

---

# A STRONGER CORPORATE REGISTRY

## ANALYSIS AND RECOMMENDATIONS

---

**Corporate Register:** There are currently 31 business registers and the Australian Business Register administered by ASIC.

**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. 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. Check out our [Beneficial Ownership Position Paper](#) to learn more.

**Politically Exposed Persons:** 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.

### INTRODUCTION

Australia has inadequate corporate regulatory systems. This enables people who have been involved in corruption and other illegal activities to register companies in Australia.

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 makes it easier for dishonest and criminal individuals to hide corruption, misconduct and crime, including money laundering, fraud, and embezzlement.

A stronger corporate regulatory system requires greater transparency and proper due diligence. In 2020, the Australian government allocated funding for implementation of the Modernising Business Registers (MBR) program. This program aims to improve the administration of business registers and unify the Australian Business Register and the 31 business registers held with the Australian Securities and Investments Commission (ASIC). This is long overdue and a welcomed step. It goes some way in addressing the flaws in the current system, but greater reform is required for it to be fit for purpose. It appears it will assist with preventing phoenixing activities and tax evasion, but is a missed opportunity to overhaul the system to address arguably the more important issue of having a reliable system for due diligence.

## Modernising Business Registers 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.

The new registry service will modernise and streamline the way businesses register, view and maintain business registration details with government on a more contemporary, digital registry system. As part of the MBR Program, a new director ID – a unique identifier that a director will keep forever, will also be introduced.

## RECOMMENDATIONS

- Australia must remove excessive costs and allow free access to the register
- Australian regulators must 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
- Australian regulators must 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
- Australia must establish a centralised public beneficial ownership register
- Australia must establish a trust register and require full disclosure of beneficial owners and ultimate beneficiaries

## WHAT IS THE PROBLEM?

Australia's corporate system in its current form is not fit for purpose as it does not properly identify individuals registering associations with private companies. The MBR Program is an important step in improving the system, but does not go far enough, leaving the public and private sector in the dark into the integrity of businesses registering in Australia. Though the Australian Transaction Reports and Analysis Centre (AUSTRAC), the regulator responsible for protecting the financial system from serious and organised crime, requires Australian entities to properly identify their customers, the corporate register is not required to<sup>1</sup>. This registration system therefore enables private companies with opaque business structures to be registered in Australia with no verification of the data supplied, in addition to a great deal of essential identification data not collected at all.



**Elvis Presley, Homer Simpson and Bob Marley could be installed as Australian Company directors, ASIC admits.**

ABC Investigations Headline, 28<sup>th</sup> February 2020<sup>2</sup>

---

Australia is a founding member of the Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog. We have committed to fully and effectively implementing its standards for combating money laundering, specifically in respect to requiring greater transparency from both companies and trusts.<sup>3</sup> As Australia does not have a robust corporate registry we are unable to meet these global commitments. The system in its current form fails to provide legitimacy and protection to businesses as well as to support regulators to undertake compliance activities.

The ASIC is currently primarily responsible for maintaining corporate registration.<sup>4</sup> In its current form the corporate registration system in Australia is disjointed, outdated, unreliable and lacking the necessary verification, due diligence and technology to make it fit for purpose to assist in the prevention and detection of corporate misconduct and money laundering. The MBR Program will go some way in addressing these issues by unifying the registers administered by ASIC onto a single more contemporary platform. This platform will be administered by the Commonwealth Registrar (the Registrar) under legislation and as a separate statutory function of the Australian Taxation Office (ATO).<sup>5</sup> However, the program still fails to address many flaws, particularly relating to its reliability and verification.

### **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'. Unifying the registers into one central Registrar will make it easier to cross-check information.
- No verification or cross referencing of data: The ASIC undertakes only basic data entry functions on the corporate register. It does not verify the identity of individuals, entities or their addresses, and takes information provided at face value, without any due diligence or verification checks. The government has announced that the MBR Program will include additional validation steps, yet these still fall short. It is vital that validation goes beyond software assessing whether the data is in the correct format (e.g. a mobile number has the correct number of digits, or an email includes an @ symbol). It will still fail to verify the identity of individuals and entities, and takes information provided at face value, without any due diligence or proper verification checks. There will also continue to be no due diligence checks for politically exposed persons. This means limited transparency around the relationships between directors and multiple companies will remain, enabling opaque business structures, phoenix activity and potentially money laundering and other corporate misconduct and crime to thrive in a sought after 'rule of law' jurisdiction.
- No requirement for beneficial ownership disclosure: Australia's corporate register system has no trust register. This makes ultimate beneficiary ownership confirmation impossible. This is despite the fact that Australia's financial regulator, AUSTRAC, requires all reporting entities to identify the beneficial owners of their customers and assess the money laundering/terrorism financing risk they pose.<sup>6</sup> There has been no indication from the government that it will progress beneficial ownership disclosure as part of the MBR Program. This is a clear implementation gap and disconnect in Australia's corporate governance.
- High usage costs: Australia's corporate register is one of the most expensive in the world.<sup>7</sup> People must pay a high fee to access information in the register. There has been no indication from the government that it will decrease the cost of accessing data. This discourages robust due diligence by not having free and accessible public information.

