



13 March 2017

Ms Jodi Keall
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Financial System Division
100 Market Street
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By email: beneficialownership@treasury.gov.au

Dear Ms Keall

Increasing Transparency of Beneficial Ownership of Companies

The Australian Financial Markets Association (AFMA) welcomes the opportunity to make this submission commenting on the Increasing Transparency of Beneficial Ownership of Companies consultation paper.

AFMA supports the objective of increasing transparency in relation to beneficial ownership.

As a general principle, AFMA recommends that the concept of 'beneficial ownership' should be aligned as closely as possible to existing regulatory frameworks, including those for Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) and the 'relevant interest' provisions of the *Corporations Act*. This should help ease the reporting and compliance burden associated with changes to the law to increase transparency.

The collection and dissemination of beneficial ownership information should also be integrated where practical with that for company information more generally. This should occasion a Government review of the accessibility regime for existing registers of company information to ensure that the economic value of this information is maximised and to bring this regime into conformity with Government policy commitments on public data principles and standards.

AFMA notes that the current consultation only deals with FATF Recommendation 24 on companies and not trusts, but trusts should be brought within the scope of the register.

There is scope to combine the information the ATO currently collects in respect of the beneficiaries of trusts, while also seeking additional beneficial ownership information through annual trust tax returns. This information should be combined with the beneficial ownership information on companies into a single register.

Q1: Should listed companies be exempt 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 to specific exchanges?

AFMA supports an exemption for listed companies given the substantial disclosure and reporting obligations already imposed on these entities. The exemption should be limited to those domestic financial markets that have been licensed to operate in Australia by the Minister in accordance with Chapter 7 of the *Corporations Act*. Existing computerised share registries provide timely and efficient access to this information.

Q15. Should a central register of beneficial ownership information also be established?

A central register could be expected to facilitate more accurate, timely and efficient access to information compared to individual company registers. Given that ASIC already maintains a register of company information, it would make sense for ASIC to also maintain a register of beneficial ownership. This approach should not be seen as precluding future changes in the ownership or operation of the register, including by the private sector.

Beneficial ownership information, including verification, could be sought at the time of incorporation. Reporting obligations and the penalty regime in relation to the beneficial ownership register could then be aligned to those that apply to company information more generally. Beneficial ownership information could be included in the annual statement ASIC sends to companies for review and confirmation.

An important issue that arises in this context is the accessibility of the information contained in the beneficial ownership register. With the exception of question 33, the consultation paper contemplates the register being made available mainly to government users. However, there is a strong case for this information to be made more widely available to maximise its value to the community that will bear the cost of complying with beneficial ownership reporting requirements. AFMA note that the UK Register of People with Significant Control (PSC) is searchable by the public free of charge, excluding a PSC's residential address and date of birth for privacy reasons.

A more limited accessibility regime, canvassed in Question 33, would see the information made available to private sector entities with Know Your Customer (KYC) obligations and would assist in lowering the compliance burden of these obligations.

The question of accessibility to the beneficial ownership register also raises the issue of the charging framework to be applied to private sector use of the information. In the context of the Government's examination of the possibility of selling ASIC's register of company information, many observers noted that ASIC's charges for accessing this

information are among the highest in the world. If a central register of beneficial ownership is to be created and made searchable by non-government entities, consideration needs to be given to whether a user-charging framework is applied.

The Australian Government Public Data Policy Statement commits Australian government entities to make non-sensitive data open by default. The current charging framework in relation to ASIC's company register would seem incompatible with the Policy Statement.

The recent Productivity Commission inquiry into Data Availability and Use noted that ASIC's company register might constitute a National Interest Dataset in terms of the inquiry's proposed *Data Sharing and Release Act*. A central register of beneficial ownership could be viewed similarly.

A central register of beneficial ownership, along with publicly-held company information more generally, should be brought into conformity with the Government's Public Data Policy Statement. This suggests the need for a wider review of the accessibility arrangements and the charging framework applying to such data to ensure consistency of approach. In particular, the arrangements governing any beneficial ownership register should reflect the Government's forthcoming response to the Productivity Commission's report on Data Availability and Use.

Making existing company information and the beneficial ownership register freely available would be a cost to Government revenue, but would have wider economic benefits and facilitate good corporate governance by enhancing the private sector's ability to scrutinise corporate affairs, in addition to scrutiny by tax authorities and regulators. AFMA's [submission](#) to the Productivity Commission's inquiry into Data Availability and Use canvasses these benefits and related issues.¹

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

If a register of beneficial ownership were made publicly accessible, the issue of exchange of information with other jurisdictions does not arise, except in relation to information that might be suppressed from public access for privacy reasons, such as residential address and date of birth. Any automatic exchange of information with authorities in other jurisdictions containing sensitive private information should be subject to a Memorandum of Understanding between the jurisdictions in relation to the use of such data to ensure that private information is adequately safeguarded.

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?

¹ Submission to Productivity Commission Inquiry into Data Availability and Use, Australian Financial Markets Association, 29 July 2016.
http://www.pc.gov.au/_data/assets/pdf_file/0010/203230/sub057-data-access.pdf

An important potential benefit of a central register of beneficial ownership information is to alleviate existing AML/CTF reporting obligations on companies. This benefit could arise either through regulators directly accessing the information in lieu of current reporting obligations or companies accessing the register in the course of meeting these obligations. Ideally, the central register would also perform the identification and verification function so that this burden is not multiplied across all reporting entities dealing with each company customer. Reporting entities could then rely on the register to meet the verify requirement of KYC and ongoing customer due diligence obligations.

However, as noted previously in this submission, this argues for making the information generally available to maximise its economic value, subject to privacy protections. The Government would also need to give consideration to an access pricing regime if the information is not to be made freely available. As previously noted, any access pricing regime should conform to the Government's policy commitments in relation to publicly-held data and access to other business information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Kirchner', written in a cursive style.

Dr Stephen Kirchner
Economist