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**Submission on Increasing Transparency of the Beneficial Ownership of Companies**

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The Tax Justice Network Australia (TJN-Aus) welcomes this opportunity to make submission on increasing transparency of the beneficial ownership of companies. TJN-Aus supports the creation of an accurate, accessible registry of ultimate beneficial ownership for all companies and trusts. Such a registry would be a great assistance to Australian businesses that have anti-money laundering and countering terrorism financing obligations under the [*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*](http://www.comlaw.gov.au/Series/C2006A00169). The registry would reduce the due diligence costs for reporting entities under the Act to determine ultimate beneficial owners of corporate entities they are dealing with and assess money laundering and terrorism financing risks. Costs are also saved by the fact that multiple reporting entities are not paying for the same due diligence as each other, if the beneficial ownership registry is public.

The World Bank and UN Office on Drugs and Crime have stated on the usefulness of public registries of beneficial ownership:[[1]](#footnote-1)

*…. finds that registries can usefully compliment anti-money laundering objectives by implementing minimum standards for the information maintained in the registry and by providing financial institutions and law enforcement authorities with access to adequate, accurate, and timely information on relevant persons connected to corporate vehicles – corporations, trusts, partnerships and limited liability characteristics, foundations and the like.*

The UK Government had previously revealed that 6,150 people acted as directors of more than 20 UK registered companies, with some people being directors in over 1,000 companies, clearly indicating some directors were acting as front people for the ultimate beneficial owners.

A research report by World-Check had previously shown that almost 4,000 people who are appear on various international watch lists are registered as directors of UK companies.[[2]](#footnote-2) This included 154 people allegedly involved in financial crime, 13 individuals wanted by Interpol for alleged terrorist activities and 37 accused of involvement in the drugs trade.

The Panama Papers have provided a small window on the world in which unethical high net worth individuals and multinational corporations use shell companies with concealed ownership to facilitate tax avoidance and tax evasion. Shell companies with concealed ownership are also used as vehicles to facilitate a range of serious criminal activity, from human trafficking, money laundering, financing terrorism, commercial online child sexual abuse, illicit arms trading, fraud, embezzlement and bribery.

The OECD had previously provided data on the use of special purpose entities (SPEs or shell companies) through jurisdictions that have assisted in profit shifting by multinational companies. In general terms, SPEs are entities with no or few employees, little or no physical presence in the host economy, whose assets and liabilities represent investments in or from other countries, and whose core business consists of group financing or holding activities.[[3]](#footnote-3)

Research by Findley, Nielson and Sharman also found Australian corporate service providers were near the top of corporate service providers in terms of being willing to set up an untraceable shell company even when there was significant risk the company in question would be used for illicit purposes.[[4]](#footnote-4)

The ATO had publicly stated some time ago “Over a hundred Australians have already been identified involving tens of millions of dollars in suspected tax evasion through the use of ‘shell companies’ and ‘trusts’ around the world.” In October 2013, the Australian Federal Police charged three men with tax and money laundering offences involving $30 million. It is alleged they used a complicated network of offshore companies to conduct business in Australia while hiding the profits offshore, untaxed. The profits were then transferred back to Australian companies controlled by the offenders and disguised as loans so the interest could be claimed as a tax deduction. The level of alleged criminal benefit was estimated at $4.9 million.

The World Bank and UN Office on Drugs and Crime (UNODC) have previously conducted research showing how shell companies with concealed ownership are used to facilitate a range of criminal activity. They published a report reviewing some 150 cases of corruption where the money from laundered. In the majority of cases:[[5]](#footnote-5)

* A corporate vehicle (usually a shell company) was misused to hide the money trail;
* The corporate vehicle in question was a company or corporation;
* The proceeds and instruments of corruption consisted of funds in a bank account; and
* In cases where the ownership information was available, the corporate vehicle in question was established or managed by a professional intermediary to conceal the real ownership.

In two-thirds of the cases some form of surrogate, in ownership or management, was used to increase the opacity of the arrangement.[[6]](#footnote-6) In half the cases where a company was used to hide the proceeds of corruption, the company was a shell company.[[7]](#footnote-7) One in seven of the companies misused were operational companies, that is ‘front companies’.[[8]](#footnote-8)

As an example of a case where shell companies with concealed ownership were allegedly used to facilitate money laundering through Australia, US authorities sought to seize the assets in three Westpac accounts held by Technocash Ltd holding up to $36.9 million.[[9]](#footnote-9) Technocash Limited was an Australian registered company. The funds are alleged to be connected to shell companies owned by the defendants in the case.[[10]](#footnote-10) It is unclear if Westpac had detected the connection between Technocash and key figures in Liberty Reserve and their alleged criminal activities, particularly money laundering. According to the case filled by the US Attorney for the Southern District of New York, Liberty Reserve SA operated one of the world’s most widely used digital currencies. Through its website, the Costa Rican company provided its with what it described as “instant, real-time currency for international commerce”, which could be used to “send and receive payments from anyone, anywhere on the globe”. The US authorities allege that people behind Liberty Reserve:[[11]](#footnote-11)

