MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

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

List of documents that have been proactively released		
Date	**Title**	**Author**
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: Corporate Registry Identifier

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing a Cabinet decision authorising the establishment of a new unique identifier, for parties associated with companies and limited partnerships
Advising agencies:	MBIE
Proposing Ministers:	Commerce and Consumer Affairs
Date finalised:	2 December 2021

Problem Definition

The fundamental problem is that the company and limited partnerships registers, as currently operated create inefficiencies and privacy concerns for roleholders, and do not contribute as well as they might to the detection and deterrence of criminal activity.

Executive Summary

Companies and limited partnerships are the two most common 'for profit' entities in New Zealand, together totally almost 700,000. Under the Companies Act 1993 and the Limited Partnerships Act 2008, they must collect – and provide to the Registrar of Companies – information about those who run them (directors and general partners, respectively), those who directly own them (shareholders and limited partners, respectively), and (assuming a parallel policy workstream comes to fruition) the individuals who hold ultimately ownership or control, in other words their "beneficial owners".

Information about all these roleholders is held on a centralised database, with some of it (e.g. names) being made available on the public-facing, online, companies and limited partnerships registers. The way in which this information is currently collected and stored by the Registrar leads to a number of problems, both for roleholders and for register users.

For roleholders, there are concerns about privacy (directors' residential addresses are currently displayed publicly) and about inefficiencies (for each new role taken on, the individual must re-enter all their personal information).

For register users, there is no guarantee that the person named in the register is a real person, because the Registrar does not undertake systematic proactive identity verification. There is also no reliable way to track the corporate history of a given individual across different entities. This means the system does not help in the fight against two key activities: illegal phoenixing (where an individual opens and shuts entities in order to escape liabilities) and using complex ownership structures to launder money.

In this context, this impact assessment evaluates the status quo (Option 1) against three options for change. All three options for change would require certain roleholders in companies and limited partnerships to verify their identity, but would otherwise differ as follows.

Under the first option for change (Option 2), individuals verify their identity each time they take on a new role as a director, general partner or beneficial owner.

Under the second option for change (Option 3) and the third option for change (Option 4), a unique identifier would be assigned. The difference would be that, under Option 3, the identifier would only be assigned to directors (of companies) and general partners (of limited partnerships, while under Option 4, the identifier would also be assigned to beneficial owners (of both companies and limited partnerships).

The evaluation has concluded that the most appropriate course of action is Option 4 (unique identifier assigned to directors, general partners and beneficial owners). The evaluation determined that:

- an identifier system would – by incorporating a robust identification verification process – greatly enhance the integrity of the information held on the registers;
- including beneficial owners in the identifier requirements would mean the new system could help not just in the fight against illegal phoenixing but also in the fight against money laundering.

Officials estimate that the establishment of a unique identifier for directors, general partners and beneficial owners will require a capital injection likely close to $2.000 million, one-off operating costs of up to $0.695 million, and ongoing operating costs of $0.639 million in year 0 and then $1.278 million annually.

Limitations and Constraints on Analysis

1/ Limitations in quantifying costs and benefits

Privacy – introducing a corporate registry identifier is likely to have privacy impacts. It is difficult to quantify privacy as a monetary value.
Reduction in crime – one of the overall aims of implementing a corporate registry identifier is its function as a tool to help reduce illegal phoenixing and money laundering. However, it is difficult to quantify how much crime is reduced because of an identifier. It is only possible to predict that an identifier may assist law enforcement agencies in being able to do this.

2/ Limitations in accessing information about overseas precedents

MBIE consulted with officials in Australia about the introduction of a statute (the Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2018) that led to the establishment of a director identification number requirement. However, Australian officials declined to share their regulatory impact analysis, as it was classified as a 'Cabinet document'.

3/ Assumptions

This impact summary assumes that two other policy and operational proposals will be implemented: a proposal for the Companies Office to collect beneficial ownership information about companies and limited partnerships; and a project to move the companies register to a new IT platform. A beneficial owner is the natural person(s) who ultimately own or directly or indirectly exercise effective control over a company or limited partnership.

