
PUBLIC BENEFICIAL OWNERSHIP REGISTER PROPOSED



As a part of its election platform promise, the government has released a consultation paper seeking views to implement a public register of beneficial ownership information to record who ultimately owns, controls, and receives benefits from a company or legal vehicle operating in Australia. The ultimate aim of this is to increase transparency, discourage the use of complex structures and bring Australia in line with some other G20 nations.

It is proposed that this new disclosure regime will build on the existing disclosure regime for listed entities by extending beneficial ownership disclosure requirements to a broader range of entities regulated under the Corporations Act.

Over three million additional, unlisted entities would be subject to transparency measures with respect to the disclosure of their beneficial ownership information.

In the first phase of implementation, the paper notes that the government will be focusing on the following entities as they are regulated by the Commonwealth and are currently required to maintain registers of legal ownership:

- Proprietary companies;
- Unlisted public companies;
- Unlisted registered managed investment schemes (MISs); and
- Unlisted corporate collective investment vehicles (CCIVs).

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During the election, the proposal to implement a public register of beneficial ownership information was a part of the government's policy on "multinational tax integrity". However, the consultation paper itself does not make any specific comments on the size of the entities captured under the scheme, and therefore may very likely include all proprietary companies regardless of size that are currently required to be registered with ASIC.

The paper proposes that a regulated entity's beneficial ownership register would include details of:

- All natural persons who satisfy at least one of the threshold requirements for registration as a beneficial owner of a regulated entity, including:
 - Holding, directly or indirectly, 20% of shares or units in the entity;
 - Holding, directly or indirectly, 20% of the voting rights in the entity;
 - Holding the right, directly or indirectly, to appoint or remove a majority of the board of directors or the responsible entity or the corporate director of the entity;
 - Having the right to exercise, or actually exercise, significant influence or control over the entity;
- All companies, registered MISs, CCIVs, or trusts that would satisfy at least one of the threshold requirements above if they were a natural person.

According to the government, the wording of the threshold requirements is designed to capture forms of beneficial ownership characterised by agreement or arrangements (whether formal or customary) to act jointly or in coordination. In those cases, each person who agrees or enters into such an arrangement would be required to be registered on the beneficial ownership register, even if their direct holding/interest is less than 20%.

As it is not always possible for regulated entities to be aware of all beneficial owners, the paper also proposes to introduce obligations on ultimate beneficial owners to identify themselves as beneficial owners and provide relevant beneficial ownership information to regulated entities. Information collected from natural persons under the register and made public available will include full name, full date of birth, addresses for communication and service, residential address, nationality, nature of control or influence, and the date the person became/ceased to be beneficial owner.

CONTACT

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