

# Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Australia**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

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## **I. Definitions and Company Formation Process**

### **1. What is the definition of legal ownership in Australia?**

There is no legal definition of legal ownership under the Australian law. A company is owned by its members. A member of a company must be a natural person, a body corporate, or a body politic. A person is a member of a company if they are a member on registration, or agree to become a member after registration and their name is entered on the register of members (s231 Corporations Act 2001).

### **2. What does “beneficial ownership” mean in Australia?**

The Anti-Money Laundering and Counter Terrorism Financing Rules Instrument 2006 Part 1.2.1 defines beneficial ownership as “any individual who owns through one or more shareholding more than 25% of the issued capital in the company”.

The Corporations Act 2001 provides that members may hold shares beneficially (for their own sole benefit) or non-beneficially. Shares are held non-beneficially if the person holds shares in a capacity other than that of sole beneficial owner; or holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of another person (s1072H(8) Corporations Act 2001).

### **3. How are legal entities (companies, partnerships, foundations, etc.) formed in Australia?**

The types of legal persons that can be established or created in Australia are:

- proprietary companies
- public non-listed companies
- public listed companies
- incorporated and limited partnerships
- incorporated associations
- cooperatives

To register a company, a person must lodge an application with ASIC (s117 Corporations Act 2001).

Information to be provided on the application for registration includes:

- company’s details, including: type of company (proprietary or public) and class of company (limited, unlimited or no liability)
- the name and address of each person who consents to become a member
- full present and former names and the date and place of birth for each person who consents to become a director (who must be natural persons but the persons can be nominees) and company secretary
- the address of each director and secretary
- the address of the company's proposed registered office and its principal place of business (if different)
- share structure details including the number of shares to be issued for each class of shares and the amount paid and unpaid on those shares
- whether the company will have an ultimate holding company (if in Australia, the holding company’s ABN, ACN, or ARBN; if outside of Australia, the place of incorporation).

ASIC gives the company an Australian Company Number (ACN), registers the company and issues a certificate of registration (s118 Corporations Act 2001). A company comes into existence on the day it is registered.

#### **4. What is the role of the Company Registries in Australia?**

##### Australian Securities and Investment Commission (ASIC)

ASIC is Australia's corporate, markets and financial services regulator. ASIC registers Australian companies and regulates financial markets and financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and consumer credit.

ASIC maintains a number of on-line registers, including:

- the companies register, containing approximately 2 million registrations;
- the national business names register;
- the register of Australian Financial Services Licence (AFSL) holders and Authorised Representatives, and the register of Financial Advisers;
- the register of Australian Credit Licence (ACL) holders and Authorised Representatives;
- the register of liquidators and company auditors; and
- the register of banned and disqualified persons

ASIC maintains a record of the incorporation of each company on its publicly available Companies Register.

Information on entities registered with ASIC can be searched online.

Information is available on:

- companies
- business names
- registered bodies
- foreign companies
- associations
- managed investment schemes
- non-registered entities.

Information in relation to a specific company that can be searched and obtained for free includes:

- company name
- unique identification number (ABN, Australian Company Number [ACN], Australian Registered Business Number [ARBN], or Australian Registered Scheme Number (ARSN))
- type of company
- date of registration
- date of the next annual review
- address of registered office
- whether the company holds a professional licence (for example an AFSL or ACL).

This information is available to the public and competent authorities. Other information, such as current or historical extracts, roles and relationship extracts or copies of certain documents lodged with ASIC, is available to competent authorities as well as to the public for a small fee.

On application of registration of a company ASIC checks to ensure substantial compliance with lodgement obligations. ASIC also conducts some integrity checks (e.g., checks against Australia Post Files to ensure addresses are valid physical addresses if required, and checks of new officeholder names against bankruptcy records held by the Australian Financial Security Authority).

#### Australian Business Register (ABR)

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

Some information in the ABR can be inspected by businesses to ensure that particular enterprises are registered for the indirect tax system (see <http://abr.business.gov.au>). Similarly, other government agencies, including regulatory and law enforcement agencies can access a broader set of information in the register directly or ask the ATO to provide information contained in the ABR.