Responsible Manager(s) (completed by relevant manager)
Natasha Wells (pp for Manager) **Corporate Governance and Intellectual Property Policy** Small Business, Commerce and Consumer Policy Ministry of Business, Innovation and Employment Privacy of natural persons 2 December 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 Summary meets 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 essential identical to a company, but is designed with certain tax advantages that aim to encourage offshore investment.
4. As at October 2021, there are approximately 693,000 companies on the companies register and approximately 3,300 limited partnerships.

Corporate registers

5. 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.
6. 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.
7. 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.
8. 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.

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.

Concerns about information on the registers

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 (assuming the concomitant policy process concerning collection of beneficial ownership information is successful) the entity's beneficial owners.

12. It is the Companies Act and the Limited Partnerships Act which determine:
    a. what information about directors, general partners and beneficial owners is to be provided to the Companies Office and held on the register. This includes full name, dates and place of birth, and residential address; and
    b. which of this information on the registers must be publicly displayed. For example, while the residential address of a director is publicly displayed, their date of birth is not. There are concerns with publishing residential addresses, relating to safety and security.

Action already taken

13. The Companies Office does not have statutory discretion to remove directors' residential addresses from public display on the register. Directors' residential addresses may only be removed if ordered by the courts through the Domestic Violence Act 1995 (domestic protection order) or the Sentencing Act 2002.
14. A member's bill entitled Companies (Non-publication of Directors' Residential Addresses) Amendment Bill is currently one of more than 60 bills in the ballot, but has not yet been drawn. Its explanatory note states that the "requirement that the residential addresses of all company directors are public is a breach of their privacy and exposes them up to potential abuse, harassment and could even place the director or directors of a company in danger". If enacted, the member's bill would reclassify director's residential addresses as 'confidential', through section 367A of the Companies Act.

If no further action taken

15. It is possible that the member's bill described above will be drawn from the ballot. If so, it may (or may not) result in a change to the law that removes residential addresses from the companies register. Otherwise, directors will continue to be subject to the risk of targeting.

Concerns about how roleholder information is updated on the registers

Issue

16. Many directors, general partners and beneficial owners are involved in more than one company or limited partnership. At present, they must enter and update their personal details in full for each new role they take on. For example, a person who is a director in three companies, a general partner in two limited partnerships, and (assuming the collection of beneficial ownership information in the future) a beneficial owner of one company and one limited partnership, and who – say – moved house – would need to individually update their personal details seven times.
17. The impact of this is to take valuable time away from pursuing business (if data entry is done conscientiously) or to compromise the integrity of the information on the registers (if data entry proves too frustrating).

Action already taken

18. The Companies Office operates a number of registers. These registers are built on an ageing platform known as Biznet, for which IT support will soon no longer be offered. As a result, and in order to add additional functionality expected by register users these days, the Companies Office is migrating its registers to a new platform known as

"Business Registers". Several such registers – including the limited partnerships register, but not the companies register – have already been moved to that platform.

19. Of particular relevance here is that all personal detail changes are now done online and therefore processed much faster e.g. changing an address for a general partner would previously have required filling in a paper form, posting it in to the Companies Office, which would then be manually entered by registry staff so this whole process could take up to a week. Now the change can be done via a much shorter online form, and the change is then applied instantly to the register once submitted, so the whole process would take a matter of minutes. There are of course no more postage costs due to applications being submitted online. There is also easier searching of the register with new advanced search options.
20. Note that this impact assessment assumes that a project to move the companies register to the new platform will be completed within the next few years. This will bring the same 'data entry' benefits to users of the companies register as are described above for users of the limited partnerships register.

If no further action taken

21. Changes to an office holder's details have (or, the case of companies, will soon) become online transactions and thus much faster for the office holder concerned to register. However, it remains the case that such changes must be entered individually for each office / position held. This continues to represent a burden for the office holder and for the Companies Office. It also increases the risk of inconsistent use of an individual's name over time.
22. If no action is taken by the Government, this inconvenience to directors, general partners and beneficial owners will continue to exist over the coming years.