*…intentionally created, structured, and operated Liberty Reserve as a criminal business venture, one designed to help criminals conduct illegal transactions and launder the proceeds of their crimes. Liberty Reserve was designed to attract and maintain a customer base of criminals by, among other things, enabling users to conduct anonymous and untraceable financial transactions.*

*Liberty Reserve emerged as one of the principal means by which cyber-criminals around the world distributed, stored and laundered the proceeds of their illegal activity. Indeed, Liberty Reserve became a financial hub of the cyber-crime world, facilitating a broad range of online criminal activity, including credit card fraud, identity theft, investment fraud, computer hacking, child pornography, and narcotics trafficking. Virtually all of Liberty Reserve’s business derived from suspected criminal activity.*

*The scope of Liberty Reserve’s criminal operations was staggering. Estimated to have had more than one million users worldwide, with more than 200,000 users in the United States, Liberty Reserve processed more than 12 million financial transactions annually, with a combined value of more than $1.4 billion. Overall, from 2006 to May 2013, Liberty Reserve processed an estimated 55 million separate financial transactions and is believed to have laundered more than $6 billion in criminal proceeds.*

It was further alleged by US authorities that for an additional “privacy fee” of 75 cents per transaction, a user could hide their own Liberty Reserve account number when transferring funds, effectively making the transfer completely untraceable, even within Liberty Reserve’s already opaque system.[[12]](#footnote-12)

US authorities alleged defendant Arthur Budovsky used Technocash to receive funds from exchangers. Mr Budovsky, the alleged principal founder of Liberty Reserve,[[13]](#footnote-13) allegedly used his bank to wire funds to Technocash bank accounts held by Westpac.[[14]](#footnote-14) He is also alleged to be the registered agent for Webdata Inc which held an account with SunTrust. Technocash records allegedly showed deposits into the SunTrust account from Technocash accounts associated with Liberty Reserve between April 2010 and November 2012 of more than $300,000.[[15]](#footnote-15)

Arthur Budovsky is allegedly listed as the president for Worldwide E-commerce Business Sociedad Anonima (WEBSA) and defendant Maxim Chukharev as the secretary. Maxim Chukharev is alleged to have helped design and maintain Liberty Reserve’s technological infrastructure.[[16]](#footnote-16) WEBSA allegedly served to provide information technology support services to Liberty Reserve and to serve as a vehicle for distributing Liberty Reserve profits to Liberty Reserve principals and employees.[[17]](#footnote-17) It is alleged bank records showed that from July 2010 to January 2013, the WEBSA account in Costa Rica received more than $590,000 from accounts at Technocash associated with Liberty Reserve.[[18]](#footnote-18)

It is alleged Arthur Budovsky was the president of Grupo Lulu Limitada which was allegedly used to transfer and disguise Liberty Reserve Funds.[[19]](#footnote-19) Records from Technocash allegedly indicate that from August 2011 to November 2011 a Costa Rican bank account held by Grupo Lulu received more than $83,000 from accounts at Technocash associated with Liberty Reserve.[[20]](#footnote-20)

Further, defendant Azzeddine El Amine, manager of Liberty Reserve’s financial accounts,[[21]](#footnote-21) was the Technocash account holder for Swiftexchanger. It is alleged e-mails showed that exchangers wishing to purchase Liberty Reserve currency wired funds to Swiftexchanger. When Swiftexchanger received funds in its Technocash account, an e-mail alert was sent to El Amine, notifying him of the transfer. Based on these alerts, it is alleged between 12 June 2012 and 1 May 2013, exchangers doing business with Liberty Reserve send approximately $36,919,884 to accounts held by Technocash at Westpac.[[22]](#footnote-22)

The defendants are alleged to have used Technocash services to transfer funds to nine Liberty Reserve controlled accounts in Cyprus.[[23]](#footnote-23)

Technocash Limited is reported to have been forced out of business in Australia following the action by US authorities, when it was denied the ability to establish accounts in Australia by financial institutions.[[24]](#footnote-24) Technocash stated that it “complied with Australia’s comprehensive AML regime, verified customers and has an AFSL licence since 2003. Technocash denies any wrong doing.”[[25]](#footnote-25)

1. **Should listed companies be exempted from any new requirements to report on its beneficial owners in light of existing obligations on such companies? If so, should an exemption apply to companies listed on all exchanges or only on specific exchanges?**

The requirement to disclose ultimate beneficial ownership should apply to all companies. Other businesses have a right to know who they are dealing with and who owns the companies they do business with. Customers have a right to know who are the ultimate beneficiaries in the companies they purchase products from.

