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## Multinational tax integrity: Public Beneficial Ownership Register

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's consultation paper on the development of a Public Beneficial Ownership Register (**BOR**).

The ABA supports the implementation of a BOR and note its implementation would ensure compliance with key recommendations of the Financial Action Taskforce (**FATF**) that Australia is yet to implement. Greater transparency on beneficial ownership arrangements can be a valuable source of information for law enforcement, regulators, and other entities such as Reporting Entities (**REs**) to comply with Anti Money Laundering and Counter Terrorism Financing (**AML/CTF**) and sanctions laws.

While supportive of the introduction of a BOR, we submit that a more detailed phase of policy development is required to ensure the range of entities included and the information caught on the register meets the government's objectives with any unintended consequences identified and addressed. For example, the register would be more effective from an AML/CTF perspective if the range of collective schemes, discretionary trusts and private equity funds are also included from the outset, and there may be other entities or data sets that would be useful from other perspectives.

We note the proposed phased approach starting with a company-based register may result in a less efficient and less effective outcome while imposing excessive regulatory burdens on those sectors with the new obligations. A centralised register is likely to have more benefits for a variety of purposes, and it is clear from Treasury's paper that this is the ultimate goal of the reforms. If this is the case, we question why an intermediary step of a company-based register is being proposed.

Imposing a company-based approach as an interim step may also not be usefully leveraged in the future through a technology solution. We understand the government is considering an alignment with a technology solution involving the initiative Modernising Business Registers, but there is no clarity over when this might occur, and that solution may not be compatible even when it occurs. Moreover, given the significant investment in a company-based solution there will be added difficulty and burden to transition to a centralised model once this solution has been established.

Given this, we strongly support implementing a centralised beneficial ownership register or equivalent from the outset, and potentially phasing the rollout to highest risk sectors and entities first, then considering business models based on the complexity, the relative sizes of the businesses and the ability to meet regulatory requirements. We further note that including trusts from the outset is critical as many of the benefits of this register will derive from understanding the beneficiaries of trusts.

Finally, we note that to meet privacy concerns, consideration should be given to a tiered access model whereby high level, free and publicly available information is complemented with a more granular-level data upon request, accessible to those entities seeking further information to meet their legal obligations. Where more granular information is accessed, it may be prudent to notify the individual that this information has been disclosed to ensure transparency.

Consistent with these views we make the following recommendations.



## Key recommendations

### 1. **Implement a centralised BOR from the outset and develop a roadmap to rollout obligations for different regulated entity sectors over time.**

The ABA recommends a centralised model be implemented from the outset. A centralised BOR register can strengthen the integrity of the tax system, address financial crime and deliver efficient and effective economic outcomes for industry and the economy as a whole, particularly if all entities are captured at the outset. A centralised BOR has key benefits over a company-based register model, including

- **Independence** - The key strength of the information being placed on a central register is the fact that it is at arms-length, verifiable by the regulator and likely more reliable. It can also meet requirements under AML/CTF Rules that require the information be independent and verifiable.
- **Efficiency** – BO information in one place should make it easier to access and use that information for meeting regulatory obligations, whether to ensure those entities are meeting legal obligations, or for industry to meet AML/CTF, sanctions or other obligations.
- **Consistency** – A central register allows for the development of a consistent schema or profile by requiring entities providing BO information to adhere to specific standards.
- **Oversight** – An ability to oversight BO information and require entities to make updates periodically in a mandated manner that can be tracked due to a single point of contact.

### 2. **Retain a 25% threshold for Beneficial Ownership**

The proposal to adopt thresholds for registration consistent with existing corporate control and takeover thresholds is inconsistent with the threshold for AML/CTF and tax reporting for the Common Reporting Standard and the Foreign Account Tax Compliance Act, which is set at 25%, and the approach adopted by the UK, Singapore and France. We understand the view that 20% is proposed to ensure consistency with the Corporations Act. However, it is more relevant to drive consistency with international approaches given the international dimension of BO information.

### 3. **Include trusts from the outset and add it to the roadmap**

As part of rolling out a centralised BO register, trusts should be explicitly included as part of an implementation roadmap. Trusts could be phased in, based on the complexity of the structures. We note that industry has significant expertise in understanding and evaluating different types of trust structures for AML/CTF purposes and can assist further in categorising and delineating the types of structures to aid in the consideration of when and how they are included in the register.