Concerns about how register users search for roleholders

Issue

23. Users of the registers include:
    a. Government regulators, who search the companies register in the course of their investigations and monitoring; and
    b. Third parties:
        i. who may search the companies register to research an individual or company they are considering doing business with
        ii. who would like the contact details for a company.
24. Attempts to search for a given roleholder presently relies on using a name. These attempts 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). The Confidential information entrusted to the Government has further noted that "the construct of what a person's name is - first/middle/last – can also vary with cultures and people may elect to anglicize their name for particular transactions, but retain their original name on official documents."
25. Variations may be innocent, or they may be because people wish to hide their association with:
    a. 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
    b. 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.

26. 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. In essence, the status quo creates an information asymmetry.

Action already taken

27. The Companies Office undertakes risk-based sampling to maintain the integrity of the information on its registers. This means, for example, that if it receives a complaint about the veracity of roleholder information for a given company or limited partnership, it will often investigate that information further.

If no further action taken

28. If no action is taken by the Government, businesses, creditors and consumers will continue to find it difficult to be certain who they are dealing with, when they engage with a given company or limited partnership. This will limit trust in the corporate governance system. Similarly, law enforcement agencies will continue to find it difficult to link diverse episodes of illegal activity to a common offender.

What is the policy problem or opportunity?

29. The fundamental problem is that the company and limited partnerships registers, as currently operated:
    a. create inefficiencies and privacy concerns for roleholders; and
    b. do not contribute as well as they might to the detection and deterrence of criminal activity.
30. There is an opportunity here to improve the efficiency and integrity of the registers and, in doing so, both reassure roleholders and deter criminals.

Inefficiencies and privacy concerns for roleholders

Inefficiencies

31. Many individuals hold only one directorship, one general partnership, or one beneficial ownership position. For these people, updating their details on the registers (e.g. a change of address) will take perhaps 15 minutes.
32. However, the majority of people hold more than one such position. For example, according to Companies Office estimates, Maintenance of the law who are currently directors are simultaneously directors of two or three companies, a further Maintenance of the law of four to nine companies, and a further Maintenance of the law of ten or more companies (and they may also be beneficial owners of the same companies). Even individuals who are currently directors of only one company at a time may in future be directors of a different company. For these people, updating their details company by company on the registers could take a significant amount of time. These are the stakeholders who face inefficiencies generated by the current system.

Privacy concerns

33. While specific incidents are rare, there have been examples in New Zealand where the homes and neighbours of high profile directors have been the target of leaflet campaigns, as a result of the public display of their residential address. Potential targets include directors whose companies are high profile or whose companies are engaged in activities which some people morally object to (eg companies involved in fracking, oil drilling or tobacco); and directors may have court orders against another individual, such as restraining orders or they may be working in occupations which may give rise to personal safety concerns (eg doctors or psychologists working with violent offenders).
34. Women who are directors 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.

Failure to contribute to detection and deterrence of criminal activity

35. As currently operated, the registers do not contribute as well as they might to the detection and deterrence of two key types of criminal activity: illegal phoenixing (Activity A) and money laundering (Activity B).
36. The root cause of this outcome is that the registers fail to fully address the information asymmetry that exists between people who misuse companies and limited partnerships and people who might do business with them and/or enforcement agencies who might detect this misuse. That asymmetry is created because (i) there is no systematic

identity verification of new roleholders and (ii) there is no simple or reliable way to track roleholders' corporate history.

Activity A: phoenixing by directors and general partners

Nature of the problem

37. The people who manage companies and limited partnerships can engage in illegal phoenixing activity, where they deliberately avoid paying liabilities by shutting down an indebted company or partnership and transferring its assets to another company or partnership for less than market value (or even for free). Such activity is facilitated in some cases by so-called "debtor-friendly", or dishonest liquidators who do not properly pursue creditors' claims. In addition, in many cases the value of any claims for such activity is too low to justify the cost of taking legal action to prevent it.
38. The impact of this activity is to leave creditors, employees and the government out of pocket and with no recourse.

