

## Australia's G20 report on Beneficial Ownership Transparency

In 2014 the Anti-Corruption Working Group developed the *G20 High-Level Principles on Beneficial Ownership Transparency*. The Principles were endorsed at the Leaders' Summit in November 2014, with Leaders committing to improving the transparency of beneficial ownership by implementing the Principles.

The Principles are a landmark achievement which detail actions G20 countries commit to taking to ensure legal structures (such as shell companies) are transparent and not misused for money laundering, tax avoidance or other illicit purposes. Significantly, the Principles include a commitment by members to share in writing steps they are taking to improve the transparency of legal entities. Accordingly, Australia provides the following report:

- I. Australia is currently undertaking a Statutory Review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the AML/CTF Act), and associated Rules and Regulations (the review). The review will consider the relevant findings and recommendations of Australia's Mutual Evaluation report which was released in April 2015.
- II. In 2014 Australia updated its preventative measure requirements in the *Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2007 (No. 1)*,<sup>1</sup> including those regarding customer identification and beneficial ownership:
  - a. updating the definition of 'beneficial owner' in accordance with the FATF definition. The new definition refers to a natural person who ultimately owns or controls a reporting entity or customer, directly or indirectly,
  - b. requiring reporting entities to identify the beneficial owner of most types of customers, and collect and take reasonable measures to verify the full name and residential address or date of birth of each beneficial owner, and
  - c. requiring businesses to undertake enhanced customer due diligence measures appropriate to individual high-risk circumstances, including measures to clarify or update beneficial ownership information, and obtain further beneficial ownership information including in relation to the source of funds/wealth.
- III. *Assessment of risks*: Australia's latest, publicly available organised crime risk assessment *Organised Crime in Australia 2015*, was released in May. The public report is informed by Australia's classified *Organised Crime Threat Assessment* (OCTA), conducted biennially, which assesses money laundering risks, major risks in relation to criminal markets, and identifies areas for further analysis. In 2013 and 2015, the exploitation of complex ownership and control structures to effectively hide the ultimate beneficial owner was specifically identified as a current, key enabler of organised crime in Australia. The OCTA in turn informs Australia's classified National Threat Assessment on Money Laundering, which analyses major and emerging threats across a range of channels, including legal entity structures. Australia released a National Threat Assessment in 2011 which also identified legal persons and legal arrangements as presenting medium to high risks for money laundering and the use of complex corporate structures in money laundering schemes. This report informs Australia's public *Money laundering in Australia 2011* report.
- IV. *Collecting beneficial ownership information*: All companies must register with the Australian Securities and Investments Commission. ASIC maintains a record of the incorporation of each

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<sup>1</sup> The AML/CTF Rules are a legally enforceable legislative instrument that provide the operational detail to the high level obligations set out in the AML/CTF Act.

company on its public Companies and Organisations Register. Companies are also required to hold a register of shareholders, containing each member's name and address, date on which the member was issued shares, the number and class of shares held, and the date of issuance.<sup>2</sup> Companies are required to notify ASIC within specified timeframes (generally 28 days or less) about a change of registered office, principal place of business, its member register, its share structure, directors or secretaries, including in their personal details. For publicly listed entities, the register must also include information disclosed under any beneficial ownership tracing notice.<sup>3</sup> Tracing notices enable ASIC, listed companies, responsible entities of listed management schemes and third parties to obtain details of the beneficial ownership of securities. This mechanism aims to promote a fully informed market and to provide a swift response to inquiries concerning the ultimate ownership of securities. Responses to beneficial tracing notices are required within two days, and failing to respond is a strict liability offence. Responses must be made publicly available.<sup>4</sup>

Trusts are the only form of legal arrangements which can be established under Australian law. Australia uses a variety of methods to access beneficial ownership information on legal arrangements. Under the common law, all trustees of express trusts must hold information on the trust, including up-to-date information on the identity of settlors, protectors and beneficiaries. In turn, reporting entities are required to collect and verify trustee, settlor and beneficial ownership information of any customer acting in the capacity of a trustee of a trust.<sup>5</sup>

In Australia, entities carrying on business need an Australian Business Number (ABN) to register for our indirect tax system. An ABN must be quoted on invoices in order to validly claim tax credits for supplies of goods and services. Eligible entities apply for an ABN through the Australian Business Register (ABR) that is maintained in the Australian Taxation Office. At the time of applying for an ABN, applicants and associates are required to provide proof of identity that is validated against other information contained by the ATO.

