



## 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.

# Regulatory Impact Statement: Beneficial Ownership Information

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing a Cabinet decision authorising the collection of information about the beneficial owners of companies and limited partnerships
Advising agencies:	MBIE
Proposing Ministers:	Commerce and Consumer Affairs
Date finalised:	25 November 2021
Problem Definition	
<p>The primary problem is corporate opacity making it difficult to obtain adequate, accurate and timely information about the actual people who own or control companies and limited partnerships. This lack of transparency around real control of our corporate structures facilitates illicit activity (through the misuse of corporate entities by criminals) and leads to a deficiency in corporate governance which can erode trust and confidence in the business environment.</p>	
Executive Summary	
<p>Companies and limited partnerships are the two most common ‘for profit’ entities in New Zealand, together totalling almost 700,000. Under the Companies Act 1993 and the Limited Partnerships Act 2008, they must collect – and provide to the Registrar of Companies (the Registrar) – information about those who run them (directors and general partners, respectively) and those who directly own them (shareholders and limited partners, respectively). However, they currently have no obligations to collect any information about the individuals who ultimately hold ownership or control, in other words their ‘beneficial owners’.</p> <p>The lack of information about the beneficial ownership of New Zealand companies and limited partnerships creates a number of problems. In particular, it enables people to hide behind a ‘corporate veil’, taking advantage of their anonymity (and the attendant obscurity surrounding the source of their funds) to launder illegally gained funds through their New Zealand entities. Money laundering distorts business decisions, increases the risk of business failures, and exposes people to drug trafficking, smuggling, and other criminal activity.</p> <p>Reputational effects also result from this state of affairs. As a member of the inter-governmental Financial Action Task Force (FATF), New Zealand has committed to complying with its standards. In its formal evaluation of New Zealand in 2021, FATF identified the lack of transparency of beneficial ownership information in New Zealand as a key deficiency in our framework to combat money laundering and terrorism financing. Non-compliance also creates a risk of barriers to New Zealand businesses accessing offshore financial markets.</p>	

In this context, this impact statement evaluates the status quo against three options for change. All three options for change would require government intervention to compel companies and limited partnerships to collect information about their beneficial owners, but would otherwise differ as follows below. Industry-led approaches would not be effective, as criminals would not comply with voluntary obligations.

Under the first option for change, beneficial ownership information would be held by the companies and limited partnerships themselves, and be kept available for inspection by the Registrar and law enforcement agencies on a case-by-case request basis.

Under the second and third options for change, beneficial ownership information would have to be passed on to the Registrar so it can be held on a centralised database, where law enforcement agencies can request access. The difference would be that, under the second option for change, the information would not be publicly displayed, while under the third option for change some of it (e.g. name, basis on which someone qualified as a beneficial owner) would be publicly displayed.

The evaluation has concluded that the most appropriate course of action is the second option for change (i.e. centralised database, no information public), but with a review after several years to consider moving to the third option for change (i.e. centralised database, some information public). The evaluation determined that:

- a centralised database would better ensure compliance with the requirement to collect beneficial ownership information, as non-compliance would be easily detected
- a non-public database would better protect individuals' privacy, at least for beneficial owners whose details were not already public in their capacity as shareholders of companies.

A scheduled review to consider moving to the third option for change would allow time for further evidence to build about the efficacy of public naming in fighting financial crime, and for the conclusion of legal challenges in the European Union to the requirement to display beneficial ownership information publicly.

In public consultation, several submitters – notably the Office of the Privacy Commissioner – objected to the notion of a centralised database, which they considered was disproportionate to the problem. However, a larger number of submitters, as well as most of the government departments consulted (including NZ Police, the Department of Internal Affairs, Customs and the Reserve Bank), were strongly in favour of the proposal.

Officials estimate that the establishment of a centralised beneficial ownership database will require an initial capital injection of \$3 million, and operating costs of up to \$2.2 million in the first year and around \$2.1 million thereafter. For the 693,000 companies and 3,300 limited partnerships there will be an initial one-off cost estimated at \$310 million; and ongoing costs for annual updates estimated at \$78 million per year. There will also be privacy costs for beneficial owners that are difficult to quantify, for one fifth of companies' beneficial owners (those whose details are not already displayed in their capacity as shareholders) and perhaps two thirds of limited partners.

## Limitations and Constraints on Analysis

### Limited overseas evidence:

Using registers to improve transparency of beneficial ownership of companies and limited partnerships is a relatively new concept. There is limited international data and evidence on their efficacy. Because of this, their exact costs and benefits are difficult to quantify. The

UK, having run a publicly accessible centralised beneficial ownership register since 2016, has been our key source of overseas evidence.

