

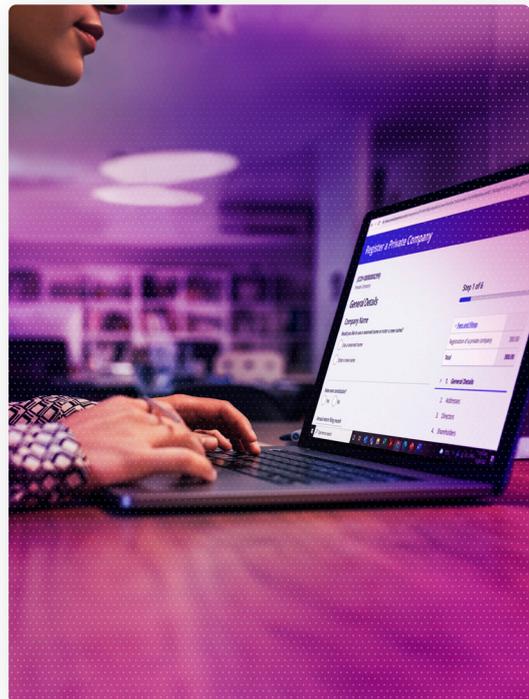
How identification can enhance business registers (beyond Director ID)

As registrars, who doesn't want to modernise our business registries; to make their use faster and easier; to increase the usefulness and integrity of their data to help businesses to thrive; and to provide value to government and regulators? Most of us do, and are juggling, if not struggling, with the many challenges in doing so. Modern registries are constantly striving to adapt to new and emerging local and global trends, opportunities, and challenges.

Business registers are fundamentally databases of information relating to entities and individuals that can be accessed by the public and others seeking information. Perhaps they are trading with a business and want to check the bona fides of the entity and officeholders, or perhaps they are providing a loan to a person and want to check if they are disqualified as an officeholder. For whatever reason, they are looking to the registers to learn about those doing business, including with the privileges of the corporate form.

Registries can do many things to have more trusted data, and in doing so can play a bigger and critical role in addressing misuse of the corporate form. This can include washing data against other sources, requiring review and updates from registered parties, and acting against those committing lodgement related offences.

A very fundamental component of registers is the identification of people and entities on the registers, and this is a good place for early focus when considering data quality and modernising registers.



The opportunity

There are emerging demands for business registers to move beyond their traditional role of registering companies. Increasingly registers are implementing initiatives to combat money laundering and terrorist financing, with a greater focus on monitoring and enforcement, as well as increased cooperation with other authorities, law enforcement and each other.

This stronger corporate regulatory system requires greater transparency and proper due diligence checks into the integrity, character and track record of directors and entities and their operations domestically and internationally. Around the world the identification of people and entities doing business is increasingly important as global trade grows and governments take steps to increase the integrity of registry data and to deter fraudulent behaviours both domestically and across international boundaries.

Registries have traditionally used corporate identifiers (such as company names and numbers), and more recently individual director identification has taken off in some jurisdictions. But this is not enough. Progressive registries are looking towards the identification of other corporate players, such as shareholders, partnerships, and beneficial owners. They are also progressing mutual recognition between jurisdictions to address economic, cyber, and other crimes that involve hiding behind the corporate veil at a global level.

Registry reforms have a long lead time and can be expensive and complex, adding to the case for giving early attention to international benchmarking, standard settings, and frameworks for efficient and effective future connections. The technology exists to support this and is becoming simpler, faster, and more accessible every day, including through off the shelf products.

What some countries are doing

Let's have a quick look at what some countries are doing in this area. As these proposals progress, stakeholders will almost certainly find it less difficult to be certain who they are dealing with, which will grow trust in the corporate governance system and reduce the challenges to law enforcement agencies.

Australia

In 2021 Australia introduced a Director Identification regime (Director ID). Underpinned by a government identity verification service, and wider registry modernisation program, it requires both new and existing directors to register for a director identification number which will be a unique number applied across directorships. The benefits range from improving register integrity making it easier for searchers to track a director, to improve administrative efficiencies, to combat crimes such as illegal phoenixing (where an individual opens and shuts entities to escape liabilities) and using complex ownership structures to launder money. The initiative has been well supported.

Australia does not currently have a beneficial ownership register to make clear the ultimate owners in control of a company. Government commitments in 2016 have been delayed although the Government has reaffirmed its commitment to improving transparency around who owns, controls and benefits from entities.

