

FIVE STRATEGIES FOR IDENTIFYING & SCREENING BENEFICIAL OWNERS

How to uncover the true ownership of a business

Overlooking the ultimate beneficiary of a third party can be materially and publicly damaging for an investor. In the absence of a public register of beneficial ownership for Australian companies, we propose five strategies to give you confidence in knowing who you are really doing business with.

Following the outcome of the Federal Election on May 18, the anticipated reforms to Australia's Integrity infrastructure are unlikely to advance in the near term, making the road towards improved transparency less certain.

In the lead up to the 2019 election, the Australian Labor Party promised to implement a publicly accessible register of the beneficial ownership of Australian companies and trusts. Despite the Abbott Government previously committing to a publicly accessible register in 2014, the current Liberal-National Coalition government backed away from the commitment in February 2019. Among other tax reforms, the registry was intended to close the legal loopholes that allow multinational companies to minimise tax through complex ownership structures.

Such a registry would help fulfil Australia's commitments to increased transparency and fighting tax evasion, money laundering, corruption, fraud and terrorist financing.

Recent examples underline the importance of increasing transparency in our business environment. Offshore companies are frequently used internationally to facilitate fraud, tax evasion, corruption and money laundering. Articles in the Australian press have also highlighted the recent involvement of companies registered in the Cayman Islands in several high-profile deals with the Australian Government.

Australia could learn from the solutions put forward internationally. Lawmakers in the UK have implemented the publicly accessible Register of People with Significant Control (PSC), limited to the beneficial ownership of companies, but excluding trusts. The Draft Registration of Overseas Entities Bill will publicly record the beneficial owners of land in the UK. Australia could implement a similar registry in progressive stages while ensuring the integrity system would continuously improve.

In the absence of a registry, financial institutions, investors and corporates dealing with third parties or investing in new businesses should adopt appropriate due diligence procedures and, in some cases, undertake an investigation to identify the beneficial owner of a third-party company.

Why do you need to identify the UBO?

An Ultimate Beneficial Owner ("UBO") is defined as the individual(s) who control(s), either directly or indirectly, 25 percent or more of a company and therefore receive(s) its profits.

Control can be established by various means such as direct or indirect shareholdings, beneficial interests or debt instruments.

There can be several layers in the chain of ownership that need to be uncovered in order to trace the beneficiary. For example, the beneficial owner of a business may own an interest in another company which in turn owns an interest in the business. This chain may be complicated further through loan and debt instruments.

Whilst the most frequent use of such structures is for tax optimisation purposes, sometimes there are other motivations. A convoluted or offshore corporate structure may be used to obscure the involvement of a politically exposed person, sanctioned individual, competitor, or related party. It may also be used to facilitate fraud and money laundering.

Identifying the UBO is integral to building trust in a third-party relationship and ensuring all new business decisions are informed and in line with the business's risk appetite. Beneficial owner risks should also be regularly reviewed to ensure that the documents are up-to-date and reflect current risk factors.

We recommend the following five strategies:

1. Screen for indicators of concealed beneficial ownership
2. Conduct online research
3. Search all available corporate registries
4. Cross-check the names of intermediaries and nominees
5. Consider consulting an expert and commissioning discreet inquiries

Strategy 1: screen for indicators of concealed beneficial ownership

The term "ultimate" beneficial owner is an acknowledgement of the fact that 'real' ownership and control may be hidden behind several corporate "layers" or structures.

Screening for the three basic indicators below will help to identify if you are engaging with an entity where the UBO is concealed.

1. Nominee directors and shareholders

Nominee directors and shareholders can include family members, personal contacts and business associates, acting on the UBO's behalf to conceal their identity.

2. Professional Intermediaries

The schemes designed to obscure beneficial ownership often require the use of professional intermediaries; third parties who assume control on the behalf of the actual beneficiary for a fee. This includes trust and company service providers, lawyers, financial planners and accountants.

3. Unnecessary complex or uncommercial corporate structures

When examining business records, it may appear that the corporate structure has unnecessary levels of complexity or makes no commercial sense. Such indicators can include:

- directors/shareholders replaced shortly after incorporation and change frequently without justification;

- relevant legal persons incorporated in jurisdictions which are opaque or considered low-tax; and
- the business taking out a series of loans from private third parties or from related parties and repaying them in multiple large payments.

Strategy 2: carry out online research

If you find you are likely engaging with an entity that has concealed beneficial ownership, the next step is to undertake extensive online research, including:

- Analysing the company's website if available, or any other electronic identifiers, such as email addresses to determine the names of possible custodians;
- Verifying non-apparent information by consulting domain-name information and mapping of relevant domain registrants and IP Addresses;
- Cataloguing all other publicly available information provided on other websites; and
- Identifying any information about the target company archived in the deep web, which may not be indexed by standard search engines.

Strategy 3: search all available corporate registries

Consult available corporate registries to understand shareholding structures (the identity of any direct or indirect shareholders, the number of shares held by each shareholder and the associated shareholder rights) and the company's corporate history. Repeat this exercise in all jurisdictions where a shareholder or any identifiable additional corporate layer may be registered. Where possible, also research a target company's registered agents if online searches do not yield satisfactory results, conduct physical consultations in all relevant jurisdictions. To help identify other companies which may be related to the beneficiary at the same address.

Strategy 4: cross-check the names of intermediaries and nominees

Cross-check the names of any corporate representatives and intermediaries through additional online searches and corporate registry searches.

Research the representatives of the targeted companies, their online profile, whether they are known to be close to a suspected UBO or appear on "leaks pages". For example, it might be possible to obtain an insight into the beneficial ownership of one company, if you can understand the ownership of a separate vehicle that involved the same nominees.

If you cannot find the UBO through online or corporate registry searches but know where the UBO is suspected to be registered or located, conducting detailed physical searches in commercial court databases of publicly accessible litigation documents may also uncover helpful information.

Strategy 5: consider consulting an independent expert to conduct discreet inquiries and an investigative due diligence

If the above research does not provide the comfort required, consider whether proceeding with the transaction exceeds your risk appetite. You could also consult an independent expert who can conduct inquiries on your behalf and has experience in unravelling complex corporate structures.

These experts are adept at identifying hard-to-obtain public records and online information in multiple languages using paid-for and specialised database services and tools. They also conduct discreet interviews with reliable sources and have networks they can leverage to collect hard-to-get information that may be pertinent in identifying the UBO.

The discourse on a publicly-accessible registry has largely focused on the registry's importance from a corporate tax perspective. However, there is value in, and a need for, a central register of beneficial ownership in Australia from the perspective of corruption and money laundering risk management.

In lieu of this, FTI Consulting underlines the importance of undertaking an investigative due diligence before formally engaging with third parties, particularly offshore.

How we can help

FTI Consulting uses open source records and discreet source inquiries to find issues that an untrained investor or corporate may miss.

Our professionals in Australia and across the globe are specialists in locating and retrieving hard to find information and documents to help uncover the true ownership structure of businesses. Our work adheres to the highest ethical standards and is carried out in accordance with all applicable laws and regulations.

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals

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