#### **Limitations in quantifying costs and benefits:**

- **Privacy** – publishing individuals' information in a register is likely to have privacy impacts. It is difficult to quantify privacy as a monetary value. However, this is one impact that must be considered for this regime. We have attempted to quantify the privacy costs for those that are likely to meet the definition of beneficial owners, by estimating the percentage of individuals that already have their personal information displayed in the Companies Register. We have also taken note of UK's experience that there had been no example of harms from publishing beneficial ownership data on individuals.
- **Reputation** – entities that disclose their controllers and owners are likely to enjoy reputational benefits that flow from being a good corporate citizen. It is also difficult to quantify such reputational benefits, or harms.
- **Reduction in crime** – one of the overall aims of implementing a beneficial ownership register is its function as a tool to help reduce money laundering and financial crimes. However, it is difficult to quantify how much crime is reduced because of a beneficial ownership register. It is only possible to predict that a beneficial ownership register may assist law enforcement agencies and others (e.g. Anti-Money Laundering (AML) reporting entities such as *banks, financial service providers, casinos and money changers*) in being able to do this. In a letter addressed to the then Minister of Commerce and Consumer Affairs (Hon Kris Faafoi) in May 2019, the UK Prime Minister's Anti-Corruption Champion indicated that the UK's public register had improved its ability to stem illicit finance, although no supporting evidence was provided.

#### **Assumptions:**

This Regulatory Impact Statement (RIS) assumes the approval by Cabinet of a Corporate Registry Identifier scheme that looks to assign an identifier to directors, general partners and (assuming that Cabinet approves the proposal to collect their information) beneficial owners. The identifier scheme will be put before Cabinet in the same Cabinet paper as the proposal to collect beneficial ownership details.

One of the purposes of this identifier scheme will be to enable roleholders in companies to update their personal details (e.g. a change of address) in one place, rather than having to update those details individually for each role they hold (e.g. if they are the director of more than one company). In compliance with the relevant privacy principle, the assignment of the identifier will be accompanied by an identity verification process. This will enhance the integrity of the information collected about roleholders, including beneficial owners.

However, under the proposals to be considered by Cabinet, the Companies Office will verify only that an individual declaring themselves to be a beneficial owner is a real person (and not a fictitious one) and that the individual making the declaration is that same real person (and not a third party). Due to the significant costs involved, the Registrar will not verify that that individual is in fact a beneficial owner of the company or limited partnership concerned nor will the Registrar be able to verify that there are no other beneficial owners whose interests have not been disclosed.

This is the same position on verification as that taken by the United Kingdom (UK) government in 2020 in its response to a consultation on enhancing the registers of Companies House (previously the UK had not performed any identity verification at all).

It represents a trade-off between, on the one hand, the objective of ensuring information collected is not just accurate (which it will be) but also complete (which it will not be) and, on the other hand, ensuring that funding proposals remain realistic, especially in the COVID environment. It also recognises the risk that, Legal professional privilege

**Existing regulatory settings:**

To achieve proportionate and effective regulation, the beneficial ownership requirement will be aligned with existing regulatory settings as appropriate including, but not limited to:

- how information is currently collected, held and updated for companies and limited partnerships (as stipulated in the Companies/Limited Partnership Acts);
- privacy principles and frameworks.

The definition of a beneficial owner in AML/Countering Financing of Terrorism (CFT) legislation will also be relevant, although we do not anticipate a precise alignment for two reasons. First, the AML/CFT definition is applied to all entity types and does not focus on attributes typically associated with beneficial ownership of a company or limited partnership. Secondly, the AML/CFT definition is directed at reporting entities (e.g. banks, financial service providers, casinos and money changers) that are required to conduct customer due diligence on their customers' beneficial owner. The AML/CFT Act defines beneficial owner as the individual who: (a) has effective control of a customer or person on whose behalf a transaction is conducted; or (b) owns a prescribed threshold (currently 25%) of the customer or person on whose behalf a transaction is conducted. "Effective control" is defined in the AML/CFT Act and explained in supervisory guidance.

**Responsible Manager(s) (completed by relevant manager)**

**Natasha Wells (Acting Manager)**

**Corporate Governance and Intellectual Property Policy**

Small Business, Commerce and Consumer Policy

Ministry of Business, Innovation and Employment

Privacy of natural persons

25 November 2021

**Quality Assurance (completed by QA panel)**

Reviewing Agency:	MBIE
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement is sufficient to meet the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

#### The relevant regulatory system

1. This analysis concerns the corporate governance regulatory system.
2. The corporate governance regulatory system comprises the rules, institutions and practices that govern how various types of legal 'entities' are set up, operated and dissolved. These 'entities' can be described as associations or groups of individuals working together towards a mutual objective, such as economic gain or shared social benefits.
3. The specific entities at issue in this analysis are companies and limited partnerships. A limited partnership is essentially identical to a company, but is designed with certain privacy and tax advantages that aim to encourage offshore investment.

#### Corporate registers

4. The Registrar of Companies (the Registrar) is appointed under the Public Service Act 2020. Under the Companies Act 1993 and the Limited Partnerships Act 2008, the Registrar's duties include ensuring that a register of companies and a register of limited partnerships (the 'registers') are kept.
5. It is the Companies Office that in practice keeps these registers. The Companies Office is a business unit within the Ministry of Business, Innovation and Employment (MBIE) which assists the Registrar in fulfilling his or her functions.
6. The company registration system seeks to balance two overarching objectives:
  - a. *integrity*: businesses, investors, regulators and the public trust the information available about entities and can rely on it for making decisions;
  - b. *efficiency*: the system is easy for companies to engage with and the costs of administering the system are proportionate.
7. An environment of trust, transparency and accountability fosters long-term investment, financial stability and business integrity. Part of the trade-off of having the privilege of limited liability, is the expectation that a company will be transparent in its activities and ownership.
8. As at October 2021, there are approximately 693,000 companies on the companies register and approximately 3,300 limited partnerships.

