



## COVERSHEET

<b>Minister</b>	Hon David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Better visibility of individuals who control companies and limited partnerships	<b>Date to be published</b>	22 March 2022 (in coordination with Minister's press release)

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
9 December 2021	Better visibility of individuals who control companies and limited partnerships	Office of the Minister of Commerce and Consumer Affairs
20 December 2021	Better visibility of individuals who control companies and limited partnerships ERS-21-MIN-0051 Minute	Cabinet Office
25 November 2021	Regulatory impact statement: beneficial ownership information (annex to Cabinet paper)	Ministry of Business, Innovation and Employment
2 December 2021	Regulatory impact assessment: corporate registry identifier (annex to Cabinet paper)	Ministry of Business, Innovation and Employment

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of national security or defence, confidential advice to Government, confidential information entrusted to the Government, legal professional privilege, maintenance of the law, privacy of natural persons, and maintaining the effective conduct of public affairs through the expression of free and frank opinions.

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Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet External Relations and Security Committee

### **Better visibility of individuals who control companies and limited partnerships**

#### **Proposal**

1. This paper seeks Cabinet approval:
  - 1.1. to require companies and limited partnerships to provide to the Companies Office information about their beneficial owners;
  - 1.2. to establish a unique identifier for individuals who hold the positions of beneficial owners, directors and general partners of these entities; and
  - 1.3. to fund this work by way of a distribution from recoveries under the Criminal Proceeds (Recovery) Act 2009 (Proceeds of Crime Fund).

#### **Relationship to Government priorities**

2. The proposals align with the Transnational Organised Crime (TNOc) strategy and most recent TNOc action plan, and support the Government's work to counter foreign interference.

#### **Executive Summary**

##### **Proposal One – Providing beneficial ownership information to the Registrar**

3. Companies currently provide information to the Registrar of Companies about their directors, and limited partnerships do the same about their general partners, but neither is required to identify their beneficial owners i.e. the natural persons who ultimately own or, directly or indirectly, exercise effective control over a corporate entity. In this context, legal entities are at risk of being misused by criminals who want to distance themselves from their criminal proceeds, and New Zealand's framework on transparency of beneficial ownership information does not meet international best practice.
4. Against this background, my proposals require companies and limited partnerships to provide information on their beneficial owners, which the Registrar will hold on a database. Some of this information – such as the individual's name – will be made publicly available on the companies and limited partnerships registers. Other more sensitive details – such as date of birth and residential address – will not, but will be made available under certain conditions to certain government agencies and anti-money laundering reporting entities.

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5. The collection of accurate beneficial ownership information by the Registrar would help to reduce the misuse of companies and limited partnerships for illicit purposes – including money laundering, bribery and corruption, insider dealings, tax evasion, and terrorism financing – by assisting law enforcement agencies to “follow the money” in financial investigations. It would also help authorities to locate assets in order to confiscate proceeds of crime, support work to counter foreign interference, and align with this year’s Transnational Organised Crime (TNOc) action plan.

### **Proposal Two - A unique identifier for beneficial owners, directors and general partners**

6. A related issue is that, while users of the companies and limited partnerships registers can currently find information about directors and general partners for a given entity, they cannot easily identify if someone holds or has held these roles for more than one entity. This makes it difficult for businesses, creditors and consumers to undertake due diligence when deciding whether to do business with a certain entity, and for enforcement agencies to detect potential unlawful activities.
7. I am proposing to introduce a unique identifier for individuals who are or become beneficial owners, directors or general partners, in the same way that unique New Zealand Business Numbers (NZBNs) have been issued to New Zealand entities. This unique identifier will ensure that an individual’s involvement in different corporate entities can be linked and tracked over time.

### **Proposal Three – financing from the Proceeds of Crime Fund**

8. The proposals above will require a \$5.000 million capital injection and a one-off investment of \$1.600 - 1.800 million for operating costs. However, they were not invited for consideration in the Budget 2022 process. In this context, I am seeking approval to fund the proposals from the Crown, through the Proceeds of Crime Fund managed by the Ministry of Justice. This is because:
  - 8.1. MBIE cannot afford to fund these proposals from existing baselines; and
  - 8.2. the proposals are fully aligned with the Cabinet-mandated TNOc Strategy (i.e. they would make it harder for organised criminal groups and networks to do business in New Zealand) and would address a key weakness in New Zealand’s system that is vulnerable to exploitation by TNOc groups and actors.

### **Background**

9. Companies and limited partnerships play an essential role in the New Zealand economy by facilitating private sector investment and growth. However, they can be and have been misused for illicit purposes. In this context, being able to identify the people who own, control and benefit from them, and being able to trace the corporate history of those people, will protect New Zealand’s international reputation for high levels of accountability and transparency in business practice, and deter the misuse of corporate entities for illegal activities.
10. In this context, my predecessor previously obtained Cabinet approval to consult publicly on whether and how to better identify beneficial owners, directors and general partners [EGI-17-MIN-0090 and DEV-18-0110 refer]. Companies and limited

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partnerships were the focus of these consultations because the majority of cases of misuse of a corporate entity involve these two types of entities.