Some information in the ABR can be inspected by businesses to ensure that particular enterprises are registered for the indirect tax system (see <http://abr.business.gov.au/>). Similarly, other government agencies, including regulatory and law enforcement agencies can access a broader set of information in the register directly or ask the ATO to provide information contained in the ABR. The ABR contains information about the associates of companies and trusts (regardless of whether they are natural or legal persons). Since December 2013 the following information is collected: for private and unlisted companies – the top 20 shareholders (by number of shares held) for each class of share are collected; and for closely held trusts – the top 20 (by the value of the benefit) individuals or organisations, either named as a beneficiary under a trust deed or that may benefit under a trust arrangement.

There are planned changes to the ABR to allow for the capture and identification for closely held trusts of the associate types of Settler, Appointer and Guardian.

- V. The Australian Transaction Reports and Analysis Centre (AUSTRAC), examines reporting entities' compliance with obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, in accordance with its risk-based supervisory approach. Where there is non-compliance, AUSTRAC requires reporting entities to rectify the problem. In the case of

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<sup>2</sup> *Corporations Act 2001* (Cth), s.169.

<sup>3</sup> *Corporations Act 2001* (Cth), Part 6C.2.

<sup>4</sup> *Corporations Act 2001*, s.672DA.

<sup>5</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*, Part 4.4.

continued non-compliance, AUSTRAC considers appropriate action according to its supervisory model.

VI. *Accessing/ sharing beneficial ownership information:* Domestically, information on ASIC registers and company registers is available and accessible by the general public, including details of beneficial ownership. Across government, competent authorities are able to access information from legal persons and arrangements directly; regulated businesses ('reporting entities') under the AML/CTF regime; and other government agencies. Internationally, Australia has a well-established mutual legal assistance (MLA) regime in place and has a strong record in cooperating with other countries providing assistance across a diverse range of requests, including the provision of financial information. Australia's MLA regime is designed to replicate the types of investigative powers available in relation to domestic investigations to foreign law enforcement authorities. In addition to formal requests for MLA, information may be shared with foreign counterparts on an intelligence basis by financial intelligence units (where an MOU is in place, or both parties are members of The Egmont Group) or Australian law enforcement.. AUSTRAC exchanges financial intelligence information with international financial intelligence unit counterparts, including through the Egmont Group.

The Australian tax administration also exchanges taxpayer related information with over 100 other countries via our international network of treaties and information exchange agreements. Information is exchanged between the Australian Taxation Office and other tax administrations enabling the relevant tax authorities to enforce and administer their domestic tax laws.

VII. *Addressing the misuse of legal persons and arrangements:*

- **Bearer shares:** Australia prohibits the issuance of bearer shares for corporations established under the *Corporations Act*.<sup>6</sup>
- **Nominee shareholders and nominee directors:** Australia will continue to mitigate the risks posed: requiring nominee shareholders to advise a company that the shares are 'non-beneficially' held,<sup>7</sup> and recording this in the company register.<sup>8</sup> Penalties apply where nominee shareholders fail to comply.<sup>9</sup> Where the power to trace beneficial owners applies,<sup>10</sup> nominee shareholders must identify the nominator. In relation to nominee directors, Australia requires that ASIC be notified within 28 days where a nominee director is appointed.<sup>11</sup> Details of the nominee director (including name, date and place of birth and residential address) must be provided to ASIC.

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<sup>6</sup> *Corporations Act*, s.254F.

<sup>7</sup> *Corporations Act*, s.1072H

<sup>8</sup> *Corporations Act*, s.169(5A).

<sup>9</sup> *Corporations Act*, s.1311(1).

<sup>10</sup> *Corporations Act*, Part 6C.2.

<sup>11</sup> *Corporations Act*, s.205B.