#### Roleholders within companies and limited partnerships

9. Companies are run by directors (of whom there are around 1.1 million) while limited partnerships are run by general partners (of whom there are around 3,400). Although the terminology differs, the roles of director and general partner are equivalent.
10. Meanwhile, the natural person(s) who ultimately own or directly or indirectly exercise effective control over a company or limited partnership are known, for both type of entity, as 'beneficial owners'. In many cases, this is simply the shareholders of the company or the limited partners of the limited partnership. The roles of shareholder and limited partner are equivalent.

## Information on the registers about roleholders

### *Issue*

11. The registers contain information about each company or limited partnership (such as its date of establishment) but also about the people associated with it – including the entity’s directors / general partners and its shareholders.
12. However, the registers do not specify who the beneficial owners of an entity are. The beneficial owners of companies and limited partnerships are thus able to hide behind a ‘corporate veil’ and take advantage of this anonymity (and the attendant obscurity surrounding the source of their funds) to launder illegally gained funds through their New Zealand entities. Money laundering distorts business decisions, increases the risk of business failures, and exposes people to drug trafficking, smuggling, and other criminal activity.

### *Action already taken*

13. The corporate governance regulatory system has been amended to address money laundering by:
  - a. requiring the registration of foreign trusts with one or more New Zealand resident trustees (New Zealand foreign trusts)
  - b. introducing a residency requirement for the directors of New Zealand companies and the general partners of New Zealand limited partnerships
  - c. providing the Registrar with new powers to investigate companies and limited partnerships.
14. Outside the corporate governance regulatory system, New Zealand has also extended the anti-money laundering and countering the financing of terrorism (AML/CFT) regime to cover more businesses (including real estate agents and conveyancers, lawyers and accountants, some businesses that deal in expensive goods, and betting on sports and racing)

### *If no further action taken*

15. New Zealand is not a major international centre for financial crime, but we are not immune. The Police Financial Intelligence Unit estimates that each year approximately NZ\$1.35 billion from the proceeds of fraud and illegal drugs is generated for laundering in New Zealand.
16. We do not have a formal estimate of how much is laundered as a result of New Zealand-based tax or other crimes. There is also not a satisfactory estimate of the amount of laundering into New Zealand, or through New Zealand based corporate entities, from the proceeds of crime generated offshore.
17. We do know that an analysis of 57 domestic cases involving the recovery of high value proceeds from crime found that shell companies and similar arrangements were used in cases accounting for Maintenance of the law of the total assets recovered. In a sample of international requests for information to the Financial Intelligence Unit, Maintenance of the law of requests where a link to New Zealand was established related to a New Zealand company. In Maintenance of the law of those cases, no New Zealand bank accounts were identified. This indicates that a large proportion of companies that authorities are interested in may not have any business activities in New Zealand.
18. Police’s National Organised Crime Group (NOCG) report that companies are being used as fronts not only for illicit financial activity but also masking other crimes through the intermingling of legitimate and illegitimate business activities. Maintenance of the law

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

19. There have been a limited number of high profile cases involving New Zealand companies, including:
  - a. *SP Trading Limited*: involved in smuggling military weapons from North Korea (possibly to Iran) in 2009.
  - b. *Tormex Limited*: over US\$680 million was moved through accounts held by Tormex during 2007 and 2008. Investigations revealed that Tormex was being used to facilitate money laundering for organised crime groups including the Sinaloa drug cartel in Mexico.
20. In these cases, more effective access to beneficial ownership information could have played a role in detecting crime, prosecuting the individuals involved or deterring the use of New Zealand companies.
21. We anticipate that, if no action is taken by the Government, similar levels of activity can be expected over the coming years. In fact, it could increase because more countries are undertaking reforms, making New Zealand a comparatively more attractive target.
22. Indeed, 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. FATF is an inter-governmental body that sets standards for combatting money laundering, terrorist financing and other related threats to the integrity of the financial system.
23. In this regard, it is relevant that in its 2021 formal evaluation of New Zealand, FATF identified the lack of transparency of beneficial ownership information here as a key deficiency in our framework to combat money laundering and terrorism financing. It was the top priority action identified in the report.

### What is the policy problem or opportunity?

24. The Companies Office maintains records of companies and limited partnerships, including their directors and shareholders, but in some cases other people may actually exercise control over the entity or its management (i.e. beneficial owners).
25. Currently there is no requirement to positively disclose beneficial ownership information for companies and limited partnerships in New Zealand to the government. Some entities may have this information at hand; others may be in more complex structures that will require investigation through directors and shareholders.
26. While the Registrar has limited scope to require that this be disclosed on a case-by-case basis, that power is almost never used as it necessarily warns entities that they are under investigation.
27. The primary problem is thus that of corporate opacity, which means it is difficult to obtain adequate, accurate and timely information about the actual people who own or



control the corporate entity. This lack of transparency around real control of our corporate structures could facilitate illicit activity (through the misuse of corporate entities by criminals) and lead to a deficiency in corporate governance which can erode trust and confidence in the business environment.