11. The table below outlines the key roles associated with these entities:

**Table 1: Roles associated with Companies and Limited Partnerships**

Role	Company	Limited partnership
Manage day-to-day business, determine policies, make decisions, fulfil statutory filing obligations	Director	General partner
Make financial investment, own parts of the business	Shareholder	Limited partner
Natural person who ultimately owns, or directly or indirectly exercises control of the business	Beneficial owner	Beneficial owner

### Issue 1 – Opaqueness of who owns or controls a company or limited partnership

12. The beneficial owner(s) of a corporate entity are the natural person(s) who ultimately own or directly or indirectly exercise effective control over the entity. In many cases, this is simply the shareholders of the company or the limited partners of the limited partnership. However, in other cases, shareholders and limited partners are not natural persons but legal entities, or are trustees.
13. This is an issue because criminals are able to use shell companies or complex ownership and control structures to disguise the true source or use of funds, and engage in illegal activities such as money laundering, corruption, tax crime, and terrorism financing. There have been high profile instances where New Zealand companies were involved in such illicit activities, such as SP Trading Limited, which in 2009 was used in an attempt to smuggle weapons from North Korea in contravention of United Nations sanctions.
14. In recent years, governments globally have identified that increased transparency in beneficial ownership (i.e. knowing who the natural persons are that control an entity) is a key tool to counter financial crime and protect legitimate business. For example, the European Union, through its Directives 2015/849 of 20 May 2015 and 2018/843 of 30 May 2018, has mandated the establishment of registers that publicly display beneficial ownership information and, in June 2021, the G7 called on all countries to fully implement the Financial Action Task Force (FATF) standards on beneficial ownership transparency.
15. Current tools to obtain beneficial ownership information in New Zealand, however, are not easily accessible, and are time and labour-consuming. They also risk tipping off criminals. In 2021, the resulting lack of transparency of beneficial ownership information in New Zealand was identified by the Financial Action Task Force (FATF) – an inter-governmental body that sets standards for combatting money laundering, terrorist financing and other related threats to the integrity of the financial system –

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as a key deficiency in our framework to combat money laundering and terrorism financing. It was the top priority action identified in the report.

16. The collection of accurate beneficial ownership information by the Companies Office would help to reduce the misuse of companies and limited partnerships for illicit purposes – including money laundering, bribery and corruption, insider dealings, tax evasion, and terrorism financing – by assisting law enforcement agencies to “follow the money” in financial investigations. It would also:
  - 16.1. help authorities to locate assets in order to confiscate proceeds of crime;
  - 16.2. support work to counter foreign interference, [redacted] National security or defence [redacted] – for example, risks associated with [redacted] Confidential advice to Government [redacted] foreign investment where the entity [redacted] Confidential advice to Government [redacted] /proposing to invest obfuscates their ownership;
  - 16.3. align with this year’s TNOc action plan (endorsed by SIB and provided to Cabinet with the TNOc Y1 report back), which prioritised addressing gaps in New Zealand’s AML/CFT framework that are vulnerable to TNOc abuse.

### Issue 2: Difficulty tracking an individual’s corporate history

17. Presently, information on the companies and limited partnerships registers is arranged by entity so that, for example, a register user can look up a given company and see with certainty who *all* its directors are and have been. Information is not arranged by director, however, so there is no reliable way for a register user to look up a given director and see *all* the companies with which he or she holds or has held directorships. Attempts to do so using a name (e.g. John H. Smith) are hampered by the fact that a director may be recorded by different variants of their name with different companies (e.g. John Smith; John Hamish Smith). This may be innocent, or it may be because they wish to hide their association with:
  - 17.1. an excessive number of businesses, such as in the case of a nominee (or strawman) shareholder or director named to hide the de facto shareholder or director; and/or
  - 17.2. a previous business, such as in the case of phoenixing – that is, a director transferring the assets of failed companies to a new one, while leaving the failed company with insufficient assets to pay its creditors.
18. This situation is a problem because it makes it difficult for businesses, creditors and consumers to undertake due diligence when deciding whether to do business with a company or limited partnership. It also makes it difficult for law enforcement agencies to detect potentially unlawful activities.
19. Directors and general partners themselves also find it time-consuming to update their details on the register, as personal details must be individually changed, one by one, on the record of each company and limited partnership. If the proposal to collect information about beneficial ownership is accepted, beneficial owners would be in a similar situation.

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### Overview of Proposals

20. Against this background, I have concluded that it would be appropriate:
  - 20.1. Proposal 1: To require New Zealand-incorporated companies and limited partnerships to provide the Registrar with information about their beneficial owners; and
  - 20.2. Proposal 2: To introduce unique identifiers that signal, for any given individual, the companies of which they are a director or beneficial owner, and the limited partnerships of which they are a general partner or beneficial owner.
  - 20.3. Proposal 3: To Crown fund these proposals from the Proceeds of Crime Fund.

### Proposal 1: Requiring the provision of information about beneficial owners

#### Definition of beneficial owner

21. The definition of beneficial owner in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act), is any individual who:
  - 21.1. has 'effective control' of a customer or person on whose behalf a transaction is conducted; or
  - 21.2. owns a prescribed threshold (currently over 25 percent) of the customer or person on whose behalf a transaction is conducted.
22. However, the AML/CFT Act definition is high level, and does not focus on attributes typically associated with beneficial ownership of a company or limited partnership, because it needs to be able to be applied to all entity types. The definition is also potentially a moving target, as it is part of the statutory review of the AML/CFT Act currently being undertaken by the Ministry of Justice.
23. In this context, I propose that the definition of "beneficial owner" in the Companies Act 1993 and Limited Partnerships Act 2008 should focus on those persons who have "significant control" over a company. In particular I consider that this definition should capture individuals who:
  - 23.1. hold, directly or indirectly, a minimum percentage ownership interest in a company or limited partnership, to be prescribed by regulations;
  - 23.2. hold, directly or indirectly, a minimum percentage of the voting rights in a company or limited partnership, to be prescribed by regulations;
  - 23.3. have the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company or general partners of a limited partnership;
  - 23.4. have the right to exercise, or actually exercise, significant influence or control over a company or limited partnership;

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- 23.5. have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or other organisation which is not a legal entity, but would itself satisfy any of the above conditions if it were an individual.
24. This list of criteria draws from the approaches taken in the United Kingdom, Hong Kong and Singapore.