Action already taken

39. In 2006, sections 386A to 386F were introduced into the Companies Act to restrict the abuse of phoenix company structures by directors of failed companies with the intent to defeat the legitimate interests of creditors. These provisions restrict the reuse of the failed company's name and provide for criminal sanctions where the director has acted in bad faith to defeat creditors' legitimate interests. The changes have reduced the potential benefits of phoenixing to directors and, therefore, meant fewer incentives for directors to abuse phoenix company arrangements.
40. No equivalent provisions were introduced for general partners, as the limited partnership entity had not yet been created (the relevant statute being the Limited Partnerships Act 2008).
41. Importantly however, these provisions do not address the problem of transferring assets between related companies at under value and leaving creditors unable to take action to recover their debts. In other words, they do not target what most people understand illegal phoenixing to be.
42. Illegal phoenixing in this latter sense will in fact in many cases be a breach of section 138A of the Companies Act. Under that provision, a director of a company commits an offence if the director exercises powers or performs duties as a director of the company (a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and (b) knowing that the conduct will cause serious loss to the company. However, it remains difficult for the Companies Office to prosecute under this provision, because they first need to detect the illegal phoenixing. The current organisation of the registers does not lend itself to such detection.
43. In this context, a government-appointed Insolvency Working Group was established in 2015 to review corporate insolvency law. One of their recommendations was to put in place a licensing regime for insolvency practitioners. This proposal has since been put into place through the Insolvency Practitioners Regulation Act 2019. While not enacted specifically to address phoenixing activity, by introducing a licensing regime for insolvency practitioners it is likely to help raise the standard of competence and trustworthiness of liquidators, reducing the likelihood of a liquidator failing to properly pursue creditors' claims. The Act also made changes to legislation so that there are restrictions on what can happen after a creditor has served a liquidation application, limiting:

a. the ability of a company or limited partnership to appoint a liquidator – this restriction will help prevent companies appointing debtor-friendly, incompetent or dishonest liquidators;
b. the transfer of the assets of a company or limited partnership other than in the ordinary course of business.

Remaining extent of the problem

44. Activity related to illegal phoenixing has not ceased in New Zealand. This is illustrated by the fact that prosecutions under sections 386A to 386F of the Companies Act (one type of illegal phoenixing) continue to occur:

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020
Prosecutions	Maintenance of the law								

45. Officials anticipate that, without further action by the Government, a similar number of prosecutions will continue to be pursued in the coming years. While it is not possible to estimate prosecution costs meaningfully, each prosecution would consist of two main costs for the registrar –
    a. investigator's time spent conducting the investigation and subsequently managing the file through the court process, and
    b. legal costs incurred with the Crown Solicitor handling the prosecution on the registrar's behalf.
46. Of course, prosecution figures may not fully represent actual illegal phoenixing activity (prosecutions require awareness of an activity, as well as sufficient evidence to take action) and provide little evidence about the financial impact on the country.
47. In this regard, in Australia a September 2015 report by the Productivity Commission estimated that, based on business activity in 2009-2010:
    a. around 2000 businesses per year were involved in phoenix activity; and
    b. the costs of illegal phoenix activity ranged from nearly AU$1.8 billion to nearly AU$3.2 billion per annum.
48. While it must be acknowledged that Australia does not have the same penalties for phoenixing activity (penalties in Australia include disqualification of directors and fines), and so may have had a different level of legislative deterrence to New Zealand, a per capita conversion of these figures would suggest:
    a. around 400 businesses per year are involved in phoenixing activity; and
    b. costs in New Zealand of between NZ$370 million and NZ$660 million per annum. These costs comprise costs to unpaid employees, costs to creditors, and costs to government (notably tax authorities).
49. If no action is taken by the Government, we anticipate that these costs will continue to be borne at a similar level in the coming years.
50. Finally, there are a range of impacts of phoenix activity that have not been included in this cost quantification. For example, if employees are not rehired by the new phoenix company, they will often experience periods of unemployment, which can have significant impacts on their wellbeing, but also on government through e.g. unemployment benefits. Furthermore, phoenix companies receive an unfair advantage that impacts their law-abiding competitors: by knowingly avoiding debts to other businesses, tax debt and employee entitlements, phoenix businesses are able to offer lower prices than their competitors.