TJN-Aus notes that Transparency International UK (TI UK) opposed publicly listed companies being exempted from the requirements of the UK people with significant control (PSC) register. TI UK pointed out that listing information is produced for the benefit of investors and unlike the PSC register, listing information is not combined into a single public register. This makes it difficult to search for information, as the information may be in various types of proprietary formats, limiting the ability of organisations and institutions to use the data in a meaningful way, such as conducting anti-money laundering due diligence checks.[[26]](#footnote-26)

Publicly listed companies have not been above involvement with subsidiaries with hidden ownership to engage in serious criminal activity. For example, Alcoa, the world’s third largest producer of aluminium, used anonymous companies formed in the British Virgin Islands to transfer million of dollars in bribe payments to Bahraini officials to secure a supply deal.[[27]](#footnote-27)

Alcoa and a joint venture it controlled agreed to pay US$384 million to resolve charges of bribing officials of a Bahraini state-controlled aluminium smelter, marking one of the largest US anti-corruption settlements of its kind.[[28]](#footnote-28) The payment was to settle criminal and civil allegations that two of the joint venture's subsidiaries bribed officials for years so they could supply raw materials to Aluminum Bahrain, or Alba.[[29]](#footnote-29) Alcoa’s mining operations in Australia were the source of the alumina that Alcoa supplied to Alba.[[30]](#footnote-30)

Alcoa failed to maintain adequate internal controls to prevent or detect more than US$110 million in improper payments funnelled to Alba through a consultant between 1989 and 2009, according to the US Securities and Exchange Commission (SEC), which brought civil charges under the *Foreign Corrupt Practices Act*. In the words of the SEC:[[31]](#footnote-31)

*An SEC investigation found that more than $110 million in corrupt payments were made to Bahraini officials with influence over contract negotiations between Alcoa and a major government-operated aluminum plant.  Alcoa’s subsidiaries used a London-based consultant with connections to Bahrain’s royal family as an intermediary to negotiate with government officials and funnel the illicit payments to retain Alcoa’s business as a supplier to the plant.  Alcoa lacked sufficient internal controls to prevent and detect the bribes, which were improperly recorded in Alcoa’s books and records as legitimate commissions or sales to a distributor.*

The Department of Justice brought criminal charges under the same law.[[32]](#footnote-32)

The US SEC said Alcoa's subsidiaries used a London-based consultant to funnel the payments to officials. The subsidiaries cited by the US SEC were Alcoa World Alumina and Alcoa of Australia, both of which were parts of the joint venture.[[33]](#footnote-33) The SEC stated:[[34]](#footnote-34)

*According to the SEC’s order, Alcoa’s Australian subsidiary retained a consultant to assist in negotiations for long-term alumina supply agreements with Alba and Bahraini government officials.  A manager at the subsidiary described the consultant as “well versed in the normal ways of Middle East business” and one who “will keep the various stakeholders in the Alba smelter happy…”  Despite the red flags inherent in this arrangement, Alcoa’s subsidiary inserted the intermediary into the Alba sales supply chain, and the consultant generated the funds needed to pay bribes to Bahraini officials.  Money used for the bribes came from the commissions that Alcoa’s subsidiary paid to the consultant as well as price markups the consultant made between the purchase price of the product from Alcoa and the sale price to Alba.*

The Department of Justice’s settlement was with Alcoa World Alumina LLC, a joint venture with Australia's Alumina Ltd. The venture, 60 percent-owned by Alcoa, agreed to plead guilty to a single count of violating the *Foreign Corrupt Practices Act* and pay US$223 million in five installments over four years.[[35]](#footnote-35)

Alcoa was listed on the ASX as of 15 June 2000 and removed itself from ASX listing in 2016.[[36]](#footnote-36)

1. **Does the existing ownership information collected for listed companies allow for the timely access to adequate and accurate information by relevant authorities?**
2. **How should a beneficial owner who has a controlling ownership interest in a company be defined?**
3. **In light of these examples given by the FATF, the tests adopted by the UK (see Part 3.2 above) and the tests applied under the AML/CTF framework and the Corporations Act, what tests or threshold do you think Australia should adopt to determine which beneficial owners have controlling interest in a company such that information needs to be collected to meet the Government’s objective?**
   1. **Should there be a test based on ownership of, or otherwise having (together with any associates) a ‘relevant interest’ in a certain percentage of shares? What percentage would be appropriate?**
   2. **Alternative to the percentage ownership test, or in addition to, should there be tests based on control that is exerted via means other than owning or having interests in shares, or by a position held in the company? If so, how would those types of controls be defined?**

TJN-Aus favours beneficial ownership being defined by a number of tests, as is the case with the UK register, using a person who meet one or more of the following conditions:

* Directly or indirectly holding more than 5% of shares in the company;
* Directly or indirectly holding more than 5% of the voting rights in the company;
* Directly or indirectly holding the right to appoint or remove a majority of the directors of the company;
* Has the right to exercise, or actually exercises, significant influence or control over the company; and/or
* Where a trust or firm would satisfy one of the first four conditions if it were an individual, any individual holding the right to exercise, or actually exercising, significant influence or control over the activities of that trust or firm.