### 4. **Take a tiered access approach**

As entities will be required to collect and disclose BO information unless an exemption is successfully obtained, we recommend a privacy-by-design approach that allows for key, high level, public facing information but tiered access for more granular information. For example, the individual listed as a BO on the register could be notified where more granular information is requested. We think this approach balances the need for public sharing of information with the need to protect the privacy of individuals and entities that are entitled to maintain an appropriate level of privacy.

Detail on our recommendations and answers to the questions are provided in the following pages.

Thank you for the opportunity to provide feedback. If you would like to discuss further, please do not hesitate to contact me at [REDACTED]

Yours sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]

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## Appendix – Answers to Questions

1. Existing Framework and case for reform		
#	Question	ABA / Member Comments:
1.	Should substantial holding and tracing notices be amended to capture additional beneficial ownership information to identify and disclose the true beneficial owners of listed entities? If so, what additional information should be captured?	We do not think it is necessary to amend substantial holding notices. Capturing additional beneficial ownership information achievable within the 2-business day lodgement timeframe and will add onerous requirements to what is currently a relatively efficient process.
2.	Should the tracing notice and substantial holding notice regimes be fully aligned so responses to each notice capture the same information?	This will be dependent on what BO test Treasury wish to pursue. If they proceed with the tracing notice and substantial holding approach, then yes these should be fully aligned.  To assist with alignment, it will be important to provide clear definitions and detailed guidance for terms such as 'associate' i.e. persons acting in concert to control or influence and 'security' so as to avoid misinterpretation leading to inaccurate records of BO information.
3.	As is the case for tracing notices, should listed entities be required to maintain a register of information collected by substantial holding notices?	We do not think this is necessary. Listed companies have a range of existing disclosure obligations, including to key regulators on tax, AML/CTF, corporations and prudential matters. These are significant obligations that provide extensive transparency in business structures and dealings.
4.	How could the accessibility and useability of registers maintained by listed entities of information received from tracing notices be improved for users of beneficial ownership information?	The solution here sits with having a centralised register – otherwise there would be different formats and accesses being maintained by the listed entities.  We consider the contribution to the accuracy of a centralised register is the most efficient means to have updated BO information.
2. Definition of beneficial ownership		
5.	Are there any elements missing from the proposed definition of beneficial ownership?	The definition appears broadly appropriate and we encourage alignment across different regulators – including consideration of existing approaches by AUSTRAC through the AML/CTF legislation, rules and guidance.
6.	Are there any potential unintended consequences which could result from adopting a 20 per cent threshold for beneficial ownership?	The Government's proposal to adopt thresholds for registration consistent with existing corporate control and takeover thresholds is inconsistent with the threshold for AML/CTF reporting, which is set at 25%, and the approach adopted by the UK, Singapore and France.  Also, if the 20% threshold is adopted would there be a way to still record or have available those that are 25% and over? For example, a BO who holds 30% ownership in an entity would be captured by both tests – is it possible to record this 30% anywhere so that it can be captured for AML/CTF purposes?



3. Entities subject to beneficial ownership disclosure requirements		
7.	Should the requirement to maintain a beneficial ownership register be applied to any other entities or legal vehicles (noting beneficial ownership requirements for property not including regulated entities held on trust will be subject to a separate consultation process)?	<p>We strongly recommend that the obligation extend to trusts from the outset. Trusts are very common in Australia and can be used to obscure beneficiaries. We note that there is significant value from both a tax and AML/CTF perspective in including trusts (especially unit and discretionary trusts) and it should be done so as part of the first phase of implementation.</p> <p>More broadly, the BO register regime should be expanded to include legal vehicles captured by Chapter 4 of the AML/CTF Rules. This includes partnerships, associations, and registered cooperatives. We are also supportive of the BO register for charities and NPOs in so far as they are not already captured by companies limited by guarantee. Allowing Non-profit organisations to have limited BO register requirements could give rise to an abuse of these structures.</p> <p>Further, under the AML/CTF Rules, there are BO determination requirements for other types of legal entities. Alignment with these Rules would be useful.</p>
8.	Should some entities, such as certain not-for-profit entities, have bespoke or limited beneficial ownership register requirements? If so, what types of entities, and what relief from the general disclosure requirements should be provided?	<p>No, this would further complicate the future regime. From an AML/CTF perspective these entities should be treated like any other non-individual customer.</p> <p>We are supportive of the BO register for charities and NPOs in so far as they are not already captured by companies limited by guarantee. Allowing Non-profit organisations to have limited BO register requirements could give rise to an abuse of these structures.</p>
9.	What factors would be relevant to determining whether a regulated entity has taken reasonable steps to identify its beneficial owners?	<p>Expectations in this regard should align with AUSTRAC guidance for determination of BO's.</p> <p>More broadly, suggested factors may include:</p> <ul style="list-style-type: none"> <li>• Appropriate application of beneficial owner definition including ensuring completeness of beneficial owners identified;</li> <li>• Looking past non-beneficially held shares (including nominee shareholding) and requiring disclosure of information relating to the persons on whose behalf those shares are being held; and</li> <li>• Consideration of indirect ownership and other nuances such as share classes (see comment in Q10).</li> <li>• Clarity as to what constitutes 'reasonable steps' will be helpful to assist regulated entities determine the standard when seeking to identify BOs. 'Reasonable steps' should be defined and include the relevant objective test.</li> <li>• Clarification of 'significant influence' under limb 4 for the test for beneficial owner (page 12), would also assist regulated entities to identify the beneficial owner.</li> </ul>