Problem B: laundering by beneficial owners

Nature of the problem

51. Historically, the beneficial owners of companies and limited partnerships have been 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.
52. 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 $1.35 billion from the proceeds of fraud and illegal drugs is generated for laundering in New Zealand.
53. 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

54. 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 of Companies with new powers to investigate companies and limited partnerships.
55. 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)
56. This impact summary also assumes that a separate proposal that the Registrar collect beneficial ownership information about companies and limited partnerships is approved and implemented. This will create transparency by making it harder for beneficial owners to hide behind the corporate veil. Such transparency will reduce the risks that these corporate structures are misused by criminals and protect New Zealand's reputation as a good place to do business. However, it is not possible to estimate by how much the collection of beneficial ownership information will actually reduce financial crime.

Remaining extent of the problem

57. Action already taken will not eliminate money laundering. In particular, the efficacy of collecting beneficial ownership information will depend on the honesty of the entities and individuals concerned and their willingness to truthfully self-identify. This is because, as things stand, there is no systematic process of identity verification undertaken by the Companies Office when registering new roleholders.

What objectives are sought in relation to the policy problem?

58. As noted above, 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.

59. The objectives sought in addressing the policy problems are thus to promote the integrity of the registers and their efficiency.

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

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

60. The criteria for the assessment of the options are a mix of criteria linked to the objectives and more generic criteria.
61. The generic criteria are:
    a. **effectiveness**: how well does the option address the problems identified, including the detection of criminal activities?
    b. **privacy** and other risks: how great are the risks to privacy posed by the option? does the option generate other harmful consequences?
62. The criteria linked to the objectives are:
    a. **integrity**: how well does the option promote the integrity of the information on the registers?
    b. **efficiency**: how large are the compliance costs (for directors, general partners and beneficial owners) and administrative costs (for the Companies Office, who manage the registers)?

What scope will options be considered within?

Focus on identifiers

63. The Insolvency Working Group was a panel of experts set up by the Government to examine aspects of corporate insolvency law and provide independent advice. The Insolvency Working Group released its first report in 2016. In this report, it recommended introducing a unique identification number for directors of companies. For this reason, two of the options in this paper involve such an identifier.
64. MBIE has consulted publicly on having an identifier for directors and beneficial owners, but not on having one for general partners of limited partnerships. This was because the original proposal for an identifier from the Insolvency Working Group was focused on issues with companies, rather than with companies and limited partnerships, and it was only through the consultation process that MBIE realised that regulating companies alone would distort individuals' choices about whether to set up a company or a limited partnership.

Increasing criminalisation / penalties for illegal activities

65. In theory, if we are hoping to reduce the incidence of people closing down companies to avoid their liabilities (illegal phoenixing), and of people hiding who really controls companies and limited partnerships through nominee shareholders or directors (to facilitate money laundering), we could propose criminalising these activities or – where relevant offences already exist – increasing the penalties for them.

Illegal phoenixing

66. As noted earlier [see para 42], illegal phoenixing is likely already a breach of section 138A of the Companies Act. However, prosecutions under section 138A for illegal phoenixing can only occur if that illegal phoenixing is detected in the first place. In this context, increasing the penalties for breach of section 138A will not address the underlying issue that it is difficult for register users to see the whole corporate history of a given individual. In any event, the penalties set out in the Companies Act in section 373 are in four tiers, and the penalties for breach of section 138A are already set at the highest tier, suggesting the an increase in the penalties is not a realistic option.

Money laundering

67. A sign that someone is a nominee director (and that the entity concerned may therefore be being misused by an invisible third party) is that they hold far too many positions across far too many entities. Where this inhibits the ability of a person to discharge their director's duties, civil liability (to the company or limited partnership) would already be engaged, but it would be possible to also criminalise the behaviour – for example by prohibiting the holding of more than X directorships. However, once again, this does not address the problem of detection. If the registers continue to be designed in a way that does not make clear all the entities with which an individual is associated, then criminalising the behaviour will be of little effect. Even if it were helpful, the value of X would necessarily be arbitrary.

Non-regulatory options

68. MBIE considers it difficult to envisage appropriate non-regulatory options that address the problems described in this document.

What options are being considered?