TJN-Aus favours a lower threshold than the UK 25% ownership of shares or voting rights. Though some international definitions stipulate a beneficial owner as a natural person who possesses more than 25% of company shares this is by no means the only definition (the banking industry often uses a definition of 10% as does the US FACTA Act which requires foreign financial institutions to provide information on US tax payers to the US authorities). TJN-Aus favours a 5% or lower threshold to be used. Corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves.

TJN-Aus notes that for listed companies ‘substantial holding’ provisions already require disclosures of persons or their associates who hold a relevant interest in 5% or more of the total number of votes attached to voting shares in the company.

There is a danger that by using a high threshold, the process will fail to reveal many beneficial owners, and will result in only cursory information that will be of limited benefit. Fewer actual owners will be identified, allowing the identities of those involved in potentially corrupt and criminal behaviour to remain hidden. A lower threshold will help prevent this.

In the case of the UK PSC register 8.7% of 1.3 million companies that had provided information for the register as of November 2016 stated they had no beneficial owners meeting the criteria for disclosure[[37]](#footnote-37), which shows the problem of having a high threshold of ownership or control before disclosure needs to be made.

Global Witness has provided the following examples of where less than 25% ownership or control would have raised red flags:[[38]](#footnote-38)

1. In Azerbaijan, a gold mine was awarded to a UK company which allegedly involved the daughters and wife of Azeri President Ilham Aliyev. They ultimately owned 11% of the company.
2. In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25% of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown.
3. A US company, Cobalt International Energy formed joint ventures in Angola with two companies, Nazaki Oil and Gas and Alper. Nazaki originally held 30%, later dropping to 15%. Alper held 10%. Nazaki was found to be owned by Angolan Vice President Vicente, Director of the National Reconstruction Office General Kopelipa and his advisor General Dino. Alper’s ownership is also suspected to include officials. Cobalt was under an US *Foreign Corrupt Practices Act* investigation as a result, but revealed that the US Department of Justice informed it that the investigation had been closed without any regulatory action in February 2017.[[39]](#footnote-39)
4. Statoil’s deals in Angola have also been under considerable scrutiny. In July 2005, Norsk Hydro (a company that later merged with Statoil) was awarded a 20% share in an oil licence in Angola. Two 15% slices were awarded to two Angolan private companies, Somoil and Angola Consultancy Resources. At the time, Norsk Hydro was "concerned about partnering with a company whose owners are unknown" but went ahead with the deal anyway.
5. In 2005, a subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the 10% share held by “the relative of an Angolan Minister.”

In the public disclosure of beneficial ownership under the Extractive Industries Transparency Initiative (EITI), Honduras, Liberia, Tajikistan and the Kyrgyzstan Republic have all adopted a 5% threshold of ownership for the disclosure of beneficial ownership.[[40]](#footnote-40)

Liberia initially decided on a 10% threshold but this has since been lowered to 5% for companies involved in Agriculture, Mining and Oil (the threshold of 10% remains for other companies). An additional point of disclosure has also been added to the Liberian process – that if no single shareholder holds over the relevant threshold (5% or 10%, depending on the sector), then the top five shareholders by percentage must be revealed. This is a useful addition to the beneficial owner definition. It is perhaps worth considering whether it would be better for the EITI to have a standard definition of beneficial ownership with a fixed percentage for all countries to use. This would end possible confusion and allow for better data comparison and analysis.

Nigeria decided to remove the concept of thresholds, arguing that all people who benefit should be revealed.

**5. How would the natural persons exercising indirect control or ownership (that is, not through share ownership or voting rights) be identified (other than through self-reporting) and how could such an obligation be enforced?**

An offence should be introduced for acting as a nominee or front person for a natural person who is exercising direct or indirect control over a company and failing to disclose that fact. This would help act as a deterrent for people who knowingly or recklessly act as nominees or front people for those who have engaged in criminal activity.

There should also be an offence for exercising indirect control and failing to disclose the fact. However, for those who are engaged and criminal activity and wish their association to be concealed, the penalty for failing to disclose is likely to be minor compared to the penalty if they are caught in the criminal activity they are seeking to conceal. So this offence is not likely to be much of a deterrent.