### **What objectives are sought in relation to the policy problem?**

28. The primary objective is to improve the transparency of beneficial ownership for companies and limited partnerships, to reduce the risk that these corporate structures are misused by criminals and to protect New Zealand's reputation as a good place to do business.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

29. The following criteria were considered in assessment of the options:
  - a. Would it deter criminals from misusing companies and limited partnerships (in other words, how well would it address the problem), and enhance New Zealand's reputation for trustworthiness and low rates of corruption?
  - b. Would it support the effective and efficient operation of the AML/CFT system?
  - c. Can any privacy impacts be managed appropriately?
  - d. Does it comply with international standards?
  - e. Are the compliance costs proportionate and reasonable / would they unduly affect New Zealand's reputation for ease of doing business?
30. These criteria are designed to find the right balance between deterring criminals and allowing genuine businesses to easily set up and run a corporate entity.
31. There are some clear trade-offs involved, such as:
  - a. New Zealand's reputation for trustworthiness and low corruption (if more intervention), versus reputation for ease of doing business (if less intervention)
  - b. Effective detection of criminal activity (if more intervention) versus respect for privacy (if less intervention).

### What scope will options be considered within?

#### International expectations

32. New Zealand is a member of the Financial Action Task Force (FATF), an inter-governmental body that sets standards for combating money laundering, terrorist financing and other related threats to the integrity of the financial system including the financing of terrorism and the proliferation of weapons of mass destruction. As a member of FATF, New Zealand has committed to complying with its standards.
33. Our efforts to comply with the FATF technical recommendations and effectiveness outcomes ensure that New Zealand can continue to access international financial markets and is regarded as a good global citizen with a demonstrable commitment to the rules-based system that helps keep people and nations safe and prosperous. If New Zealand were assessed as being materially non-compliant there is a risk that this will create barriers to New Zealand businesses accessing offshore financial markets.
34. In June 2021, the G7 called on all countries to fully implement the FATF standards on beneficial ownership transparency.
35. Coincidentally, in March 2021, FATF had completed its formal evaluation of New Zealand's compliance with its standards. As noted in Section 1, the lack of transparency of beneficial ownership information in New Zealand was identified by FATF as a key deficiency in our framework to combat money laundering and terrorism financing. It was the top priority action identified in the report.

#### Non-regulatory options

36. Non-legislative options, such as encouraging corporate entities to voluntarily release their beneficial ownership information, were considered but discarded because they were unlikely to be effective. Criminals that misuse corporate structures do so to maintain their anonymity. They can therefore not be expected to self-identify.

Consequently, non-legislative options without any legal consequences for non-compliance are unlikely to be effective in achieving the policy objectives.

### Potential exemptions

37. We have considered whether small businesses should be excluded from any of the options. However, the types of corporate entities that are at high risk of being involved in money laundering are likely to share the same characteristics as a small business (e.g. no or a small number of employees, one or two directors and shareholders).

### What options are being considered?

38. Four options are being considered. They are mutually exclusive.
39. These options were the subject of a public consultation in June 2018.<sup>1</sup> We received 29 submissions from industry bodies, community groups, large and small businesses, trustees, consultancy firms, law firms, a fund manager and individuals. The responses to that discussion document (some of which were neutral as to the options proposed) informed the development and assessment of these options.
40. MBIE also consulted with the following departments and agencies: 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. The Office of the Privacy Commissioner opposed the inclusion of beneficial owners' information on the companies and limited partnerships registers. Treasury did not oppose it. All other consulted agencies strongly supported it.

### Option One – Status Quo

#### *Nature*

41. The status quo describes what is likely to happen if no further intervention is undertaken. It has been explored in Section 1. Broadly speaking, if no further intervention is undertaken, we anticipate that money laundering will increase in New Zealand as other jurisdictions introduce tighter controls (including beneficial ownership registers).

#### *Comment*

42. Five submitters on the June 2018 consultation document preferred the status quo. One of those five was the Office of the Privacy Commissioner. These submitters:
- doubted the extent to which New Zealand entities were being misused
  - believed that high-risk entities with criminal intent were likely to evade the proposed requirements by providing incomplete or false information
  - accordingly, did not consider the privacy impacts of collecting beneficial ownership information would be outweighed by the benefits generated.

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<sup>1</sup> MBIE, 'Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships', June 2018

43. In terms of the privacy impacts referenced here, the Office of the Privacy Commissioner stated in its submission:

“All the [change] options have additional privacy impacts compared to the status quo. They would require entities and the Registrar to collect additional personal information compared to what they currently collect. Under MBIE’s options 2 and 3 the Companies Office will collect considerable information about individuals if MBIE’s broad definition of beneficial owner applies to all companies and limited partnerships.”

44. In subsequent exchanges, the Office noted that the proportion of people misusing companies and limited partnerships (about whom beneficial ownership information would be useful) is likely extremely small compared to the number of people about whom such information is proposed to be collected.
45. It is however relevant to stress that, as noted in Section 1, in most cases the beneficial owners are simply the shareholders of the company or the limited partners of the limited partnership. While information about limited partners is not currently publicly displayed, information about shareholders is. As such, the loss of privacy can be said in the aggregate to be a marginal one.

## **Option Two – Beneficial owner information held by entities**

### *Nature*

46. Under this option, corporate entities would have an explicit obligation to hold up-to-date and accurate records of their beneficial owners.
47. Corporate entities would only have to provide this information to the Registrar when requested to do so.
48. The Registrar would be able to share this information with law enforcement agencies, including the government agencies currently identified in section 366 of the Companies Act and section 79 of the Limited Partnerships Act.