69. Four options (including no action) are being considered.
70. MBIE has run three public consultation processes related to the issues discussed in this impact assessment:
    a. In May 2017, on the potential introduction of a unique identifier for directors;
    b. 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
    c. In June 2018, on beneficial ownership of companies and limited partnerships, including whether to introduce an identifier for beneficial owners.
71. The responses to those consultations informed the development and assessment of these options. Note that there was no public consultation on assigning an identifier to general partners as, at that time, officials had not identified the risk of criminals switching from companies to limited partnerships if the proposal for a director-only identifier were introduced.
72. Eleven of the 13 submissions received on the proposal to introduce director identifiers (including from the Confidential information entrusted to the Government) supported the idea. The key benefits cited by submitters were:
    a. creating efficiencies for directors and companies, and for key users of the companies register
    b. actually enhancing directors' privacy, if introduced in conjunction with changes to residential address requirements
    c. combatting the deliberate misuse of companies or attempts to disguise a director's identity or links with multiple companies
    d. improving the integrity and reliability of information on the companies register.
73. Eleven of the 18 submissions received on beneficial owner identifiers (including from Confidential information entrusted to the Government) supported the idea. Most of those that disagreed focused on the potential compliance burden for beneficial owners, while the Office of the Privacy Commissioner had concerns about privacy risks being disproportionate to the potential benefits.
74. 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.
75. All agencies support introducing a unique identifier for directors and general partners. Most agencies also support, or have no opinion on, the proposal to have a unique identifier for beneficial owners.

Option One – Status Quo / No action

76. 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:
    d. unless the member's bill making residential addresses confidential is drawn from the ballot and enacted, directors will continue to be subject to the risk of targeting by disgruntled individuals;

e. directors, general partners and beneficial owners will continue to have to update details individually for each office / position held across different entities;
f. businesses, creditors and consumers will continue to find it difficult to be certain who they are dealing with, when they engage with a given company or limited partnership. This will limit trust in the corporate governance system; and
g. law enforcement agencies will continue to find it difficult to link diverse episodes of illegal activity to a common offender.

77. A few submitters supported the status quo. For instance, one law firm – while agreeing that the different spellings of director's names created difficulties in tracking people's corporate history – believed that, rather than introducing an identifier, "it would be better to focus on the integrity of the data when director consent forms are uploaded". Another law firm opposed any change "given the comparatively small number of directors who cause serious problems". They were concerned that identity verification proposals (the other options) risked "inconveniencing (and, potentially, alienating) a disproportionately large number of innocent current and potential company directors, and necessitating unspecified expenditure (including as to establishment, monitoring and compliance) for a questionable degree of benefit."

Option Two – Requiring roleholders to regularly verify their identity

78. It would be possible to introduce a requirement that individuals verify their identity each time they take on a new role as a director, general partner or beneficial owner. As an academic explained: "under corporate law theory limited liability and separate legal entity are privileges… [so r]equiring persons who manage companies and make entrepreneurial decisions to prove their identity… is a legitimate cost."
79. This option, which was not included in the original public discussion documents, would enhance the integrity of the data on the registers. In other words, users of the register could have more confidence that the person named on the register as a director, general partner or beneficial owner is a real person.
80. However, the option would not necessarily make it more likely that an individual used precisely the same name when they took on different roles in different companies and limited partnerships. They could still use variations of their legal name (such as with or without middle initials), either deliberately or simply because they do not clearly recall how they recorded their name when they last took on a new role.
81. This option would also generate significant compliance costs for the roleholders it applied to. For example, for companies, each year there are tens of thousands of new directorships registered. If each identity verification process (including preparation) takes 1 hour, that amounts to tens of thousands of hours in costs.