4. Recording requirements		
10.	What, issues, if any, may arise with the proposed recording requirements?	<p>(1) In the initial phase, how with BO registers be accessed and what will the costs be? Not all entities will have websites in which case from an AML/CTF perspective a request will have to be made directly to the entity which is no different to current process. This brings into question what efficiencies will be realised for AML/CTF purposes by the initial phase solution.</p> <p>(2) An issue may arise is in relation to indirect ownership. Under the AML/CTF Rules (Part 1.2), we need to identify the beneficial owner of a person who is a customer of a reporting entity, which may mean an individual who indirectly owns or controls the customer. It would be useful for the BO Register to facilitate this – an example would be:</p> <ul style="list-style-type: none"> <li>- Bank A's customer is Company B. Company B is owned by Company C (15%), Company D (15%) and Company E (70%). Company C &amp; D are each owned 100% by John Smith, so John Smith owns 30% of Company B (ie, Company C's 15% + Company D's 15%) - Will the public BO Register provide this look through, as technically Company C and Company D would be each underneath the 20% ownership requirement if not looking through and aggregating John Smith's ownership?</li> </ul> <p>(3) Another potential consideration is in relation to company shares. The most common type of share is the ordinary share, however, where a company issues Class A, Class B or other types of shares, the way in which beneficial ownership is assessed may differ depending on what rights are granted to each share class. Assessment of beneficial ownership is complex field, and if not assessed properly, may result in unreliable information being uploaded to the BO Register. Will this be a factor that regulated entities are required to consider when assessing their beneficial ownership – if so, will there be guidance provided to regulated entities on how to assess beneficial ownership to ensure consistency and reliability on how to assess beneficial ownership?</p>
11.	Should regulated entities have bespoke disclosure requirements with respect to discretionary trusts listed on their beneficial ownership registers? If so, what information should be disclosed?	<p>Discretionary trusts are challenging due to the wide variety in trust structures and roles. We note that there is difficulty in prescribing bespoke requirements given the number and scale. However, pre-set standards and clear guidance should assist, with further ability for clarification by trustees.</p> <p>Banks have significant exposure to trust structures and can assist further in the design and types of information they find useful in meeting legislative requirements. We welcome further engagement with Treasury on this.</p>



5. Content and availability of beneficial ownership register

Information collected and made publicly available

12.	How should public access of regulated entities' registers be facilitated? Should registers be accessible on request or published on the regulated entities' websites?	<p>Given privacy concerns, there should be tiered access to the register, with high level details being publicly available and with lower, more granular detail being offered on request by regulators, law enforcement or reporting entities in order to meet their AML/CTF obligations.</p> <p>Although it is stated that the chosen information fields are informed by registers in overseas jurisdictions, there should be balance between the right to privacy and that of the public interest and transparency. A tier system is recommended where the information in all fields should only be made available to i.e. government agencies/ large regulated entities and the public can access to less specific information.</p> <p>Also, from an AML/CTF perspective it may not be necessary to have direct access to the beneficial owner's full date of birth or residential address provided there are opportunities for verification to be undertaken through an identity verification service provider e.g. Equifax. This facilitates identity verification but ensures privacy of the beneficial owner's information is maintained.</p> <p>We finally note that not all entities will have websites and Treasury should consider how those entities will make that information available publicly.</p>
13.	What other information should be collected on the beneficial ownership register?	<p>For alignment with FATCA/CRS requirement, tax residency information (including foreign tax file number) should also be collected to allow verification of CRS/FATCA data by interested parties.</p> <p>As per our answer at Q6, would it be possible to record % of ownership should we need to rely on this?</p>
14.	Should any of the proposed beneficial ownership information not be collected?	No.
15.	What key risks, if any (including privacy risks), are associated with making the proposed information available to the public? How can these risks be mitigated?	<p>As recent EU case law demonstrates, full public access may have limits due to privacy concerns.</p> <p>Beneficial ownership registers are mandated under EU anti-money-laundering directives ([2022] EUECJ C-37/20 (22 November 2022)). In a recent case, the ECJ held that granting public access to the identity and personal data of beneficial owners would infringe the right to respect for private and family life, and the right to the protection of personal data enshrined respectively in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ("the Charter").</p> <p>As such, the Directive 2018/843 in Luxemburg law was invalid. Any BO register in Australia may also face a similar legal challenge over privacy concerns.</p> <p>The privacy issue may be better understood with wider consultation, involving the Information commissioner, OAIC, and other privacy advocacy groups.</p>