### **What information will be collected about beneficial owners**

25. I propose that biographic, contact and corporate information be collected about beneficial owners and stored on a new register. This is likely to comprise: full legal name; date they became a beneficial owner; the basis on which they are a beneficial owner; address for service; date and place of birth; a telephone number and an email address used by the person; nationalities; countries of residence; and their residential address.
26. To this end, I propose that companies and limited partnerships must:
- 26.1. take reasonable steps to ascertain who their beneficial owners are; and
- 26.2. where they determine that someone is a beneficial owner, provide to the Registrar key identifying information: full legal name; email address; and address for service or residential address. The other information required will be provided by the beneficial owners themselves, when they apply for a corporate role-holder identifier.
27. I am proposing that the obligations of disclosing this high-level beneficial ownership information to the Registrar should fall on the company or limited partnership concerned, because of the difficulty I believe we would face in enforcing obligations on many beneficial owners who are based abroad. Listed issuers will be exempted from this requirement if they are already subject to equal or more stringent public disclosure requirements.
28. To support companies and limited partnerships in discharging these duties, I propose that:
- 28.1. shareholders and limited partners have obligations to ascertain whether they are a beneficial owner and to inform their company or limited partnership if they are; and
- 28.2. individuals who are or should reasonably be aware that they are beneficial owners have a duty to provide all relevant information to their company or limited partnership.

### **Some beneficial owner information automatically public**

29. In their Regulatory Impact Statement, officials recommended that information about beneficial owners be held on a private, internal database within the Companies Office, and that none of that information (not even the names of beneficial owners) be public displayed on the companies and limited partnerships registers. Such information would – in varying degrees – be available to law enforcement, other appropriate government agencies, and AML reporting entities only.

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30. However, having considered the matter carefully and recognising that it is a finely balanced decision, I believe having some of this information publicly accessible (notably the person's name, the date on which they became a beneficial owner, and the basis on which they qualify as a beneficial owner) would strike a better balance between privacy concerns and the broader public interest. A public register reflects the prevailing international trends. Moreover, besides providing an accessible, central collection of beneficial ownership information to support law enforcement agencies who are working to combat financial criminal activity, a public mechanism will:
- 30.1. deter criminal activity hiding behind the veil of corporate entities by requiring greater transparency;
  - 30.2. support AML reporting entities in their mandatory customer due diligence processes to identify beneficial owners; and
  - 30.3. enable entities who are engaging in business with other entities to conduct their own due diligence.

### **Ability to request suppression of certain public information**

31. To enhance privacy, I propose that beneficial owners of companies and limited partnerships should be able to request that normally public information about them be suppressed, where they can demonstrate particular safety or welfare concerns.

### **Limited access to further information for agencies and reporting entities**

32. A key aspect of the FATF recommendation 24 is that competent authorities have access to adequate, accurate and current information on beneficial ownership in a timely manner.
33. In this context, I propose first that, because reporting entities under the AML/CFT Act have an obligation to verify beneficial owners, it would be appropriate to allow them to request access to the residential address of the beneficial owner. A key benefit of this is that it would improve efficiencies in the AML/CFT regime, as it would remove the need for businesses to ask the same company for the same information – they could rely on the register as a source of this information (in theory, provided sufficient information is available). This reduces compliance costs for reporting entities and opportunity costs for the companies/LPs themselves.
34. I propose second that law enforcement, and other appropriate agencies (such as Immigration NZ and the Overseas Investment Office), should be able, in certain circumstances, to request access to all non-public information (including suppressed information) on the corporate role-holder register about a specific individual. My officials will work with enforcement agencies and the Privacy Commissioner on the drafting of the relevant information-sharing provisions to ensure they appropriately balance privacy interests and enforcement needs. My officials will also work with those agencies to consider whether secure and real time access to beneficial ownership information can be made available to enforcement agencies, to improve efficiency of making and handling such requests.
35. The table in Appendix 1 sets out the proposed levels of access to the information to be collected.



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### Proposal 2: Introducing a unique identifier

36. The New Zealand Business Number (NZBN) Registrar currently assigns unique Global Location Number (GLN) as a NZBN to New Zealand businesses.
37. I propose that individuals who are or become directors, general partners, or beneficial owners must apply for a similar unique identifier, which could take the form of a number, a certificate or a digital code. I will refer to this as a corporate role-holder identifier (CRI). The CRI would be assigned by a suitable registrar (e.g. the Registrar of Companies) once suitable identity verification has occurred.
38. Verification would need to ensure that the individual is a real person (and not a fictitious one) and that the individual making the application is that same real person (and not a third party).
39. Due to the significant costs involved, it is not currently envisaged the Registrar will verify, in addition, that that individual in question is in fact a director, limited partner or beneficial owner of the company or limited partnership concerned. Nevertheless, noting that Cabinet was recently informed that 'company formation' processes are an area of vulnerability to trans-national organised crime [ERS-21-MIN-0027 refers], my officials will consider whether, in tightly constrained circumstances where significant 'red flags' are raised and subject to competing policy priorities such as the ease of doing business, there might be scope for the Registrar to verify whether an individual presenting as a beneficial owner, is indeed a beneficial owner, during the CRI application process.
40. An individual's CRI, once issued, will have associated with it the person's personal details (such as name and address) but also all the director, general partner, and beneficial owner positions that the individual holds. If the person holds any such positions at the time of application, they must declare what those positions are. If the person picks up additional positions, or ceases to hold a position, this will have to be signalled to the Registrar, either by the individual or (provided the individual is informed by the Registrar) by an authorised representative of the company or limited partnership.
41. By contrast, because of the lower risks associated with their positions, I do not propose at this stage that the CRI include a person's status as a shareholder of a company, or as a limited partner of a limited partnership (except to the extent that it is this position that makes them a beneficial owner). Nor would a general partner that was not an individual need to apply for a CRI.