### **Factors contributing to the problem are:**

- Undue influence, lobbying and revolving doors: The Australian political and business landscape can be characterised as a 'culture of mateship'.<sup>8</sup> 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. This is frequently framed within a 'regulatory burden' narrative by the Australian government. This is evident in the what the government has released on the MBR Program. The 'why the register is needed' section on the ATO website states an aim is "to make it easier for businesses to meet their registration obligations – leaving them with more time to focus on their customers and business

operations".<sup>9</sup>

- ***No appetite for robust due diligence:*** There is a lack of political will in Australia to ensure we have robust due diligence mechanisms in place. An example of this is the research conducted by TIA that found significant corruption risks in the mining sector approvals process.<sup>10</sup> This is associated with a lack of due diligence into the integrity, character and track record of mining companies that are applying for mining licences and project approvals. Our research into the process of approving mining permits in Queensland and Western Australia found the current due diligence checks to be lacking.<sup>11</sup> They are limited to financial capacity and environmental records of companies within Australia, but do not look at companies' conduct overseas, and do not include any examination of the beneficial owners - those who will ultimately benefit from mining Australia's resources. The MBR Program fails to include the necessary reforms to improve due diligence, instead focusing on preventing phoenixing and tax evasion activities. This is a missed opportunity to address the broader risks that result from a lax corporate registry system.

## WHAT ARE THE RISKS?

### Australian Risks

A weak corporate register allows companies and their associated entities - often with opaque business structures - to use Australia as a launching pad for dubious activity.

This could include businesses with:

- Histories of breaches of Australian corporate law and Director duties;
- Associations with politically exposed persons known for corruption; and
- Potential money laundering through the property and luxury goods market in Australia.<sup>12</sup>

Money laundering activities<sup>13</sup> could include:

- Concealing the proceeds of crime;
- Obscuring the beneficial ownership of assets through complex corporate and trusts structures;
- Avoiding or evading tax through exploitation of tax havens or offshore financial centres and
- Evading regulatory regimes, particularly the detection, freezing and confiscation of illicit assets.<sup>14</sup>

### Case study: Australian Links to Malaysian Financial Scandal

Former Malaysian prime minister Najib Razak had an alleged role in the multi-billion dollar 1MDB financial scandal that toppled him from office. Mr Najib's bank accounts connected to the alleged money laundering were held with the Malaysian bank AmBank, of which ANZ is the single largest shareholder, holding a 24 per cent stake. This highlights the importance of 'know your customer' due diligence work and how Australia can be used as a launching pad for dubious activity.



#### **An introduction to Malaysia's unfathomably large 1MDB fraud scandal**

*Crikey* headline, 10th October 2018.<sup>15</sup>

## International Risks

When companies of any nationality exploit the natural resources of resource-rich, but corruption-prone countries, such as in the Pacific, the impacts are devastating. Citizens of these countries do not get a fair share of their natural resource wealth, communities are side-lined in decision making processes, land and livelihoods are lost, and what revenue is generated more often ends up in deep pockets of corrupt officials with little or no expenditure on essential services such as health and education.<sup>16</sup>

While Australia's ongoing commitment to the Pacific through development aid is welcome, unless Australia's corporate laws are strengthened, Australia will continue to be a potential launching pad for companies (both Australian and international) that have not been properly 'checked out'. Other countries have legitimate expectations that associated individuals have already been properly scrutinised by Australia in line with international commitments. The lack of a robust system in Australia provides a vacuum where potentially corrupt conduct fills, impacting already vulnerable populations. Elite capture and corruption can rapidly undermine institutions of governance which Australia's development spending tries to support in places such as the Pacific.

### Case study: Gold Ridge Mine

Gold Ridge is a mine on Guadalcanal, Solomon Islands, about 30 km south east of the capital Honiara. Activities of Chinese mining and infrastructure companies, including those associated with the Goldridge mine, and registered in Australia, are undermining political integrity and democracy in the Solomons. They are causing devastating environmental impacts and displacing communities. All of this is happening at speed and with no transparency as to the deals being done, the consent of landowners, or what the benefits will be and for whom.

The company AXF Resources registered in Australia, is a case in point of the need for stronger corporate regulatory system in order to prevent potential corrupt, illegal or unethical behaviour. Questions around the acquisition of rights to the Goldridge mine, blended finance, possible money laundering and opaque corporate structures should be red flags for Australia and our corporate registry.