Protection of certain information from public disclosure		
16.	Are there any potential unintended consequences which could result from adopting the proposed approach to protect some beneficial owners' information from public disclosure?	This approach is consistent with already existing information protection (i.e. company office holder details, silent electors etc). We would assume that the unintended consequences would be similar, i.e. people misusing this protection to hide / mask their true identities. This would be mitigated by providing full access on a tiered basis to the government bodies and regulated entities (as appropriate).
17.	In what other circumstances should beneficial ownership information be protected from disclosure? What should be the scope of the protection in those circumstances?	<p>It is appropriate for BO to apply for an exemption from disclosure of this information, however the reasons for the granting of exemptions should be according to a prescriptive list (i.e. domestic violence risk) to avoid misuse.</p> <p>There needs to be a mechanism for appropriate entities – perhaps regulators or approved REs could have access to information about protected BOs. This could be incorporated into the abovementioned proposed 'Tiered' approach to BO register access.</p>
18.	Should disclosure exemptions be granted on a graduated basis, so in each case, only the specific details on the register that would put a person's personal safety at risk are exempt from disclosure (e.g. a beneficial owner's name may still be publicly accessible while other identifying information about the owner on the register may be exempt)?	<p>Yes, it is appropriate that not all the information would be required for all purposes, but that only the necessary information is disclosed (e.g. to satisfy AML/CTF obligations).</p> <p>As noted, under Q 12, from an AML/CTF perspective it may not be necessary for the general public to have direct access to the beneficial owner's full date of birth or residential address provided there are opportunities for certain bodies to have access on a tiered approach.</p>
6. Accuracy and currency of beneficial ownership registers		
19.	Are there any potential unintended consequences which could result from requiring regulated entities to be reasonably assured of the identities of their beneficial owners? How could these be addressed?	<p>The scope of the measure applies very broadly to a range of entities and industries that may not have the sophistication to understand and apply the requirements. While not an unintended consequence, applying this legislative requirement without a significant program of education, awareness, training and uplift of those entities, will result in significant problems in establishing this requirement.</p> <p>We note that finding staff to do this work is likely to be challenging and may raise the costs for those businesses.</p> <p>To simplify some steps, as these entities are already aware of their responsibilities to maintain records with ASIC, a better approach would be to extend existing reporting to ASIC to include beneficial ownership.</p> <p>We note that there should be clear requirements and guidance on those making BO information available to abide by a consistent standard so that they do not avoid the obligation through unhelpful disclosures that do not provide the right amount of detail.</p>
20.	Are there other methods, procedures, and approaches to	The proposed collection and verification seem appropriate and is consistent with what is required of reporting entities.