**Table 1: Positions associated with a CRI**

Companies		Limited partnerships	
<b>Directors</b>	Included	<b>General partners</b>	Included
<b>Shareholders</b>	Not included	<b>Limited partners</b>	Not included
<b>Beneficial owners</b>	Included	<b>Beneficial owners</b>	Included

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42. However, subject to system design constraints, I consider that individuals who are shareholders and/or limited partners who wish to enjoy the benefits of having a CRI (e.g. only having to update their details in one place) should be able, if they wish, to apply for one, and that similarly directors, general partners and beneficial owners who obtain a CRI should be able to opt for their shareholder and limited partners positions to also be associated with it.
43. All the information associated with a CRI will be stored on a database that I will refer to as the corporate role-holder register. The Companies Office will be able to use the CRI to accurately link individuals to the various entities they are associated with and thus create a transparent corporate role-holder register that maps out the full corporate history of any given individual. While the information shown through these linkages will be publicly available, I note that this is not a new policy. That history has always been visible, it has just not been readily or meaningfully able to be searched.

### **Proposal 3: Financing the proposals from the Proceeds of Crime Fund**

44. The Proceeds of Crime Fund (POC Fund) consists of the monies forfeited to the Crown under the Criminal Proceeds (Recovery) Act 2009 as non-tax revenue.
45. Cabinet has previously decided [CAB-19-MIN-0087] that money from the POC Fund can be used: to expand alcohol and other drug treatment services; to fight organised criminal groups dealing in methamphetamine and other drugs; to address mental health issues within the criminal justice system; and to address crime-related harm to communities and improve community wellbeing.
46. The proposals in this paper are not a perfect fit within those categories, and yet:
  - 46.1. they aim to minimise money laundering (a key enabler of organised crime), and a material proportion of laundered money is likely to come from drug trafficking, with all its attendant harms to people and communities;
  - 46.2. they are fully aligned with the Cabinet-mandated Transnational Organised Crime (TNOc) Strategy (i.e. they would make it harder for organised criminal groups and networks to do business in New Zealand) and would address a key weakness in New Zealand's system that is vulnerable to exploitation by TNOc groups and actors.
47. In this context, I believe that the nexus between my proposals and the Criminal Proceeds (Recovery) Act 2009 is such that Cabinet should authorise their part-financing from the POC Fund. Such funding is all the more important given I recently learned that I have not been invited to submit these proposals for consideration in the Budget 2022 process, Free and frank opinions

### **Transitional issues for existing entities and role-holders**

48. Companies and limited partnerships will have an obligation to take reasonable steps to determine who their beneficial owners are, to obtain high-level information about those beneficial owners, and to provide that information to the Registrar. I propose

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that existing companies and limited partnerships should have a transitional period in which to meet these obligations.

49. Directors, general partners and beneficial owners will have an obligation to apply for a CRI. I am proposing that the directors, general partners and beneficial owners of existing companies and limited partnerships should have a transitional period in which to meet this obligation.
50. I propose staggered timeframes, according to whether or not the entity in question:
- 50.1. is 'large' within the meaning of section 45 of the Financial Reporting Act 2013 (in which case it will have ample resources): and/or
- 50.2. has one or more offshore directors or beneficial owners (in which case it may be seen as at higher risk of misuse).
51. The following table shows indicative timeframes, which I will finalise during the drafting process:

Obligation	Timeframe if large or has offshore director (or both)	Timeframe in other cases
Directors/GPs must apply for identifier	6 months	12 months
Entity must provide high-level beneficial owner details to registrar	6 months	12 months
Beneficial owners must apply for identifiers	12 months	18 months

### Enforcement

52. These proposals involve placing new duties on individuals and corporate entities to provide information to their companies and limited partnerships and to the Registrar. I have concluded that it is appropriate to impose these obligations on *both* individuals and corporate entities because of the difficulty we would face in enforcing obligations on many individuals – particularly beneficial owners – who might be based abroad.
53. New offences and penalties, including the ability to remove the entity from the register, will be required to enforce compliance. This is because I do not consider relying on the goodwill of the persons and entities concerned will result in adequate compliance. I also note that the standards set by FATF prescribe “effective, proportionate and dissuasive sanctions” for failure to comply.
54. I am satisfied that this approach is consistent with those taken with the Companies Act 1993, Limited Partnerships Act 2008 and New Zealand Business Number Act 2016, all of which contain offences and penalties for breaches of similar obligations. Overseas jurisdictions such as the UK, India and Australia have introduced or plan to introduce offences and penalties.