The ABR contains information about the associates of companies and trusts (regardless of whether they are natural or legal persons). Since December 2013 the following information is collected:

- for private and unlisted companies – the top 20 shareholders (by number of shares held) for each class of share are collected
- and for closely held trusts – the top 20 (by the value of the benefit) individuals or organisations, either named as a beneficiary under a trust deed or that may benefit under a trust arrangement

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

#### **5. How is basic information on legal entities obtained and recorded in **Australia**?**

Under section 169 of the Corporations Act 2001, companies are required to hold a register of members containing each member's name and address, date on which the member was issued shares, the number and class of shares held, whether the shares are fully paid and the amount unpaid on the shares (if any), and must indicate any shares that a member does not hold beneficially.

- For publicly listed entities, the company's register must also include information disclosed in the context of the ASIC's power to trace beneficial ownership of shares (Corporations Act, Part 6C.2). Under this article, ASIC may direct a member of a publicly listed company, a person having a relevant interest or having given instructions about voting shares, to disclose the detail of his/her interest in the shares, information about the acquisition or disposal of the shares, the exercise of the voting rights or any other matters relating to the shares. Any information received by the company in this context must be recorded.
- For listed companies, section 672DA of the Corporations Act provides that "relevant interests" in shares (securities) must be disclosed; "relevant interest" is defined in section 608 as meaning, amongst other things, an interest "however remote" and can include beneficial interests as contemplated by the meaning of beneficial owner in the Glossary to the FATF Methodology.

Under Part 6C.1 of the Corporations Act 2001 a substantial shareholder (*i.e.*, a shareholder holding 5% or more of voting power) of a listed public company or responsible entity of a listed managed investment scheme must disclose this interest to the company and the relevant market operator (e.g., the Australian Securities Exchange) within two business days after acquiring the interest.

Companies must notify ASIC of cancellations and new issues of shares, as well as any changes to its share structure in response to its annual statement. Proprietary companies must notify ASIC of the issue, conversion or cancellation of shares; including share class, the total number of shares issued for each class and the total amount paid and unpaid on the shares; changes to the share structure; and details of the top 20 members, including their name and whether they hold the shares beneficially.

#### **6. How is beneficial ownership information on legal entities obtained and recorded in Australia?**

ASIC or a listed company may issue a tracing notice in relation to holdings in the listed company (section 672A of Corporations Act). In practice, there are a number of businesses that issue beneficial tracing notices on behalf of listed companies and it is common for this to occur. In most instances, ASIC will not be involved as the listed company will do this work and the responses from these notices must be publicly available (section 672DA of Corporations Act). Third parties can also request ASIC to issue a tracing notice. Disclosure in response to a tracing notice must be made within two days, and failing to respond to a tracing notice is a strict liability offence with penalty up to 25 penalty units (approximately USD 3,000) and/or six months imprisonment.

#### **7. How are legal arrangements (express trusts and trust-like agreements) formed in Australia?**

In Australia, trusts are primarily governed by common law at the State and Territory level. States and Territories also have statutes which impose additional obligations on trustees and a trust's constituent elements. As a consequence, the process for the formation of trusts varies from one State or Territory to another.

#### **8. How is information on legal arrangements obtained and recorded in Australia?**

As mentioned above, laws governing trusts, including the information and documents necessary for the establishment of a trust, vary from one State or Territory to another.

There is no obligation to register trusts at the federal level. However, the federal Corporations Act 2001 (Corporations Act) applies in addition to trust law when a trustee is a corporate entity; and if the trust receives income, it is subject to federal tax laws and must lodge an annual tax return with the ATO. In doing so, information about trustees and in some cases beneficiaries is disclosed and recorded by the ATO on the ABR. In total there are over 7.5 million ABN holders registered in the ABR, including over 991,000 trusts. There is no estimate of the total number of trusts existing in Australia.