### *Comment*

49. Four submitters preferred this option. These submitters acknowledged that there is overwhelming evidence that criminals make use of the anonymity associated with corporate structures in order to launder money and, in this context, as one law firm put it: “It seems obvious that a prudent and legitimate corporate entity should keep records on its beneficial owners...”
50. The submitters believed that this option struck the appropriate balance between:
- a. disincentivising criminal activity versus protecting individuals’ privacy and personal security; as well as
  - b. maintaining security versus avoiding disproportionate compliance and enforcement costs.
2. However, as another submitter stated, it would be difficult to keep track of whether entities are complying with their obligation to identify and record their beneficial owners. This option would also not significantly assist in combatting money laundering, as the relevant law enforcement agencies would not have ready access to this information.
3. Option 2 also fails to avoid the ‘tip-off effect’ where enquiries from the Registrar will tip off the entity that law enforcement agencies are interested in their ownership, which is counterproductive to an investigation.

### Option Three – Beneficial owner information held by Registrar but kept private

#### *Nature*

51. Under this option, corporate entities would be required to identify their beneficial owners and to keep accurate and up-to-date information about their beneficial owners.
52. Corporate entities would be required to provide information about their beneficial owners when they apply for registration as a company or limited partnership. This information would need to be updated at certain times.
53. Beneficial ownership information would be included on the companies and limited partnership registers but it would not be publicly available.
54. The Companies Office can grant law enforcement agencies, other key government agencies, and AML reporting entities appropriate levels of access to the information.

#### *Comment*

55. Five submitters preferred this option. They believed that a central register would make compliance by entities more likely, as failure to collect the information about their beneficial owners would be easily detected. However, they believed that it was not appropriate (as under Option 4) for the information about beneficial owners to be made public, as one put it, “due to the issues around personal safety and security”.
56. These submitters further believed, Confidential information entrusted that:

“...legitimate businesses should face minimal impact [from this option]. Many New Zealand companies are small-medium enterprises (SMEs), where the beneficial ownership information is readily available and is more or less already declared to the Companies Office (e.g. simple company structures with two directors who are equal shareholders)”.

### Option Four – Beneficial owner information held by Registrar and made public

#### *Nature*

4. This option is the same as Option 3, except that high-level information (such as a beneficial owner’s legal name) is publicly displayed. In addition, the Companies Office can grant law enforcement agencies, other key government agencies, and AML reporting entities appropriate levels of access to the non-public information.

#### *Comment*

57. Ten submitters supported this option. These submitters acknowledged the privacy impacts of publicly displaying beneficial ownership information, but considered that its benefits outweighed its costs. Particular attention was paid to how Option 4 would assist third parties, both business and law enforcement.
58. For example, for Confidential information entrusted to the Government, this option:

“...would be a significant benefit for companies that are required to undertake AML on customers. This is because increased transparency would reduce the time involved in obtaining beneficial ownership information”.
59. Confidential information entrusted that this option removes the, “cost and complexity [that currently] are a barrier for smaller businesses conducting effective due diligence”.

Similarly, Confidential information entrusted to the Government noted that: "...criminal organisations establish complex corporate structures across a number of jurisdictions to disguise or hide the beneficial ownership"

and that, in this context, a public register would mean:

"NZ's foreign counterparts could review the register themselves before making any formal international cooperation requests such as mutual legal assistance or extradition, increasing the efficiency of the international cooperation process".

60. Confidential information entrusted to the Government also claimed that making the data public, "would increase the integrity and accuracy of the data" due to "the ability for multiple parties to review the data such as financial institutions..., media and NGOs...".
61. For context, 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. However, legal challenges have been launched on behalf of some beneficial owners and the outcome of those is pending.

## How do the options compare to the status quo/counterfactual?

### Key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

	Option One – Status Quo	Option Two – Entity-held register	Option Three – Central register with restricted access	Option Four – public register
<b>Deters criminals</b>	<p>0</p> <ul style="list-style-type: none"> <li>No deterrence effect, as beneficial ownership information is not compiled</li> </ul>	<p>0</p> <ul style="list-style-type: none"> <li>Little deterrence effect, as law enforcement agencies cannot access beneficial ownership information without tipping off suspicious entities that they are being investigated.</li> </ul>	<p>+</p> <p>Positives</p> <ul style="list-style-type: none"> <li>Some deterrence effect.</li> <li>Law enforcement agencies can access information without tipping off criminals.</li> <li>Less attractive for criminals to set up entities as they are required to provide beneficial ownership information.</li> </ul> <p>Challenges</p> <ul style="list-style-type: none"> <li>Efficacy of register dependent on accurate and verified data, as criminals may still not provide correct information to avoid being caught. The fact that verification will focus on</li> </ul>	<p>+</p> <p>Positives</p> <ul style="list-style-type: none"> <li>As per Option 2.</li> <li>In addition, a public register enables all entities and the public to conduct their own due diligence when engaging in business.</li> <li>There is a greater level of public scrutiny. The information is also accessible by parties with some watchdog functions such as anti-corruption non-governmental organisations and journalists.</li> </ul> <p>Challenges</p>