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### Sundry issues

55. I also propose that directors and shareholders of companies, and general partners of limited partnerships, should be able to request that their residential addresses be suppressed from the companies and limited partnerships register if they provide an address for service. This would align their situation with that of beneficial owners (who, because they must provide an address for service, will have their residential address automatically suppressed).
56. However:
- 56.1. where a suppression request concerns a disclosure previously made and uploaded to the register (such as a past director consent form), a fee should apply to cover the administration cost involved in removing the information;
- 56.2. creditors, insolvency practitioners, shareholders and other parties should have the right to request access to the residential address of a director or general partner where they have been unable to reach the person using their address for service about a matter related to that person's statutory role or duties.
57. Director and general partner consent forms, incidentally, are currently sent to the Registrar for checking and – under sections 12(1)(c), 12(1)(d) and 159(2) of the Companies Act 1993 – then made publicly available on the companies register. This is inefficient for the Registrar, as the checking is time-consuming, there being in excess of 100,000 consents sent in each year. It has also been raised as a concern by some directors that their signature is made publicly available on the register. In this context, I propose that director consent forms no longer be sent to the Registrar, but that the company keep them available for inspection when required. In addition, many companies in New Zealand – especially smaller ones like family businesses – have directors who are also shareholders. It would create confusion if they could hold director consents themselves but had to send shareholder consents to the Companies Office. I thus propose removing the need for both director and shareholder consents to be sent to the Registrar.

### Risks

58. In advancing these proposals I am aware of the need to balance, against the public interest in identifying and deterring the misuse of corporate entities for illicit purposes, certain privacy considerations. For example, the collection of information about beneficial owners and establishment of a CRI creates a risk that such information may be improperly accessed or used for purposes not originally intended to infringe on the privacy interests of the individuals.
59. To address privacy concerns, I propose that there should be legislative constraints on third-party access to non-public information. In particular, I propose that the legislation includes:
- 59.1. a clear statement of purpose for the collection of information and the establishment of an identifier;

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- 59.2. a specific limitation that restricts the use of the information and the identifier to appropriate purposes only, and an explicit prohibition against registrars using the identifier for a purpose other than that set out in legislation;
  - 59.3. a clear definition of the information to be collected and the positions to be associated with the identifier; and
  - 59.4. clear conditions limiting when information can be released to third parties.
60. Importantly, it should be clear that the unique identifier will not be made public.

### Consultation

#### Public consultation

61. MBIE ran three public consultation processes related to the proposals in this paper:
- 61.1. In May 2017, on the potential introduction of a unique identifier for directors;
  - 61.2. In May 2018, on whether the Companies Office should continue to publish the residential addresses of directors if an identifier is to be introduced; and
  - 61.3. In June 2018, on beneficial ownership of companies and limited partnerships, including whether to introduce an identifier for beneficial owners.
62. Most submitters supported the inclusion on the companies and limited partnerships registers of information about beneficial owners, and the introduction of a unique identifier for directors and beneficial owners. Those who preferred the status quo generally noted it was sufficient if government agencies could improve data sharing amongst themselves.
63. Key benefits acknowledged by most submitters included that the provisions would enable New Zealand to fully meet FATF recommendation 24, would increase confidence in reporting systems, would help avoid the 'tip-off effect', and would reduce people's ability to misuse corporate entities.

#### Inter-agency consultation

64. MBIE consulted with the Department of Internal Affairs, New Zealand Customs Service, Inland Revenue, New Zealand Police, Ministry of Justice (Policy Group), Ministry of Foreign Affairs and Trade, Treasury, Financial Markets Authority (FMA), the Reserve Bank of New Zealand, Land Information New Zealand, the Department of Prime Minister and Cabinet (National Security Group), Companies Office, Ministry of Business, Innovation and Employment (Immigration), Immigration NZ, the New Zealand Security Intelligence Service, the Government Communications Security Bureau, and the Office of the Privacy Commissioner. In addition, the Department of the Prime Minister and Cabinet (Policy Advisory Group) and the Ministry of Justice (Sector Group) have been informed.
65. The Office of the Privacy Commissioner opposes the inclusion of beneficial owners' information on the companies and limited partnerships registers. Treasury does not oppose it, while all other consulted agencies strongly support it. All agencies support introducing a unique identifier for directors and general partners. Most agencies also



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support, or have no opinion on, the proposal to have a unique identifier for beneficial owners.

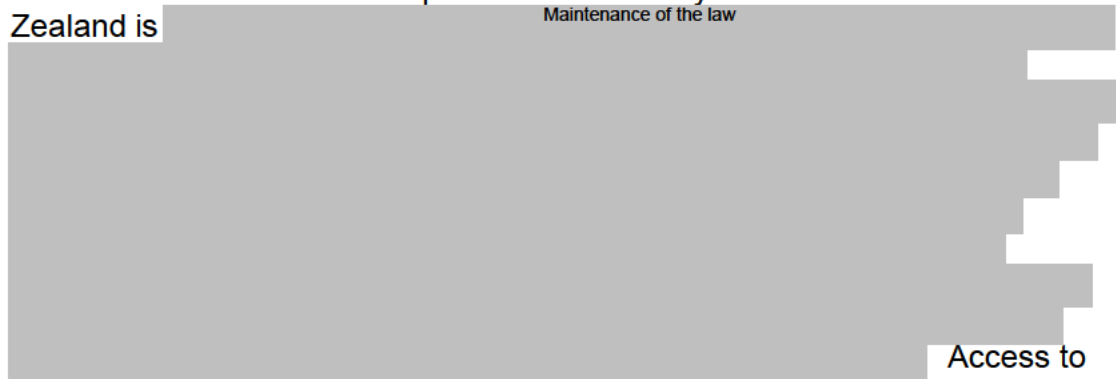
66. The following are views of note:

66.1. The Privacy Commissioner does not support the collection and disclosure of beneficial ownership information. The Commissioner is concerned about the extensive collection and aggregation of personal information of individuals, the vast majority of whom will be meeting their obligations. He considers that those wishing to conceal their interests for illicit purposes will find other ways to do so, should the proposals proceed. And while the Privacy Commissioner supports introducing a CRI for directors and limited partners, because he considers this will assist agencies in exercising their existing powers, he does not consider that the CRI should extend to beneficial owners.

