- *Undue influence, lobbying and revolving doors:* Undue influence and lobbying by special interest groups and powerful individuals, and the revolving door between elected officials, the private sector and their in-house lobbyists and consultants is contributing to a policy reform agenda of winding back regulatory oversight.

¹ ASIC Fees Highest in the World; see <https://www.michaelwest.com.au/asic-fees-highest-in-world/>

A STEP IN THE RIGHT DIRECTION?

The Australian government has recognised part of the problem and has put in place some reform to modernise the business registers.

Modernising Business Registers (MBR)

Program: What reforms will it include? The MBR Program will progressively establish a new business registry service between 2021 and 2024. This will unify the Australian Business Register managed by the Australian Tax Office (ATO) and 31 registers currently managed by ASIC in to one place.

MODERNISING BUSINESS REGISTERS PROGRAM:

The MBR program will establish the Australian Business Registry Services (ABRS).² As part of this program a Director Identification Number (DIN), a unique identifier for company directors, will be introduced requiring all directors to confirm their identity. This is a step in the right direction in preventing the appointment of fictitious directors and facilitating traceability of their profile and relationships with companies over time. It may assist the government to address some aspects of illegal phoenix activity, but with only basic checks of accuracy of data provided, rather than robust due diligence checks, then risks remain.

Illegal Phoenix Activity: When a company is liquidated, wound up or abandoned to avoid paying its debts. A new company is then started to continue the same business activities without the debt.

Control and ownership of private companies in Australia will continue to be conducted by anonymous nominees. Trust structures existing behind anonymous ownership accentuates opaqueness due to a lack of any centralised recording. These nominee relationships can create risks for stakeholders including money laundering, financing of terrorism and profiting from criminal and/or corrupt behaviour.

Though the MBR Program is welcome, it must also address the risks of non-transparent control and ownership.

BENEFICIAL OWNERSHIP:

Australia has made numerous commitments to progress beneficial ownership disclosure on the global stage, but with no progress. There has also been no information released about what the Australian Government intends to do about beneficial ownership transparency as part of the MBR program. Whilst lack of political will is a key factor, until the corporate register is fixed, reliable and accurate information that can be crosschecked and validated - the system upon which to build a public register of beneficial owners, just does not exist.

RECOMMENDATIONS- THE AUSTRALIAN GOVERNMENT AND REGULATORS MUST:

- *Remove excessive costs and allow free access to the register:* Data access need to be free as the public and private sector have the right to know who is doing business here in Australia.
- *Close the loophole allowing the anonymous appointment of directors and beneficial shareholders, ensuring nominees make their role apparent and reveal who they are a nominee for:* As long as companies are able to appoint nominee directors and shareholders, Australia's Corporate system will not be fit for purpose.
- *Verify current data and collect additional data to properly identify the individuals registering companies, and identify whether they have been involved in corrupt or criminal conduct in Australia or overseas:* Robust corporate registers provide legitimacy and protection to businesses and support regulators to undertake compliance activities.
- *Establish a centralised public beneficial ownership register:* Companies will otherwise continue to be used to disguise the identity of those involved in illicit activities, including tax evasion, money laundering, bribery, corruption and terrorism financing.
- *Establish a trust register requiring full disclosure of beneficial owners and ultimate beneficiaries:* As long as Australia does not have a trust register and beneficial ownership disclosure, it will continue to have inadequate due diligence mechanisms.

² ASIC Modernising Business Registers program; see <https://asic.gov.au/about-asic/dealing-with-asic/modernising-business-registers-program/>