			<p>identity, and not whether the person concerned is in fact a beneficial owner, reduces the efficacy of the register.</p> <ul style="list-style-type: none"> <li>• Difficult to quantify the actual impact of beneficial ownership registers on crime; can only propose that beneficial ownership registers will aid Law Enforcement Agencies in greater transparency and accessibility to information.</li> </ul>	<ul style="list-style-type: none"> <li>• However, as for Option 2, efficacy depends on accurate and verified data. The focus on identity verification, but not on whether a person is actually a beneficial owner, reduces the efficacy of the register.</li> </ul>
<p><b>Supports AML/CFT system</b></p>	<p>0</p> <ul style="list-style-type: none"> <li>• No impact on operation of AML/CFT system</li> </ul>	<p>0</p> <ul style="list-style-type: none"> <li>• Information is not publicly available so reporting entities unable to use for their own due diligence.</li> <li>• Limited impact on operation of AML/CFT system.</li> </ul>	<p>+</p> <p>Positives</p> <ul style="list-style-type: none"> <li>• Some support towards AML/CFT system: beneficial ownership information is more accessible to Law Enforcement Agencies.</li> </ul> <p>Challenges</p> <ul style="list-style-type: none"> <li>• The link between beneficial ownership registers and AML/CFT systems is limited: there is not yet a body of evidence demonstrating beneficial ownership registers effectively supporting AML/CFT system as this is still a relatively new concept internationally. UK experience has provided some support that a beneficial</li> </ul>	<p>+</p> <ul style="list-style-type: none"> <li>• As per Option 2.</li> </ul>



			ownership register improves its ability to stem illicit finance.	
<b>Protects privacy</b>	0 <ul style="list-style-type: none"> <li>Personal information not publicly accessible, but can be requested by agencies.</li> </ul>	0 <ul style="list-style-type: none"> <li>Personal information not publicly accessible, but can be requested by agencies.</li> </ul>	<p>-</p> <p><b>Positives</b></p> <ul style="list-style-type: none"> <li>No personal information publicly accessible; register has restricted access only.</li> <li>Some change to privacy compared to status quo, but less impact than Option 3.</li> </ul> <p><b>Challenges</b></p> <ul style="list-style-type: none"> <li>Difficult to quantify the impact on privacy and what this means for individuals, as little evidence internationally yet on beneficial ownership and privacy e.g. European Court of Justice has yet to rule on current legal challenges to EU requirements for beneficial ownership details to be public.</li> </ul>	<p>--</p> <p><b>Challenges</b></p> <ul style="list-style-type: none"> <li>Certain personal information (e.g. name) is publicly accessible.</li> <li>As per Option 2, while difficult to quantify the impact of privacy and what this means for individuals, not all companies and limited partnerships' beneficial owners will be impacted. This is because most companies' beneficial ownership information is already disclosed publicly (their directors and shareholders).</li> <li>There may also be some reputational benefits for companies in providing the information (i.e. they are seen as being socially responsible/transparent).</li> <li>UK experience is that after several years of having a public register, there have been no examples of harms arising from publishing individuals' information on the register.</li> </ul>

<p><b>Meets international standards</b></p>	<p>0</p> <ul style="list-style-type: none"> <li>Does not meet FATF Recommendation 24</li> </ul>	<p>+</p> <p>Positives:</p> <ul style="list-style-type: none"> <li>Meets FATF Recommendation 24 (on beneficial ownership) in its current form.</li> </ul> <p>Challenges:</p> <ul style="list-style-type: none"> <li>Potentially not compliant with in future if standard moves towards centralised registers of beneficial ownership information.</li> </ul>	<p>+</p> <p>Positives</p> <ul style="list-style-type: none"> <li>Meets FATF Recommendation 24 in its current form.</li> <li>Follows international trend of establishing registers; though not publicly available.</li> </ul> <p>Challenges</p> <ul style="list-style-type: none"> <li>Not future-proofed. From the current global trends (and subject to the outcome of challenges to the EU's requirement for public display of beneficial owner information), public registers are likely to be the future preference – notwithstanding that evidence of the efficacy of public registers is limited.</li> </ul>	<p>++</p> <ul style="list-style-type: none"> <li>As per Option 2.</li> <li>However, is future-proofed in the event global standards move towards requiring public display of beneficial owner information.</li> </ul>
<p><b>Proportionate and reasonable costs</b></p>	<p>0</p> <ul style="list-style-type: none"> <li>No additional costs for corporate entities</li> <li>Reporting entity costs stay the same as status quo.</li> </ul>	<p>-</p> <ul style="list-style-type: none"> <li>One-off and ongoing costs to corporate entities.</li> <li>Reporting entity costs stay the same as status quo.</li> <li>Companies Office may have extra costs for responding to requests for access.</li> </ul>	<p>--</p> <ul style="list-style-type: none"> <li>In addition to costs of Option 1, there will be costs for entities to report the relevant information and keep the Companies Office up to date with changes.</li> <li>There may be some reduction in compliance costs for AML reporting entities as it is easier to identify beneficial owners; however the information</li> </ul>	<p>-</p> <ul style="list-style-type: none"> <li>As per Option 2.</li> <li>However, access to information will be more efficient, reducing costs to agencies and the Companies Office of ad hoc access arrangements.</li> </ul>