66.2. While the FMA, Police and the TNOG Secretariat are strongly supportive of the proposals, they cautioned that requiring law enforcement agencies to make case-by-case targeted requests to the Registrar for the suppressed information would significantly reduce the benefits for enforcement agencies. They consider law enforcement agencies should be granted real-time secure access to this data with appropriate safeguards to address privacy concerns. I agree this should be further assessed as options for implementation are further developed.

66.3. Police's National Organised Crime Group (NOCG) report that, from an operational perspective, (often complex) layering of companies is a consistent feature in organised crime investigations. Recent investigations have revealed that the ease with which companies can currently be established in New Zealand is

Maintenance of the law



Access to accurate beneficial ownership information would support these investigations and save significant time and resources.

### Financial Implications

67. The proposals to provide for a beneficial ownership register and an identifier system will have a financial impact. Officials estimate these would be:

67.1. Capital injection from the Crown of up to \$5.000 million to build a new register and/or amend the Companies Office registers;

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- 67.2. Crown funding for one-off operating cost of \$1.600 - 1.800 million for an education campaign on the new requirement, and IT developments costs to suppress information on historical registers; and
- 67.3. Ongoing operational costs are estimated at \$3.400 million annually for management and maintenance of the registers, awareness and education work, an enforcement capability and the associated depreciation and capital charge. An increase in the appropriation will be required and proposed to be funded by third parties through a levy applied to the incorporation and annual return fees for companies and limited partnerships (noting that currently there is no annual return fee for limited partnerships).

### **Legislative Implications**

- 68. The proposals in this paper will require amendments to the Companies Act 1993, the Limited Partnerships Act 2008 and possibly the New Zealand Business Number Act 2016.
- 69. A legislative bid for a Corporate Governance (Transparency and Integrity) Reform Bill will be made in 2022, with a legislative priority of 4 (to be referred to a select committee in the year).

### **Impact Analysis**

- 70. Two regulatory impact summaries were prepared in relation to the proposals in this paper:
  - 70.1. The first regulatory impact summary (RIS) supports the proposal to include information about beneficial owners on the companies and limited partnerships registers, but concludes that it would be preferable for all such information to remain private while noting that this is a finely balanced issue. I am comfortable that my proposal to make the information publicly available is appropriate, given the international expectations on New Zealand for transparency and the fact that beneficial owners have the ability to request suppression of certain information in certain circumstances.
  - 70.2. The second regulatory impact summary supports the establishment of a CRI.
- 71. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statements prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statements is sufficient to meet the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

### **Human Rights, Gender Implications, and Disability Perspective**

- 72. Women who are directors, general partners or beneficial owners are more likely to need their address kept private than men, because women are more likely to need a safe house as a result of family violence (for example, in 2018, 87% of Family Court protection order applications were filed by or on behalf of women). Under current arrangements, to have their address suppressed on the companies or limited partnerships register, they have to go through a protection order process in the Family Court, and then apply to the Registrar. With the proposals in this paper, they

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will be able to make a request directly to the Registrar. This suggests that the proposals in this paper will be of particular benefit to women.

### Publicity

73. The proposals in this paper are likely to be reported on by the press. I intend to issue a media statement providing context for the proposals.

### Proactive Release

74. I propose to release this paper proactively, subject to any appropriate redactions, within 30 business days.

### Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

#### *Creating a new register*

1. **note** that the registers maintained by the Companies Office currently contain limited information about the beneficial owners of those entities;
2. **agree** that the following details of beneficial owners of companies and limited partnerships should be collected and stored, alongside information about directors and general partners, on a new non-public corporate role-holder register:
  - 2.1. biographic information (such as date of birth);
  - 2.2. contact information (such as an email address);
  - 2.3. corporate information (such as the companies and/or limited partnerships of which he or she is a beneficial owner);

#### *Initial identification of beneficial owners*

3. **agree** to require:
  - 3.1. companies and limited partnerships to:
    - 3.1.1. take reasonable steps to ascertain who their beneficial owners are likely to be;
    - 3.1.2. where they determine that someone is likely to be a beneficial owner, take reasonable steps to ascertain the following information about them: full legal name; an email address used by the person; their residential address or an address for service; and
    - 3.1.3. where they obtain such information, provide it to the Registrar.
  - 3.2. individuals who are shareholders or limited partners to take reasonable steps to ascertain whether they are or have become a beneficial owner, to inform their company or limited partnership if they are, and to respond to any requests in relation to their beneficial ownership status; and



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3.3. individuals who are aware, or ought reasonably to be aware, that they are or have become beneficial owners to provide the information cited in recommendation 3.1.2 to their company or limited partnership.