## II. Types of Legal Entities

There are many types of legal entities able to be formed in **Australia**. This Guide will provide information on the two most common types of companies: public companies limited by shares and proprietary limited companies:

### Public Company limited by shares, listed on a public stock exchange

Type of legal entity	Public Company limited by shares, listed on a public stock exchange	
What is the minimum number of natural persons required for formation?	3	
	<b>Yes</b>	<b>No</b>
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)		X
Is there a residency requirement for directors?	X	
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?		X
Does the jurisdiction allow for nominee directors?	X	
If so, are they required to disclose their status as nominee directors?	X	
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?		X
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X

### Proprietary Company

Type of legal entity	Proprietary Company limited by shares	
What is the minimum number of natural persons required for formation?	1	
	<b>Yes</b>	<b>No</b>
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)		X
Is there a residency requirement for directors?	X	
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?		X
Does the jurisdiction allow for nominee directors?	X	
If so, are they required to disclose their status as nominee directors?	X	
If so, are the nominee directors required to obtain information on and/ or	X	

disclose the identity of natural person(s) on whose behalf they are acting?		
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?	X	
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X

### III. How to Access Information

This guide will address the ability to access information on entities formed in **Australia** available in 1) registries and 2) other channels.

#### Registries

The registry in **Australia** is called the Australian Securities and Investment Commission (ASIC). It is available online at [www.asic.gov.au](http://www.asic.gov.au).

Contact information for the registry is provided here:

Name: Rosanne Bell  
Senior Executive Leader, Registry  
Agency: ASIC  
Address: GPO Box 9827  
Melbourne, VIC 3001  
Phone: +61 1300 300 630

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Principal Purpose of Business (if set out in the company's constitution)
8. Registered Capital
9. Registered Agent Information
10. Officer/Director Information
11. Shareholder/Member Information
12. Application/Certification of Formation
13. Annual/Biennial Reports (for all disclosing entities, public companies, large proprietary companies and registered schemes.)
14. Register of Charges
15. Historical Document (previous 2 years annual filings available)

#### Registry Update

Companies are required to notify ASIC within specified timeframes (generally 28 days) about a change of registered office, principal place of business, its member register, its share structure, directors or secretaries, including in their personal details. Failure to notify is sanctioned by a fine of 60 penalty units (approximately USD 7,160).

In addition to this obligation, ASIC sends companies an annual statement (also called an "extract of particulars") annually on its review date. The annual statement contains the information about the



company held on ASIC's registers. If any details are incorrect the company must notify ASIC of the updated information (section 346C).

Failure to notify ASIC may be sanctioned by a fine of 60 penalty units (approximately USD 7,160). Providing false or misleading information to ASIC may be sanctioned by a fine of up to 200 penalty units (approximately 23,900) and/or five years imprisonment.

	Online Access (free or for nominal fee, no log-in requirements)	Other Public Access (available in person only or via pre-registration requirement)	Law Enforcement Access only	For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information
<b>Name of Legal Entity</b>	X			
<b>Entity Number (if any)</b>	X			
<b>Type of Legal Entity</b>	X			
<b>Date of Incorporation</b>	X			
<b>Current Status (active, etc.)</b>	X			
<b>Principal Address of Business</b>	X			
<b>Principal Purpose of Business</b>	X			If this information is set out in the company's constitution
<b>Registered Capital</b>	X			
<b>Registered Agent Information</b>	X			If it exists, this information can be determined from looking at copies of lodged documents or if the agent is the registered office of the company.
<b>Officer/ Director Information (incl. power of representation)</b>	X			
<b>Shareholder/ Member Information</b>	X			
<b>Memorandum Articles of Incorporation</b>				Memorandum and articles of association are no longer required following legislative changes in 1988. Companies may choose to be governed by a constitution and/or replaceable rules set out in the Act (see s136). The governing documents of companies including old M&A are available on the register.
<b>Application/ Certificate of Formation</b>	X			
<b>Annual/ Biennial Reports</b>	X			For large proprietary companies, public companies, disclosing entities and registered investment schemes.
<b>Shareholder Register</b>				See note 1.
<b>Register of Charges</b>				See note 2.
<b>Bank Account Information</b>				See note 3.
<b>Payment Records</b>				
<b>Historical Documents (example: past annual filings)</b>	X			

## Notes

1 - Shareholder register - A company's shareholder register is maintained by the company and kept at the company's registered office or principal place of business or a share registry or a place approved by ASIC. A company must allow anyone to inspect its shareholder register. Members may inspect the register for free. On application and payment of a fee (up to the prescribed amount) by a non-member, the company must allow that person to inspect and obtain copies of documents on the register. ASIC does not hold copies of shareholders registers except for proprietary companies which must keep ASIC informed about its top 20 shareholders. Information about the top 20 shareholders of proprietary companies are available on ASIC's online register.