The World Bank pointed out in 2011 that in one jurisdiction, that they did not name, customers of financial institutions are required to complete a written declaration of the identity and details of the beneficial owner(s) – a requirement pursuant to an agreement between the jurisdiction’s bankers association and signatory banks. The form is signed and dated by the contracting party and includes a statement that it is a criminal offence (document forgery) to provide false information on the form, with a penalty of up to five years imprisonment or a fine. The form approach has been adopted by banks in other jurisdictions, even when not required by law or regulation. In the jurisdiction where the form is used, the prosecuting authority has prosecuted cases of forgery (that is, falsely establishing in a written document a fact with legal application or what is referred to as an ‘intellectual lie’).[[41]](#footnote-41)

The World Bank argues the written declaration of beneficial ownership is a valuable tool for a number of reasons. It assists in focusing on the process of identification of the beneficial owner at the outset, not only for the bank officials but also for the contracting party. It provides the background information that will assist the bank with verification, as well as in determining if the beneficial owner(s) is a Politically Exposed Person (PEP). It assists regulatory authorities in evaluating beneficial ownership practices and enables better oversight of how banks are handling beneficial ownership issues. Finally, the requirement to sign under penalty of a criminal offence and, where appropriate, the additional consequences of non-conviction based or criminal forfeiture, serves to alert the contracting party to the seriousness and importance of the information and therefore acts as a deterrent. It may not be a deterrent for the corrupt PEP, but for intermediaries and others (including family and close associates) who are acting as the contracting party.[[42]](#footnote-42)

A similar approach could be adopted for those holding shares or acting as Directors of a company.

1. **Should the process for identification of beneficial owners operate in such a way that reporting must occur on all entities through to and including the ultimate beneficial owner?**

For the register to be effective it is essential that reporting must occur on all entities to and including the ultimate beneficial owner. It must not be possible for a person engaged in serious criminal activity to be able to continue to be able to arrange for the concealment of their ultimate beneficial ownership.

**7. Do there need to be special provisions regarding instances where the relevant information on a beneficial owner is held by an individual who is overseas or in the records of an overseas company and cannot be identified or obtained?**

It is the view of the TJN-Aus that where it is not possible to identify the ultimate beneficial owner it should be a requirement that the ownership cannot be permitted. For example, a legal entity wishes to buy shares in a company but it is not possible to identify the ultimate beneficial owner of the entity seeking to purchase the shares. The purchase should not be permitted. Or if ASIC is unable to establish the ultimate beneficial ownership of a company that is seeking to be registered, then it should deny registration to that company.

For existing ownership where the ultimate beneficial ownership is currently not identified, there should be a reasonable period provided for entities and people to disclose ultimate beneficial ownership after which action is taken if the disclosure has not been made. For example, ASIC deregisters companies that fail to disclose their ultimate beneficial ownership (assuming it is possible to determine the non-disclosure).

There might be a process for a person or entity to seek an exemption where there is a legitimate reason why the ultimate beneficial ownership is unknown, but TJN-Aus is unaware of circumstances where there is a legitimate need to conceal ultimate beneficial ownership from law enforcement authorities.

The experience with the UK PSC register is that only 2% of companies reported struggling to identify a beneficial owner or collect the right information.[[43]](#footnote-43)

**8. Should there be exemptions from beneficial ownership requirements in some circumstances? What should those circumstances be and why?**

TJN-Aus does not believe there should be any circumstances in which beneficial ownership should not be disclosed on a register only accessible to law enforcement authorities.

If a public register of beneficial ownership was to be implemented then it would be legitimate for beneficial ownership details to not be placed on the public register where a person or company can prove a genuine, serious rick of violence or intimidation. We note that ASIC has a process that allows people to apply for ‘relief’ from regulatory requirements, including disclosure.[[44]](#footnote-44) However, in such a case the beneficial ownership details should remain accessible to law enforcement authorities. In the case of the UK PSC register, approximately 30 beneficial owners have been successfully granted the right to keep their name off the public register due to concerns about their safety as of November 2016.[[45]](#footnote-45)

Further, to highlight that safety risks are greatly exaggerated by those who benefit from the current system of concealed ownership, the Extractive Industries Transparency Initiative reported that in the Democratic Republic of Congo more than 100 mining companies have provided public access to the names, nationality, full addresses and identity numbers of their beneficial owners. The EITI has, as of the end of November 2016, received no reports of intimidation or other difficulties experienced by the beneficial owners of the companies that have publicly disclosed these details.[[46]](#footnote-46)

**9. What details should be collected and reported for each natural person identified as a beneficial owner who has a controlling ownership interest in a company?**

The register needs to collect unique identifiers of beneficial owners in the database, so that an individual can be clearly identified and all their beneficial ownership holdings known. In the UK company database, company director records are connected up between multiple companies to easily see who if one individual is a director of more than one company. Unfortunately this is not the case in the ASIC company register. Member organisations of TJN-Aus have had experience of being unclear if the same person is the director of multiple companies due to slight variations in name and place of birth. It is also not yet the case for the UK PSC register. Also the lack of unique identifiers (in the absence of a full date of birth) in the PSC register, also makes it hard to compare the data against other data sets.