4. **agree** that existing New Zealand companies and limited partnerships should have a transitional period (for example, up to 12 months) to notify the Registrar of their beneficial owners' identification details except that, where they qualify as 'large' within the meaning of section 45 of the Financial Reporting Act 2013 and/or they have one or more offshore directors or beneficial owners, this period should be shorter (for example, only up to 6 months);
5. **agree** that, subject to ensuring consistency with relevant concepts in legislation such as the Financial Markets Conduct Act 2013, an individual should be considered a beneficial owner if they:
  - 5.1. hold, directly or indirectly, a minimum percentage ownership interest in a company or limited partnership;
  - 5.2. hold, directly or indirectly, a minimum percentage of the voting rights in a company or limited partnership;
  - 5.3. have the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company or general partners of a limited partnership;
  - 5.4. directly or indirectly have the right to exercise, or actually exercise, significant influence or control over a company or limited partnership;
  - 5.5. directly or indirectly have the right – where a trust (or other organisation which is not a legal entity) would satisfy any of the above conditions 5.1-5.4 if it were an individual – to exercise, or actually exercise, significant influence or control over the activities of that trust or other organisation..

### *Public display of some information*

6. **agree** that certain limited information about beneficial owners on the corporate role-holder register should be made publicly available on the register of companies and on the register of limited partnerships, notably full legal name, date of and basis for becoming a beneficial owner, address for service, and chains of beneficial ownership;

### *Ability of various parties to request suppression of public information*

7. **agree** that beneficial owners who can demonstrate, with suitable evidence, particular safety or welfare concerns should have the right to request that the Registrar suppress public information about them on the relevant registers;

### *Access to information on the corporate role-holder register*

8. **agree** that New Zealand Police, New Zealand Customs, Inland Revenue, the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, Land Information New Zealand, the Overseas Investment Office, the New Zealand Security Intelligence Service, the Reserve Bank of New Zealand, the Financial

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Markets Authority, the Serious Fraud Office and any other entity prescribed in regulations should have the right to request access to:

- 8.1. in respect of a specific beneficial owner, their date of birth, place of birth, email address, residential address, phone number, nationality/countries of residence, and their corporate role-holder identifier; and
  - 8.2. in respect of a specific director or general partner, their date of birth, place of birth, email address, residential address, and corporate role-holder identifier.
9. **agree** that reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and any other class of entity prescribed in regulations, should have the right, upon payment of an appropriate charge, to request access to:
- 9.1. the residential address of a specific beneficial owner, director or general partner;
  - 9.2. where they obtain the prior written consent of the individual concerned, the information set out in recommendations 8.1 and 8.2;
10. **authorise** the Minister of Commerce and Consumer Affairs to consult with the agencies in recommendation 8 above and the Privacy Commissioner on the drafting of the conditions for access and on-sharing of that information;
11. **note** that the Minister of Commerce and Consumer Affairs will investigate whether agencies should be given secure, real-time access to information held by the Registrar of Companies;

### *Introducing a unique identifier*

12. **agree** to require the following individuals to apply for a unique 'corporate role-holder identifier':
- 12.1. those who are or become a director of a company or a general partner of a limited partnership; and
  - 12.2. those who are aware, or ought reasonably to be aware, that they are or have become a beneficial owner of a company or limited partnership;
13. **agree** to require individuals who apply for a corporate role-holder identifier to provide the following information for inclusion on the corporate role-holder register:
- 13.1. biographic information (such as date of birth); and
  - 13.2. contact information (such as an email address);
14. **agree** that there should be systems in place within the Companies Office to ensure that the individual applying is a real person and is the person they say they are;
15. **agree** that the corporate role-holder identifier should enable a person to discern the following information about the individual to whom it is issued:

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- 15.1. all company directorships, past and present;
  - 15.2. all positions as general partner in a limited partnership, past and present;
  - 15.3. all positions of beneficial ownership of a company or limited partnership, past and present; and
  - 15.4. the basis and dates on which the individual became and ceased to be a director, general partner or beneficial owner;
16. **agree** that individuals to whom corporate role-holder identifiers have been issued should, when they are associated with one or more companies or limited partnerships, have a responsibility to keep the Registrar up-to-date at least once a year, as regards their biographic and contact details;
  17. **agree** that companies and limited partnerships should have a responsibility to keep the Registrar up-to-date at least once a year, as regards the individuals who have, or should have, corporate role-holder identifiers, with whom they are associated;
  18. **agree** that existing companies and limited partnerships should have a transitional period to confirm to the Registrar that all necessary applications for the corporate role-holder identifier have been made, and that the length of this period should vary according to whether:
    - 18.1. the relevant entity qualifies as 'large' within the meaning of section 45 of the Financial Reporting Act 2013 and/or has one or more offshore directors, general partners or beneficial owners; and
    - 18.2. the individuals who must apply for the identifier are directors / general partners or are beneficial owners;
  19. **agree** that companies and limited partnerships should thereafter confirm in their annual return that all applications for the corporate role-holder identifier that became necessary in the relevant year have been made;

### *Enforcement (breach of obligations)*

20. **agree** that, for breaches of obligations that are 'bright-line' such as failing to give the Registrar a notification by a particular date, infringement offences should be created, with the following levels of penalty:
  - 20.1. for individuals, an infringement fee of \$500 or a fine imposed by the court not exceeding \$1,500; and
  - 20.2. for bodies corporate, an infringement fee of \$1,000 or a fine imposed by the court not exceeding \$3,000;
21. **agree** that, for breaches of obligations that are not 'bright line' such as failing to take reasonable steps to ascertain who the beneficial owners are likely to be, criminal offences with an appropriate mens rea (fault) element should be created, with the following levels of penalty:

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21.1. for individuals, a fine not exceeding \$10,000; and

21.2. for bodies corporate, a fine not exceeding \$50,000;