**Chinese redevelopment of Solomon Islands' Gold Ridge mine dubbed 'way over the top'**

*ABC News headline. 2019.<sup>17</sup>*

## WHAT IS AUSTRALIA (NOT) DOING?

### Modernising Business Registers Program

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.<sup>18</sup> 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.<sup>19</sup>

However, control and ownership of private companies in Australia will continue to be conducted by anonymous nominees. Trust structures existing behind this anonymous ownership then accentuates opaqueness due to a lack of any centralised recording. The countless risks these nominee relationships create for any stake holder include money laundering, financing of terrorism and profiting from criminal and/or corrupt behaviour. Given that the nominee 'non-beneficial' owner is merely a legal owner, not liable for tax and with no compulsion to reveal who they are, there is the additional risk of tax fraud.

Though MBR Program is welcome, it must also address the above risks of non-transparent control and ownership. If these risks remain, Australia will continue to be a 'go to destination' for money laundering, and an attractive launching pad for dubious companies and individuals to conduct business in Australia and abroad.

To achieve this the program must ensure nominees are required to make their role apparent and reveal who they are a nominee for.

An Australian business registration, may assist a company to obtain registration in other jurisdictions, on the assumption that due diligence checks have been done in Australia – effectively supporting the global reach of corrupt behaviour.

If the government is to be a more effective regulator, it must take its role of “promote(ing) confident and informed participation by investors and consumer in the financial system” seriously and undertake robust due diligence, and check and verify data provided, rather than simply playing a data entry role.<sup>20</sup> As stated by the ASIC Commissioner John Price in 2018, the ASIC is a “registration system not a checking system...we don’t validate the information given to us”.<sup>21</sup>

## Beneficial ownership

Australia has made numerous commitments to progress beneficial ownership disclosure on the global stage, but with no progress.<sup>22</sup> There is a lack of political will to implement commitments made at the 2014 G20 (High-Level Principles on Beneficial Ownership)<sup>23</sup>, and the 2016 UK Anti-Corruption Summit<sup>24</sup>.

Civil society and private sector efforts to include beneficial ownership disclosure in the third Open Government Partnership National Action Plan were also rejected by Federal Treasury.<sup>25</sup>

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. The last consultation process on the issue was held in early 2017.<sup>26</sup> 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.

### Case Study: Australian Resident Director and Corporate Services (ARDCS)

The current loopholes in the system allow third party providers to sell nominee director or shareholder services, ensuring that the real identities and ultimate beneficiaries are kept hidden, and allowing opaque business structures to flourish. The soon to be introduce DIN does not prevent this and users of the register still will not know if a person is acting on behalf of another. The public will not be reassured that only those fit and proper are doing business in and from Australia.

For example, ARDCS, a Gold Coast (Queensland), based company provides ‘Resident Director Services’ allowing international companies to purchase nominee directors. As quoted from their website, for a cheap price you can ensure “a cost-effective and seamless solution” to overcome the “major hurdle” that the “director residency rule” can be for overseas businesses wishing to establish in Australia. This is one of many nominee service providers available in Australia, that promotes the confidentiality of their services.



Australian Resident Director and Corporate Services<sup>27</sup>

## 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. Having one of the most expensive systems to access public information from discourages robust due diligence. Australia is lagging behind and needs to catch up with other countries who either charge a fraction of the cost of Australia's hefty fees, or don't charge at all.

- **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. Corporate transparency ensures everyone knows who they work with and who they work for. This transparency does not include anonymous nominee relationships, which enable individuals with questionable reputations and histories to conduct business both in and from Australia. Australia needs to lift the veil on who is behind companies to identify potential links to politically exposed persons, criminal and corrupt actors to enable a robust assessment of their business activities and legitimacy both in Australia and transnationally.

- **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. However, for as long as the corporate registration system in Australia is unreliable and lacking the necessary verification and due diligence, it will not be fit for purpose to assist in the prevention and detection of corporate misconduct and money laundering. The verification should include checking if a person registering is convicted of a serious offence, whether they are on a sanctions list or that they're a politically exposed, in addition to basic name, date/place of birth and residential address verification.

- **Establish a centralised public beneficial ownership register**

Companies can be used to disguise the identity of those involved in illicit activities, including tax evasion, money laundering, bribery, corruption and terrorism financing. This will continue to occur in Australia through mechanisms such as the use of shell companies, the use of complex ownership and control structures and nominee shareholders if Australia does not establish a beneficial ownership register. In order to do so, it needs accurate and verified data in the corporate register.

- **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. Companies are able to register in Australia with no verification of who the ultimate beneficiaries are, their character, integrity and track record. These systems need to be put in place to order to make ownership confirmation possible.