New Zealand

Also down under, New Zealand does not yet have Director identification, but the Ministry of Business, Innovation and Employment (MBIE) is actively developing policy to achieve better visibility of individuals who control companies and limited partnerships, using a Corporate Role Identifier (CRI). The current policy proposals contemplate a few options, including one to assign an identifier for directors, general partners, and beneficial owners. The assignment of identifiers to beneficial owners (of both companies and limited partnerships – being the natural person who ultimately owns or exercises control) raises issues around privacy yet could effectively pierce the corporate veil and benefit third parties including government agencies, and banks and other anti-money laundering reporting agencies. It is difficult to quantify how much crime is reduced because of an identifier, but it is widely accepted that it will assist law enforcement agencies to do so.

The New Zealand Companies Office operates key registers and is considering moving them from an ageing platform to a new platform. The registries are largely online, but it remain a burden for each officer/position holder to enter changes individually for each role held. Better identification will help address this challenge.

United Kingdom

In 2020 the UK announced (in response to the 2019 consultation on options to enhance the role of Companies House and increase transparency of UK corporate entities) its intended reform of company information in a bid to combat fraud and money laundering, with new measures including compulsory verification of directors' identity.

The UK has had a publicly available beneficial ownership register since 2016. The UK intends to have registers of beneficial ownership for three different types of assets: companies, property and land, and trusts.

Information on the beneficial ownership of companies has been publicly available since 2016, although concerns were raised about its accuracy. In February 2022 the Government published a white paper setting out new proposals, and these reforms are expected to be included in an Economic Crime Bill in the 2022-23 parliamentary session.

The Economic Crime (Transparency and Enforcement) Act 2022 was expedited and on 15 March 2022 the UK Government gave royal assent to a Beneficial ownership register for UK property, establishing a register of overseas entities owning UK property with a 6-month transitional period for registration. A similar register has been operational in Scotland since April 2022.

The register for trusts was introduced in 2017 and is not public but is being expanded in 2022.

Canada

In Budget 2021 the Federal Government of Canada announced funding to have a publicly accessible beneficial ownership register up and running by 2024.

USA

In January 2021 the US Congress passed the Corporate Transparency Act, which ends the registration of anonymous shell companies that have been criticised for helping to launder the proceeds of crime and corruption.

Each reporting entity must submit the required beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), the US Financial intelligence unit, with a transitional period for existing entities. The information is not publicly available but can be used within Government subject to restrictions.

This followed development in two provinces: Quebec legislation to make benefits ownership information available on its existing corporate registry, and British Columbia's access to some beneficial ownership information for land owning companies, partnerships, and trusts.

Europe

The European Union Member States pledged to have a beneficial ownership register by 2020 following the publication of the Panama papers, which demonstrated how business leaders and politically exposed people could hide their ownership of assets being nominee directors. By mid 2021 several member states had not done so.

Benefits and risks of identification

Identification of players on a business registry can offer many benefits. These range from ensuring players are 'real humans', increasing knowledge of stakeholders and their movement and transactions, permitting better online customer experiences, to deterrence of terrorism and other crimes. It can also increase trust in, and perceived value of, registry information more generally.

Identification systems can range from individual birth certificates, drivers' licences and bank cards to biometric technology, which uses unique personal characteristics such as eye or face scans, voice, or fingerprints. The security and convenience of digital ID verification can drive the level of confidence.

Along with many positive aspects, there are concerns to be managed around implementation costs, invasion of privacy, information security, misuse of information, provision of fake identification documents, and the perception of a 'big brother' society.

The principles of strong registry identification

- > The more players that are identified, the higher the cost, but also the greater the potential benefits. Options include entities, company directors, other officeholders (such as corporate secretaries and alternate directors), business operators such as partners, shareholders and members, beneficial owners, agents and so on.
- > The more robust the identification system, the better. The coordinated use of identification systems across Government agencies can reduce costs, improve customer experience, and build trust. Digital identity verification systems are now also widely used across the private sector, such as in banking and finance. It can be very challenging and costly for registries to implement bespoke identification systems.
- > Mutual recognition across jurisdictions is good. Sharing of information across borders and having a 'tell once use many' principle can help deter global misconduct. This recognition can require alignment of policy and legislation, as well as information sharing arrangements and processes.
- > Online is better. Digitisation, new technology, and user behaviours, make online processes sensible and more efficient. As business registries are now largely online, it makes sense to integrate identification systems into registry systems and processes.
- > Use of commercial products can be efficient. There is no need to build from scratch when there are commercial off-the-shelf products and services that are built to incorporate identity verification and have been developed with the experience from other commercial and government implementations.
- > Using the natural life cycle of a business cuts red tape. It makes sense to identify stakeholders as they arrive at a business registry for the first time, such as when they are first appointed as a director, or when they become a company owner, and to reuse and update the identity from there.
- > Global standards should be supported. A chain is only as strong as its weakest link and the adoptions of standards for identification will not only provide guidance to registries, but also increase interoperability.

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