Ideally a person would be registered on the beneficial ownership register and assigned a unique identification number, so all their beneficial ownership holdings can be easily identified and linked. For such registration TJN-Aus supports a similar process to the 100 point check used by financial institutions when opening an account.

In the case of a public beneficial ownership register, it should include present given and family name, residential address, all former given and family names and the date and place of birth, as is the case for information to be provided by company directors to ASIC.

**10. What details should be collected and reported for each other legal persons identified as such beneficial owners?**

TJN-Aus believes that where a legal person is a beneficial owner then the beneficial owners of the legal person should also have to be disclosed. Ultimately ownership will rest with natural persons and there should be a requirement for these to be disclosed as the ultimate beneficial owners.

**11. In the case of foreign individuals and bodies corporate, what information is necessary to enable these persons to be appropriately identified by users of the information?**

The requirements for disclosure of foreign beneficial owners should be the same as for Australian beneficial owners, be they natural persons or body corporate. Where a foreign beneficial owner seeks to conceal their identity then, wherever possible, ownership should be denied to them (for example, they cannot purchase shares in Australian companies above the beneficial ownership threshold, act as a director of a company or be able to register a company with ASIC).

**12. What obligations should there be on a company to make enquiries to ascertain who their beneficial owners are and collect the required information? What obligations should there be on beneficial owners themselves?**

Companies should be required to make all reasonable efforts to establish who are their beneficial owners and ultimate beneficial owners. In the case where the management of a company is unable to identify the beneficial owners and ultimate beneficial owners, or have strong reason to suspect beneficial owners are being concealed by an intermediary the company should be required to exclude the ownership of the undisclosed party. This is similar to requiring financial institutions not to proceed with highly suspicious transactions under anti-money laundering and counter terrorism financing obligations.

A lesser requirement might be to require companies to have to report to authorities, perhaps AUSTRAC, cases of suspicious ownership for possible investigation where the company is unable to establish the beneficial ownership or suspects the ultimate beneficial ownership is being concealed from it.

Beneficial owners should have an obligation to disclose their ownership, as per the answer to question 5.

There is a need to regulate companies that provide nominees as a service. For example, AUSeCorporate[[47]](#footnote-47) that advertise to foreign investors and business people providing a nominee service to conceal their ownership from public scrutiny. As concealing beneficial ownership from the public is the business of such companies there should be a high requirement for them to have to do thorough due diligence and substantial penalties for the failure to do so. A public register of beneficial ownership would remove this high risk business activity.

**13. Should each company maintain their own register?**

TJN-Aus supports a publicly accessible central register. Registers maintained by companies themselves should only be as an addition to the central register. TJN-Aus notes that as of November 2016 nine countries have made beneficial ownership information public through EITI reports.[[48]](#footnote-48)

**14. How could individual registers being maintained by each company provide relevant authorities with timely access to adequate and accurate information? What would be an appropriate time period in which companies would have to comply with a request from a relevant authority to provide information?**

Company based registers would be clumsy and deny law enforcement effective investigative capabilities. For example, a law enforcement agency detects that an individual is acting as a front for a terrorist organisation in one company. The law enforcement agency wishes to investigate if the same person has beneficial ownership in other companies. In the case of company based registers the law enforcement agency would be required to make that request to every company individually to check this information. In the case of a central searchable register the law enforcement agency could do a simple search on the person and immediately identity any additional beneficial ownership the person has.

**15. Should a central register of beneficial ownership information also be established?**

**16. What do you see as the advantages and/or disadvantages of a central register compared with individual registers being maintained by companies?**

TJN-Aus supports the establishment of a public searchable central register of beneficial ownership. Even a searchable central register that is only accessible to law enforcement bodies and regulators provides a valuable law enforcement tool. For example, it would allow a regulator to search and determine the extent of beneficial ownership of anyone suspected of criminal activity. It would mean if a person is added to the Interpol wanted list[[49]](#footnote-49), it will be possible for Australian law enforcement agencies to search and see if the person has any beneficial ownership in Australia. It would allow regulators to identify people who may be acting as professional nominees, by being directors in tens of companies.

**17. In particular, what do you see as the relative compliance impact costs of the two options?**

The compliance costs for a central register will be higher, but the benefits to law enforcement agencies and regulators will outweigh the costs. Making the beneficial ownership register public would also see a reduction in costs to businesses that are reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as such businesses will need to spend less on conducting their own due diligence to determine beneficial ownership.