## ENDNOTES

---

- <sup>1</sup> AUSTRAC, Annual Report 2019-20, page 20; [https://www.austrac.gov.au/sites/default/files/2020-10/AUSTRAC\\_Annual%20Report%202019\\_2020.pdf](https://www.austrac.gov.au/sites/default/files/2020-10/AUSTRAC_Annual%20Report%202019_2020.pdf)
- <sup>2</sup> Elvis Presley, Homer Simpson and Bob Marley could be installed as Australia company directors, ASIC admits; see <https://www.abc.net.au/news/2020-02-28/homer-simpson-could-be-installed-as-australian-company-director/12010646>
- <sup>3</sup> FATF, Australia Profile; <http://www.fatf-gafi.org/countries/#Australia>
- <sup>4</sup> ASIC, Registers; <https://asic.gov.au/online-services/search-asics-registers/>
- <sup>5</sup> Treasury, Modernising Business Registers (MBR) Program Consultation Paper; <https://treasury.gov.au/consultation/c2021-157170>
- <sup>6</sup> AUSTRAC, Beneficial Owners; <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/beneficial-owners>
- <sup>7</sup> ASIC Fees Highest in the World; see <https://www.michaelwest.com.au/asic-fees-highest-in-world/>
- <sup>8</sup> In the family- Majority of Australia's lobbyists are former political insiders; see <https://www.theguardian.com/australia-news/2018/sep/16/in-the-family-majority-of-australias-lobbyists-are-former-political-insiders>
- <sup>9</sup> ATO, Modernising Business Registers program; <https://softwaredevelopers.ato.gov.au/modernisingbusinessregisters>
- <sup>10</sup> Transparency International Australia, Accountable Mining Australia; <https://transparency.org.au/global-mining-3/australia/>
- <sup>11</sup> Transparency International Australia, Corruption Risks: Mining Approvals in Australia; <https://transparency.org.au/wp-content/uploads/2019/10/Australia-Report.pdf>
- <sup>12</sup> Transparency International Australia, Anti-Money Laundering Position Paper; <https://transparency.org.au/position-paper-anti-money-laundering/>
- <sup>13</sup> Transparency International Australia, Position Paper, Money Laundering; <https://transparency.org.au/position-paper-anti-money-laundering/>
- <sup>14</sup> AUSTRAC, Strategic analysis brief-Money laundering through legal practitioners; <https://www.riskscreen.com/kyc360/wp-content/uploads/2015/09/AUSTRAC-brief-legal-practitioners.pdf>
- <sup>15</sup> <https://www.crikey.com.au/2018/10/10/an-introduction-to-malaysias-unfathomably-large-1mdb-fraud-scandal/>
- <sup>16</sup> Gibson, Ginger & Bradshaw, Ben, 2018, Resource Extraction and Indigenous Community Consent; [https://www.researchgate.net/publication/343426417\\_Resource\\_Extraction\\_and\\_Indigenous\\_Community\\_Consent](https://www.researchgate.net/publication/343426417_Resource_Extraction_and_Indigenous_Community_Consent)
- <sup>17</sup> <https://www.abc.net.au/news/2019-10-30/china-cites-early-harvest-benefits-in-guadalcanal-deal/11654596>
- <sup>18</sup> Ibid.
- <sup>19</sup> Australian Business Register, Modernising Business Registers and Director Identification Numbers; <https://www.abr.gov.au/media-centre/modernising-business-registers-and-director-identification-numbers>
- <sup>20</sup> ASIC, Our Role; <https://www.asic.gov.au/about-asic/what-we-do/our-role/>
- <sup>21</sup> ABC, Company registration Process Opens Door to Organised Crime; <https://www.abc.net.au/radio/programs/pm/company-registration-process-opens-door-to-organised-crime/10071900>
- <sup>22</sup> Transparency International Australia, Position Paper, Beneficial Ownership; <https://transparency.org.au/position-paper-beneficial-ownership/>
- <sup>23</sup> Australian Government, G20 High-Level Principles on Beneficial Ownership Transparency; <https://www.ag.gov.au/sites/default/files/2020-03/G20High-LevelPrinciplesOnBeneficialOwnershipTransparency.pdf>
- <sup>24</sup> UK Government, Anti-Corruption Summit London 2016; <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016/about>
- <sup>25</sup> Open Government Partnership Australia, Australia's Third Open Government National Action Plan; <https://ogpau.pmc.gov.au/national-action-plans/australias-third-open-government-national-action-plan-2020-22>
- <sup>26</sup> Treasury, Increasing transparency of the beneficial ownership of companies; <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies>
- <sup>27</sup> Australian Resident Director and Corporate Services <https://www.ardcs.com.au/>