	verifying the information on beneficial ownership registers?	
21.	Are there any potential unintended consequences which could result from implementing the proposed requirements for ensuring beneficial ownership registers are kept up to date? How could these be addressed?	<p>There may be problems with BOs who are associated with multiple regulated entities. If regulated entities were to have mistaken records, there is potential to have inconsistent information recorded about the same BO across multiple entity records.</p> <p>One way to address this is explicitly link the register with other verified record in a similar manner as what has been done for the Director IDs through MyGoVID, so that there is an ability to trace the roles of beneficial owners. While not resolving all issues, including other forms of verifiable credentials will also be useful.</p>
22.	What are the key privacy risks, if any, arising from a requirement to verify the identities of beneficial owners? How could these be mitigated?	<p>This should be handled to the same standard as other privacy requirements (e.g. stored securely, handled appropriately, used only for the purpose of recording BO identity).</p> <p>Using services such as MyGovID to tokenise the verification is an option here.</p> <p>Consideration should also be had to the period of time that verification records need to be maintained. Existing AML/CTF records require IDV records to be held for 7 years after the relationship ends. This is often a long period of time and may not be appropriate here.</p>
<b>7. Enforcement and Penalties</b>		
23.	Is it appropriate to grant ASIC powers in the Corporations Act (equivalent to those it has under sections 72 and 73 of the ASIC Act) for responding to non-compliance with substantial holding notices and tracing notices? Why or why not?	<p>We would agree that ASIC is the most appropriate regulator to have these powers given as they already collect BO (and other company) information for other reasons under the Corps Act. However, there may be issues with this given the scope of the proposals that apply to a range of entities not regulated by ASIC.</p> <p>For example, ASIC may be required to regulate some of the non-individual entities that don't have to register with the regulator, e.g. non-profit sector entities. If ASIC is the regulator, how will they regulate non-corporate entities?</p>
24.	Are there any potential unintended consequences which could result from adopting the proposed enforcement regime for regulated entities, if so, how could these be mitigated?	<p>As with any new regime it would have significant impact on the regulator and regulated entities.</p> <p>To mitigate this, we suggest a phased approach to enforcement with a pragmatic approach. A learning and information phase should be included, and over time firms that do not meet requirements after the initial collaborative/educative approach should face stricter measures.</p>
25.	What other enforcement, incentive or penalty options could be introduced to encourage greater compliance with the proposed beneficial ownership register requirements?	<p>We consider that other than penalty/fine options and enforcement proceedings, there should be sufficient resources on education/ best practice uplift and medium touch compliance/audit activities to encourage greater compliance culture from regulated entities.</p>





8. Regulatory costs and benefits		
26.	What regulatory and compliance costs are already incurred by regulated entities to collect, verify, and maintain beneficial ownership information under existing regimes including member register and anti-money laundering and counter terrorism financing obligations?	<p>From an AML/CTF perspective, under the proposed initial phase there will be no reduction in costs as the information provided on each RE's BOR is unlikely to be considered sufficiently independent and reliable.</p> <p>A potential cost would be the hiring more staff to undertake BO identification and verification work in the manner.</p> <p>There will be a desire across multiple described industries/ sectors for professionals with specific KYC/BO skills or relevant work experiences. We note that the AML/CTF sector is already lacking the numbers of professionals. This may increase demand for these skill sets and result in increased costs for existing reporting entities to maintain and replace their existing workforce.</p>
27.	What additional financial costs would regulated entities or listed entities incur to comply with the proposals in this paper? Which entities would be affected and what would be the quantified estimate of regulatory burden incurred?	<p>The financial costs on entities with new requirements to report BO information is likely to be significant, while for existing reporting entities such as banks that seek to collect that information, the costs are likely to be moderate.</p> <p>The range of additional costs may include cost of training staff to apply any new requirements and the build of any new systems to be compliant under any new BO register legislative framework.</p>
28.	What other impacts would the proposals in this paper have on businesses and the economy more broadly? What information can you provide to assist with quantifying the benefits and costs?	<p>In relation to the initial phase, the benefits from an AML/CTF perspective will be negligible. We note, however, the costs to new entities that need to provide this information for the first time will be substantial and add additional regulatory burden across those sectors. We suggest that the costs would be similar to a new reporting requirement and new IT systems that may be required to ensure an updated BOR.</p>
29.	What other information is relevant to assessing the costs and benefits and regulatory burden of introducing the proposals outlined in this paper?	<p>As noted above, there is a small pool of specialised staff in this area of work, and those that can apply both a KYC and BO lens will be in very short supply. These costs should be considered and evaluated, as not all entities will have the sophistry to understand and apply the obligations.</p> <p>Further, many entities may not have the systems or digital presence to make the information publicly available so will incur additional costs in making the information available, although there could be other ways that this obligation is met.</p> <p>Further, regardless of the approach, we consider the access to the registered needs to be free. Reporting Entities need to be able to rely on the register(s) for the purpose of performing KYC. There should be a flag to indicate if a BO has been verified by the party so that others know what level of reliance they can place on the register for the relevant BO.</p>
30.	What transitional arrangements would be necessary to enable regulated entities and listed entities to meet the proposed new requirements?	<p>As with any new legal obligations a transitional period should be implemented and applicable to all regulated entities. Prior to and during this period the regulator should be producing and disseminating accurate guidance and best practice material, e-learning, workshops, webinars etc.</p>