

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission

Question No: 177

Topic: Public register of ultimate beneficial ownership

Reference: Written

Senator: Ketter, Chris

Question:

1. The draft and final Open Government Partnership documents have different timeframes. Specifically, on a beneficial ownership registry, was ASIC consulted on the start date for consultation being pushed back from “late 2016” to “February 2017”?
2. Was ASIC consulted on the appropriate timeframes for consultation on the beneficial ownership registry?
3. If so, what caused the timeframe on consultation to be pushed further out?
4. In the draft Open Government Partnership plan, Milestone 4 was “Recommendation to Government on other related areas of beneficial ownership transparency considered during consultation”. This milestone is not in the final document. Was ASIC privy to the reasons why and can they elaborate?
5. What are the “related areas” of beneficial ownership that were expected to be canvassed?
6. In the final Open Government Partnership document, Milestone 3 is to “begin work to implement Government decision on transparency of beneficial ownership of companies”. The end date is described as “Expected to continue for the duration of this Plan”. What is the end date of the Open Government Partnership Plan?
7. Does ASIC expect work to be completed within a year of the plan ending?
8. What legal entities does ASIC expect to be covered by the registry?
9. Can ASIC provide a list of the types of legal identities or arrangement being considered for the registry?
10. Are trusts considered part of the scope of a beneficial ownership registry, particularly if they fit the Financial Action Task Force definition of “legal arrangement”?
The beneficial ownership register consultation paper was released in February 2017 . It states: The FATF recommends that countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. This consultation paper, however, only deals with FATF Recommendation 24 on companies”.
11. Is ASIC aware of why trusts are carved out?
12. When was the decision to carve out trusts made?
13. Will the timeframe for implementation of a beneficial ownership of trusts be beyond that of the company register?

Answer:

1. ASIC was not consulted on the change in the start date for consultation from that set out in the draft *Open Government National Action Plan*, which was released on 31 October 2016 by the Department of Prime Minister and Cabinet.

2. The Treasury released the consultation paper *Increasing the Transparency of the Beneficial Ownership of Companies* in February 2017. Timing of this consultation is a matter for Treasury.
3. Not applicable.
4. ASIC is not aware of the reasons.
5. ASIC is not able to confirm what was intended by the authors of the draft *Open Government National Action Plan*. ASIC notes however that Treasury's consultation paper seeks feedback on a number of matters in addition to the establishment of a register of beneficial ownership—including the substantial holding and tracing provisions applying to listed companies, ASIC's powers in relation to tracing notices, and bearer share warrants.
6. The publically available *Open Government National Action Plan* published in December 2016 states that the Plan sets out an agenda for a two year period: see page 6 of the submitted plan available at <http://ogpau.pmc.gov.au/sites/default/files/posts/2017/01/australias-first-open-government-national-action-plan-final.pdf>
7. This is a matter for the Australian Government
8. The entities included in any register that is ultimately introduced will be a matter for the Australian Government.
9. Please refer to our response to question 8 above.
10. Please refer to our response to question 8 above.
11. This is a matter for the Australian Government.
12. Please refer to our response to question 11 above.
13. This is a matter for the Australian Government.