2 - Register of Charges - In 2012 the Charges Register maintained by ASIC was transferred to the Personal Property Securities Register (PPSR). Since then only charges satisfied prior to the new register commencement are available for searching on the ASIC Register. A historical search will contain details of any historical charge recorded on ASIC's Register of Company Charges. The PPSR may be searched online for free without a log-in requirement at <https://www.ppsr.gov.au/>. The PPSR is maintained by the Australian Financial Security Authority.

3 - Bank account information - A company's bank account information is not publicly available. ASIC may obtain a company's bank account information by serving a statutory notice to produce documents on the company and on the financial institution with which the company banks. Failure to produce the requested documents is an offence punishable by a monetary penalty or imprisonment of up to two years.

## Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in [Australia](#).

### Channels through which foreign authorities may obtain information

#### Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals	X		See note 1, below	X		See note 2, below
Records/ documents	X			X		

#### Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals	X		See note 1, below	X		See note 2, below
Records/document s	X			X		

#### Financial Institutions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel	X		See note 1, below	X		See note 2, below
Accounts records/ documents	X			X		

#### Trust and Company Service Providers

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel	X		See note 1, below	X		See note 2, below
Accounts records/ documents	X			X		

**Other Designated Non-Financial Businesses and Professions**

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel	X		See note 1, below	X		See note 2, below
Accounts records/ documents	X			X		

**Notes**

1 - Sections 8-10 and 18 of the Mutual Assistance in Business Regulation Act 1992 (Cth) (MABRA) empower competent authorities (*i.e.*, ASIC and APRA) to provide assistance in response to a request from a foreign regulator; and ASIC senior staff exercise the Minister's power under MABRA to authorise the obtaining of information, documents or evidence. MABRA cannot be used for criminal matters.

2 - Requests for interviews with relevant individuals and records/documents may be made under the Mutual Assistance in Criminal Matters Act 1987 (MACMA) by foreign authorities to Australia's International Crime Cooperation Central Authority in the Attorney-General's Department for assistance in criminal matters. The Australian Central Authority can be contacted as follows:

Assistant Secretary  
 International Crime Cooperation Central Authority  
 International Crime Cooperation Division  
 Attorney-General's Department  
 3-5 National Circuit  
 BARTON ACT 2600  
 AUSTRALIA  
 Telephone: +61 2 6141 3244  
 Facsimile: +61 2 6141 5457  
 Email: [mutualassistance@ag.gov.au](mailto:mutualassistance@ag.gov.au)

#### IV. Other Useful Sources of Information

Resource Name	Web Link
Step by Step Guide for Asset Recovery from G-20 Countries Australia	<a href="http://www.g20australia.org/official_resources/step_by_step_guide_asset_recovery_australia">http://www.g20australia.org/official_resources/step_by_step_guide_asset_recovery_australia</a>
This guide describes the different steps foreign jurisdictions will follow to can obtain assistance from Mexico to recover assets that are the proceeds of crime.	
Requesting Mutual Legal Assistance in Criminal Matters from G-20 Countries. A Step by Step Guide.	<a href="http://www.g20australia.org/sites/default/files/g20_resources/library/MLA_Guide.pdf">http://www.g20australia.org/sites/default/files/g20_resources/library/MLA_Guide.pdf</a>
This guide presents the mutual legal assistance regime in force in each of the G20 countries and describes the specific procedure to be followed while requesting mutual legal assistance to G20 countries.	
Information about Australia's international crime cooperation arrangements	<a href="https://www.ag.gov.au/Internationalrelations/Internationalcrimecooperationarrangements/Pages/default.aspx">https://www.ag.gov.au/Internationalrelations/Internationalcrimecooperationarrangements/Pages/default.aspx</a>
This website of the Attorney's General Department describes the international cooperation mechanisms, including mutual legal assistance and extradition, in place in Australia and provides a link to the relevant laws and regulations.	