**18. Who would be best placed to operate and maintain a central register of beneficial ownership?**

The central register could be operated by ASIC given their role in maintaining the existing register of company information. In fact the existing register of company information could be expanded to include the information on beneficial ownership. They would need an increased budget to cover the costs of effectively managing the beneficial ownership register, as members of TJN-Aus have experience that due to limited resources it has been possible for companies to be registered on the ASIC register of company information at false addresses and with fake directors.

**19. What should the scope of the register operator’s role be (collect, verify, ensure information is up to date)?**

The operator of the central register should be required to collect the information, verify that it is accurate, ensure the information is up-to-date, issue warnings and infringement notices for failure to comply and initiate legal action against individuals and businesses where necessary to ensure compliance and deter the making of false or fraudulent declarations about beneficial ownership.

**20. Who should have an obligation to report information to the central register? Should it be the company only or also the person who meet the test of being a relevant ‘beneficial owner’?**

The obligation to report information to a central register should apply to the company, the person who is a beneficial owner, any nominee representing a beneficial owner and any intermediary, such as AUSeCorporate, that arranges nominee arrangements.

**21. Should new companies provide this information to a central registry operator as part of their application to register their company?**

People establishing a new company should be required to disclose all required beneficial ownership information as part of their application to register the company. Failure to do so should result in refusal by the regulator to register the company. Making knowingly false declarations about beneficial ownership should incur significant penalties.

**22. Through what mechanism should existing companies, and/or relevant beneficial owners, report?**

There should be a separate process for existing companies and relevant beneficial owners to report upon the establishment of the central register.

**23. Within what time period (how many days) should any changes to previously submitted beneficial ownership information have to be reported to a company (where registers are maintained by each company) or the registry operator (where there is a central register)?**

TJN-Aus supports that any changes to beneficial ownership should have to be reported to the registry operator within 28 days by the beneficial owner, any nominee or intermediary they are using (from the time the nominee or intermediary becomes aware of the change) and by the company (from the time it becomes aware of the change in beneficial ownership). This period is largely consistent with existing reporting requirements to ASIC about changes to registered office, principal place of business, its member register, its share structure, directors or secretaries, including their personal details.

**24. If reporting to a central register is required, should this information be included in the annual statement which ASIC sends to companies for confirmation with an obligation to review and update it annually?**

The beneficial ownership information should be included in the annual statement which ASIC sends to companies for confirmation, but this should not replace or mitigate the obligation to report any changes within 28 days.

**25. What steps should be undertaken to verify the information provided to a central register by companies or their relevant beneficial owners?**

The regulator managing the central register should be responsible for verifying the information provided to the register, using a risk-based approach to give greater scrutiny to business areas that have a higher risk of using concealed beneficial ownership for criminal activity, such as the extractives sector and labour hire businesses. Having a system by which companies are required to make suspicious activity reports about beneficial ownership to the regulator managing the central register would assist the risk based approach.

Analysis of the UK PSC register by Global Witness has shown greater verification of the data entered is needed by the regulator. Almost 3,000 companies as of November 2016 listed their beneficial owner as a company with a secrecy jurisdiction address – something that is not allowed under the rules.[[50]](#footnote-50) Further, it was found that 76 beneficial owners shared the same name and birthday as someone on the US sanctions list and 267 disqualified directors were listed as beneficial owners. There were also 2,160 beneficial owners with a 2016 date of birth and people who listed the year 9988 as their date of birth.

As demonstrated by the findings of Global Witness, having a public register will allow third parties to assist the regulator in verification of data allowing for more cost effective detection of errors on the register as well as possible examples of false information being provided to the register.

**26. Should beneficial ownership information be provided to one relevant domestic authority and then shared with any other relevant domestic authorities? Please explain why you agree or disagree.**

It seems more efficient that beneficial ownership information would be provided to the one regulator and then shared with other relevant authorities, as a means to ensure that the information is all in one place and that businesses, intermediaries and beneficial owners are clear about where they need to report to.

**27. Should beneficial ownership information be automatically exchanged with relevant authorities in other jurisdictions? Please explain why you agree or disagree.**

Relevant beneficial ownership information should be automatically shared with relevant authorities in other jurisdictions, unless there are strong grounds to believe that the information would be misused to violate the human rights of the beneficial owner. Automatic exchange of information about beneficial ownership will assist in combating the use of companies with concealed ownership to carry out transnational crimes such as tax evasion, money laundering, human trafficking and terrorism. Automatic exchange of information between tax authorities has already seen significant global benefits in recovering funds obtained by tax evasion and in deterring individuals from engaging in cross-border tax evasion. Similar benefits can be expected from the automatic exchange of information on beneficial ownership.