### *Enforcement (other)*

- 22.** **agree** that a person who provides information to the Registrar knowing or being reckless as to whether it is accurate will commit an offence and be liable on conviction to a fine not exceeding \$50,000;
- 23.** **agree** that a person who knowingly applies for more than one corporate role-holder identifier will commit an offence and be liable on conviction to a fine not exceeding \$50,000;
- 24.** **agree** that a person:
- 24.1. will commit an offence if they know an identifier to be a false corporate role-holder identifier (meaning one that relates to another person, or an identifier that is not a corporate role-holder identifier) and without reasonable excuse use, deal with, or act upon the identifier as if it were genuine, or cause another person to use, deal with, or act upon the identifier as if it were genuine; and
- 24.2. will be liable upon conviction to a fine not exceeding \$250,000;

### *Sundry issues*

- 25.** **agree** that a director, general partner or shareholder:
- 25.1. can require the suppression of their residential address from the main register information if they provide an address for service;
- 25.2. can require the Registrar to suppress their residential address from uploaded historical documents if they provide an address for service, in return for a fee, if they can demonstrate specific safety concerns;
- 26.** **agree**, however, that creditors, insolvency practitioners, shareholders and any other class of entity prescribed in regulations should have the right to request access to the residential address of a specific director or general partner, where they have been unable to reach the person using their address for service about a matter related to that person's statutory role or duties;
- 27.** **agree** that the consent forms of directors and shareholders of companies, and general partners of limited partnerships, should be held by the company or limited partnership, rather than sent to the Registrar, but should remain available upon request to the Registrar, and to shareholders of the relevant company;

### *Scope of recommendations*

- 28.** **agree** that the recommendations in this paper will not apply to listed issuers if they are already subject to equal or more stringent public disclosure requirements;

### *Financial implications*

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- 29. agree** that the capital expenditure and one-off operating expense required to implement the corporate role-holder register outlined in recommendation 2, and the corporate role-holder identifier outlined in recommendation 12, should be funded from an allocation from proceeds of crime recovered under the Proceeds of Crime (Recovery) Act 2009 which has been treated as Crown non-tax revenue;
- 30. approve** the following changes to appropriations to give effect to the policy decisions in recommendations 2, 12, and 29 above, with a corresponding impact on the operating balance and net core Crown debt:

	\$m – increase/(decrease)				
	2021/22	2022/23	2023/24	2024/25	2025/24 & Outyears
<b>Vote Business, Science and Innovation Minister of Commerce and Consumer Affairs</b>					
Departmental Output Expense: Commerce and Consumer Affairs: Registration and Provision of Statutory Information (funded by revenue Crown)	-	1.800	-	-	-
Ministry of Business, Innovation and Employment: Capital Injection	-	5.000	-	-	-
<b>Total Operating</b>	-	<b>1.800</b>	-	-	-
<b>Total Capital</b>	-	<b>5.000</b>	-	-	-

- 31. note** that it is intended that the ongoing operating expenses to provide for a beneficial ownership register and an identifier system be funded from third party revenue;
- 32. note** that consultation on the appropriate level of ongoing third party revenue will occur following the passage of legislation, and that these costs are currently estimated at \$3.4 million per annum;
- 33. invite** the Minister of Commerce and Consumer Affairs to report back on the outcome of public consultation on the appropriate level of ongoing third party revenue;

### *Legislative implications*

- 34. note** that a legislative bid for a Corporate Governance (Transparency and Integrity) Bill will be made in 2022, with a legislative priority of 4 (to be referred to a select committee in the year);
- 35. invite** the Minister of Commerce and Consumers Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations above;
- 36. authorise** the Minister of Commerce and Consumer Affairs to make decisions that are consistent with the policy decisions in this paper, on any minor or technical matters that may arise during the drafting process;

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37. **agree** that the resulting draft bill be released as an exposure draft in 2022;
38. **invite** the Minister of Commerce and Consumer Affairs to thereafter report back to Cabinet with the final text of the draft bill, with a view to its introduction to the House.

Authorised for lodgement

Hon David Clark

Minister of Commerce and Consumer Affairs

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**Appendix 1: Access to information collected**

	<b>Beneficial owners (BO)</b>	<b>Directors and General Partners</b>
<b>Public</b>	<ul style="list-style-type: none"> <li>• Full legal name</li> <li>• Date became a BO</li> <li>• Basis as a BO</li> <li>• Address for service</li> </ul>	<ul style="list-style-type: none"> <li>• Full legal name</li> <li>• Date of appointment</li> <li>• Address for service or residential address</li> </ul>
AML / CFT reporting entities can request access	<ul style="list-style-type: none"> <li>• Residential address</li> </ul>	<ul style="list-style-type: none"> <li>• Residential address</li> </ul>
Creditors and insolvency practitioners can request access		<ul style="list-style-type: none"> <li>• Residential address</li> </ul>
Enforcement agencies can request access	<ul style="list-style-type: none"> <li>• Date of birth</li> <li>• Place of birth</li> <li>• Email address</li> <li>• Residential address</li> <li>• Nationality/residency</li> <li>• Phone number</li> <li>• Corporate Role-holder Identity</li> </ul>	<ul style="list-style-type: none"> <li>• Date of birth</li> <li>• Place of birth</li> <li>• Email address</li> <li>• Residential address if address for service is provided</li> <li>• Corporate Role-holder Identity</li> </ul>

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**Appendix 2: RIS for collection of beneficial ownership information**



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**Appendix 3: RIS for corporate role-holder identifier**