			<p>collected will not be verified to full AML standards.</p> <ul style="list-style-type: none"> <li>• Costs to the Companies office in establishing a register on which beneficial ownership information can be held. See full estimate later in document.</li> </ul>	
<b>Overall assessment</b>	0	0	+	+

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

62. MBIE's preferred approach is Option 2, with a re-assessment of whether to transition to Option 3 in the near future.
63. As demonstrated in the analysis, the difference between Options 2 and 3 is finely balanced. While some of the benefits for Option 3 (e.g. future-proofing against international requirements) may be larger, Option 2 will have fewer privacy impacts. MBIE favours the more conservative approach particularly because of two factors that remain difficult to quantify in the abstract: the efficacy of public registers in combatting financial crime, and the privacy impact of making some beneficial ownership information public.
64. These two factors are largely untested. Although there is consensus globally by many governments that public registers of beneficial ownership information are necessary for healthier business and reducing financial crime, there is not yet a body of evidence that supports or quantifies their impact. Best practice for the implementation of a beneficial ownership register by governments is still slowly emerging.
65. The main evidence we have considered in this regard is the UK's experience of operating a public beneficial ownership register since 2016. The UK Prime Minister's Anti-Corruption Champion wrote to the then Minister of Commerce and Consumer Affairs (Hon Kris Faafoi) in May 2019, inviting him to consider establishing a public beneficial ownership register. He noted that their public register had:
  - a. allowed for greater oversight and scrutiny of UK companies by all stakeholders, which in turn has improved the quality and accuracy of the data.
  - b. helped companies and authorities reduce barriers and inefficiencies involved in obtaining timely access to beneficial ownership data for UK companies; and
  - c. improved their ability to counter illicit finance.
66. He also noted that the exemption regime has worked well in the UK, and to date there have been no examples of harms that have arisen from the publication of beneficial ownership data in the register.
67. Another factor to bear in mind is that, while the people who will most often be the beneficial owners of companies already have their details displayed on the registers (in their capacity as shareholders), this is not the case for the people who will most often be the beneficial owners of limited partnerships (namely, limited partners). Limited partners enjoy two advantages over shareholders: anonymity; and the significant tax advantages attached to the profits generated by their entity. For the limited partners of the 3,300 limited partnerships in New Zealand, transparency will be a new experience that may be unwelcome and so – unless the tax advantages remain sufficient to tempt them – there is the potential for such people to choose not to invest.
68. In this context, MBIE's preference is to proceed with a closed central register in the first instance, and re-assess whether to transition to a public register when there is enough precedence to affirm the effectiveness of a public register. It is reasonably straightforward to move from a closed register to an open register, as most of the IT development and build should be the same. It is, however, difficult to change from a public register to a closed one – once information is made public the privacy impact will already have occurred.
69. MBIE also notes that legal challenges have been launched in the EU to a requirement that beneficial owner information be publicly displayed, and waiting a few years before deciding on a move to publicly naming beneficial owners in New Zealand would allow time for us to consider the outcome of those challenges.

70. MBIE recognises that there are not strong differences between Options 2 and 3, and that both will achieve the aims of the assessment factors. However, we prefer the conservative approach for the reasons discussed.

## What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>		Evidence <b>Certainty</b> <i>High, medium, or low</i>
		Option 2	Option 3	
<b>Additional costs of the preferred option compared to taking no action</b>				
Regulated groups	Initial one-off plus ongoing monetary costs for 692,325 companies and 3,261 limited partnerships to remain compliant; Ongoing costs for annual update and report to Companies Office.	<b>Medium</b> - Around 8 hours one-off costs per entity to familiarise, identify and collect, collate and process beneficial owners (\$56*8=\$448); \$310m for all NZ companies and limited partnerships.  Up to 2 hours ongoing costs per entity (\$56*2=\$112); \$78m for all NZ companies and limited partnerships.  \$56 is based on an annual salary (if we include superannuation/ACC/overheads) of a person employed to process such applications.	<b>Medium</b> - Around 8 hours one-off costs per entity to familiarise, identify and collect, collate and process beneficial owners (\$56*8=\$448); \$310m for all NZ companies and limited partnerships.  Up to 2 hours ongoing costs per entity (\$56*2=\$112); \$78m for all NZ companies and limited partnerships.	High
	Privacy cost	<b>Low</b> – there will be limited privacy impact, although the extent of that is difficult to quantify.	<b>Medium</b> - privacy is difficult to quantify; however, this option will represent the greatest departure from the status quo, and therefore the likely highest impact.  We estimate that at least 80 percent of companies' beneficial owners should already have their information disclosed in the register (because they are either a director or a shareholder).  Up to two thirds of limited partnerships' limited partners might meet the definition of beneficial owner and they will be impacted	