**28. What sanctions should apply to companies or beneficial owners which fail to comply with any new requirement to disclose and keep up to date beneficial ownership information?**

The sanctions that should apply to companies, beneficial owners or businesses that arrange nominees to conceal beneficial ownership from public scrutiny should be the same as failure to notify ASIC about changes to company details: a fine of 60 penalty units and/or one year imprisonment. In relation to listed companies, failing to provide beneficial ownership information within the required time period should be a strict liability offence with a penalty of up to 25 penalty units and/or six months imprisonment. Where it can be established that a person failed to provide beneficial ownership information they were required to provide the regulator of the beneficial ownership register should be able to seek a court order placing restrictions on the relevant ownership.

Further, in line with the UK PSC register, where a person does not respond to a notice from a company requiring them to provide information, and also does not respond to a subsequent warning notice, the company should be able to apply restrictions on the relevant shares or interests which effectively ‘freeze’ them so that they cannot be sold or transferred and associated rights such as voting cannot be exercised. The ability to take such action should not require a court order.

**29. How long should existing companies have from when the legislation commences to report on their beneficial owners? What would be an appropriate transition period?**

TJN-Aus believes that six months should be the period existing companies and beneficial owners should have from when the legislation commences to report on their beneficial ownership.

**33. If companies had access to the additional beneficial ownership information collected, could this reduce companies compliance costs by making it easier for them to comply with other existing reporting obligations such as those under the AML/CTF legal framework?**

Having access to additional beneficial ownership would reduce due diligence compliance costs for businesses with AML/CTF Act obligations.

**36. Are the current tracing notice obligations sufficient to achieve the aim of providing timely access to adequate and accurate information to relevant authorities about those who control these companies?**

The current tracing notice obligations are not sufficient to achieve the aim of providing timely, adequate and accurate information about beneficial ownership and ultimate beneficial ownership, with the consultation paper noting the strategies that can be employed to defeat or frustrate tracing notices.

Listed companies and their beneficial owners should not be exempted from having a positive obligation to provide the relevant beneficial ownership information to the regulator of the central registry.

**42. What do you see as the benefits of nominee shareholding arrangements? Are there any negative aspects to their use?**

Nominee shareholding can be used by criminals to hide their ownership and control in companies.

**43. Should further obligations be introduced in order to increase transparency of the beneficial owners of shares held by nominee shareholders?**

As stated earlier, it should be an offence for a nominee shareholder not to disclose the beneficial owner they are holding the shares for.

**47. What do you see as the benefits of bearer share warrants? Are there any negative aspects of their use?**

Bearer share warrants are a vehicle to facilitate money laundering. As an example, in the case of Syed Ziaddin Ali Akbar, who was the former head of the BCCI Central Treasury from 1982 to 1986 and was charged and convicted in October 1988 of laundering drug money at UK Trading House.[[51]](#footnote-51) In an attempt to defeat asset recovery efforts by law enforcement, in January 1989 he used bearer shares in a Vanuatu company to transfer assets to his borther.

**48. Should a ban be introduced on bearer share warrants?**

TJN-Aus supports a ban on bearer share warrants due to the high risk they can be used for money laundering.

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**Background on the Tax Justice Network Australia**

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN’s objective is to encourage reform at the global and national levels.

The Tax Justice Network aims to:

(a) promote sustainable finance for development;

(b) promote international co-operation on tax regulation and tax related crimes;

(c) oppose tax havens;

(d) promote progressive and equitable taxation;

(e) promote corporate responsibility and accountability; and

(f) promote tax compliance and a culture of responsibility.

In Australia the current members of TJN-Aus are:

* ActionAid Australia
* Aid/Watch
* Anglican Overseas Aid
* Australian Council for International Development (ACFID)
* Australian Council of Trade Unions (ACTU)
* Australian Education Union
* Australian Services Union
* Baptist World Aid
* Caritas Australia
* Columban Mission Institute, Centre for Peace Ecology and Justice
* Community and Public Service Union
* Friends of the Earth
* GetUp!
* Global Poverty Project
* Greenpeace Australia Pacific
* International Transport Workers Federation
* Jubilee Australia
* Maritime Union of Australia
* National Tertiary Education Union
* New South Wales Nurses and Midwives’ Association
* Oaktree Foundation
* Oxfam Australia
* Save the Children Australia
* SEARCH Foundation
* SJ around the Bay
* Social Policy Connections
* SumOfUs
* Synod of Victoria and Tasmania, Uniting Church in Australia
* TEAR Australia
* Union Aid Abroad – APHEDA
* UnitedVoice
* UnitingWorld
* UnitingJustice
* Victorian Trades Hall Council
* World Vision Australia

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