			quite significantly, as the Limited Partnerships Act currently restricts the amount of limited partners' information that must be disclosed. This represents under 2,200 limited partnerships.	
Regulators	Monetary cost for set-up, education campaign and ongoing administration of the system for Companies Office.	<p><b>Medium</b> – Same cost as Option 3 to set up infrastructure, plus extra cost to enable restricted access to information.</p> <p>As this option is restricted access only, there will be ongoing costs for processing requests for access to information.</p> <p><i>*See detailed forecast and discussion below</i></p>	<p><b>Low-Medium</b> – Same cost as Option 2 to set up infrastructure.</p> <p>Although a public register, there will be some information (e.g. residential address) that is restricted access only; this will have ongoing costs associated with managing release of that information in specific required instances e.g. for law enforcement purposes. Requests for information may be lower than Option 2 as certain information will be public.</p> <p><i>*See detailed forecast and discussion below</i></p>	High
Others (eg, wider govt, consumers, etc.)				
<b>Total monetised costs</b>		Medium	Medium	
<b>Non-monetised costs</b>		Low-medium	Medium	
<b>Additional benefits of the preferred option compared to taking no action</b>				
Regulated groups	Greater confidence for entities undertaking business in NZ.	<b>Medium</b> – companies may have greater confidence knowing there is a register in place.	<b>High</b> – companies may have greater confidence knowing there is a register in place; and also being able to undertake some of their own due diligence through the information publicly available.	Medium

Regulators	Companies Registrar has better access to beneficial ownership information.	<b>High</b> – Registrar will have easy access to information.	<b>High</b> – Registrar will have easy access to information.	High
Wider government	Benefit in supporting international partners and standards. Law enforcement agencies and other government entities who will be users of the information on the register. Increase AML/CFT system rating.	<b>Medium</b> - the register will assist in the overall effort to meet international standards, but does not follow trends towards public register; law enforcement agencies will be able to respond to overseas requests better and have more resources for their own investigations.	<b>High</b> - the register will assist in the overall effort to meet international standards. It also follows international trends to move to public registers. It will provide law enforcement agencies support and another tool/source of information.	Medium
Other parties	AML reporting entities have more support; and the public can benefit from more transparency in NZ corporate entities. Encourage business investors and contribute to economic growth.	<b>Low-Medium</b> – not so much support for AML reporting entities as they will need to request access to any beneficial ownership information they wish to see. The wider public will not benefit from the register.	<b>High</b> – access to information will enable AML reporting entities to have another source of information, especially the ownership chains information. Public can provide another layer of oversight/scrutiny.	Medium
<b>Total monetised benefits</b>		N/A	N/A	
<b>Non-monetised benefits</b>		Medium	High	

**\*Detailed forecast of approximate costs for establishing and running a public beneficial ownership register:**

71. These costs have been provided to us by the Companies Office’s accountant in relation to the capital required and ongoing running costs of Option 3 - a public register. However, MBIE predicts that the costs for Option 2 will be very similar, except for a slight increase in capital and annual operating costs.
72. The reason for this is the same infrastructure will be required for both types of registers, which makes up majority of the capital cost and ongoing operating costs. However under Option 2, an extra mechanism will be required to suppress information, and an increase in resources and labour for processing requests for access to that information.



\$millions	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
<b>Capital Injection</b>	2.000-3.000						
<b>Operating Costs</b>	0.988-1.138 (one-off) + 1.048 (half of a normal year's ongoing cost)	2.095	2.095	2.095	2.095	2.095	2.095

## Section 3: Delivering an option

### How will the new arrangements be implemented?

73. The implementation of the beneficial ownership register will be effected through a legislated regime, amending the current relevant legislation (Companies Act 1993 and Limited Partnerships Act 2008) to cover requirements. Regulations to support implementation will also be required.
74. The Companies Office and Registrar will play an important role in the implementation and operation of this regime. The beneficial ownership register will share common information with the Corporate Registry Identifier register (**CRI**). When the latter is developed, the beneficial ownership register will be able to extract data about beneficial owners from the CRI register. We anticipate a communication and education campaign by the Companies Office to inform the affected regulated parties of the legislative changes and requirements.
75. This will be followed by a stipulated transition phase to enable existing entities to provide information.

### How will the new arrangements be monitored, evaluated, and reviewed?

76. As the enforcement agency for the Companies Act and the Limited Partnerships Act, the Companies Office will play a key role in monitoring the proposed scheme, concurrently with the Corporate Registry Identifier work. In particular, feedback to the Companies Office from directors, general partners and beneficial owners will provide a valuable source of intelligence as to the effectiveness – or otherwise – of the proposal. There will be an opportunity for MBIE's corporate governance policy staff to receive this information on an ongoing basis as part of our regular engagements with the Companies Office.
77. More generally, officials regularly engage with businesses, law firms, consumer organisations and other agencies (e.g. Customs and Police). These engagements provide an opportunity to test the impacts of the proposed reforms.
78. We are opting to select a more conservative option, due to the fact there is little existing evidence internationally on the efficacy of beneficial ownership registers. It will be necessary to review this over time as other jurisdictions who have opted for public beneficial ownership registers gather more evidence to determine if New Zealand should also go public. The outcome of legal challenges in the EU to the public display of beneficial ownership information should also be available by then.
79. If our preferred option is adopted, we plan to review the changes three years after enactment. An evaluation or review at that time would allow the changes to have bedded in and any anticipated and desired impacts to show. This review would likely take place concurrently with a review of the CRI.
80. Stakeholders with concerns about the policy proposals will have the opportunity to raise these through the Parliamentary Select Committee process, and through engagement with MBIE. Any issues or concerns that stakeholders have in relation to implementation or enforcement of the changes can be directed to the Companies Office.