Option Three – Assigning an identifier for directors and general partners

82. Under this option, individuals who are or become directors or general partners would have to apply for a unique identifier, which could take the form of a number, a certificate or a digital code. The identifier would be assigned by a suitable registrar (e.g. the Registrar of Companies) once suitable identity verification has occurred. Verification would 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). The identifier would have associated with it

83. This option would represent an intrusion into / risk to the privacy of individuals wishing to hold roles in the direction of companies and limited partnerships. This is because the identifier will make it much easier than it is currently to see all the companies and limited partnerships with which an individual is associated. There may be reasons why a person does not wish their association with one or more entities to be easily discoverable by people who use the register (for example, where the entity concerned is associated with cigarette manufacture).
84. Unique identifiers can also raise concerns about identify theft because, if they are stolen, they can be used to impersonate the person concerned. However, the risk of misuse can be mitigated by providing for substantial penalties for misuse. In addition, the risks associated with the identifier under Option 3 can be managed by appropriate design in the implementation stage – for instance, it may be that the identifier is not used in the "log in" process at all, and that its focus remains firmly on linking the different roles of the person once they have logged in.
85. It is also important to note that this option would actually promote the privacy of company directors, by allowing the suppression of the residential addresses of directors (those addresses currently being publicly displayed), reducing the risk of targeting by disgruntled members of the public and the risk of identity theft. Privacy concerns can be further mitigated by the introduction of criminal offences relating to the misuse of another person's identifier.
86. The option would also – of course – benefit register users (including law enforcement) – enabling the tracking of the corporate history of a given director or general partner across all the entities that they have been involved with. This would enable better detection of persons who might be engaging in illegal phoenixing and/or acting as nominee directors.
87. The administrative costs to directors and limited partners would be higher initially than under Option Two – the identity verification process would probably be longer than one hour because of the extra care needed before assigning a unique identifier. However, over the long term, this option would actually save time for people who are directors or general partners of more than one entity (either simultaneously or over time), as they would not need to re-enter their details (name, date of birth etc) each time.
88. There was widespread support for the assignment of an identifier for directors during the public consultation process, including from the Office of the Privacy Commissioner. For instance, a large law firm stated that this option would "bring New Zealand in line with international trends and will reinforce recent moves to increase transparency and accountability within governance". MBIE Immigration – for its part – stated: Maintenance of the law

[1] Resolving means being able to link a digital identity to an actual person (e.g. if you have a couple of client numbers for one person, then being able to 'resolve' them means you can link those together to realise that they are actually a single person)

Option Four – Assigning an identifier for directors, general partners and beneficial owners

89. This option is identical to Option Four, except that the identifier would be assigned not just to directors and general partners, but also to people who qualify as beneficial owners of companies and limited partnerships.
90. This option would represent an intrusion into / risk to the privacy not just of individuals wishing to hold roles in the direction of companies and limited partnerships, but also into the privacy of individuals who ultimately own or control those entities. In other words, its marginal privacy costs are higher. In this regard, the Office of the Privacy Commissioner stated in its submission to the public consultation of 2018 that they opposed an identifier linked to beneficial owners, stating: "Our view is that assigning beneficial owners a unique identification number would be … disproportionate to their role in the system. Compared to company directors (who MBIE has previously proposed to assign a unique identifier) beneficial owners do not have statutory functions and duties in the companies system."
91. By contrast, this option would significantly assist in the fight against money-laundering. As noted earlier, this impact assessment assumes that information about the beneficial owners of companies and limited partnerships will be introduced to the companies and limited partnerships registers. This 'piercing of the corporate veil' will reduce the risk that these two types of corporate entity are misused by criminals to launder money generated through crime. However the extent to which it does so will depend on the reliability of the beneficial ownership information provided. Because Option 3 will involve a robust identification verification process, it will promote this reliability.
92. Third parties stand to benefit, notably anti-money laundering (AML) reporting entities, such as banks. These entities are obliged to verify the identity of the beneficial owners of entities that they deal with. Knowing that the Companies Office has already done much of the verification process would reduce their costs of compliance with their AML obligations.
93. Government departments and agencies – including Police, Customs, the Department of Internal Affairs, the Financial Markets Authority and MBIE's Companies Office – also supported Option 4. One agency stated that an identifier "could be transformational for the information on the register if designed and implemented carefully". When scanning generally for potential offences, for instance, law enforcement agencies could trace inter-relationships that may otherwise be opaque, and potentially identify other entities that may be involved in or committing similar offending. For example, if a director is dealing with a company that appears wholly independent of themselves but is actually held on trust for their benefit, that would become transparent in the register.
94. Another agency suggested that an identifier for beneficial owners actually "provides scope for supporting privacy – e.g. ownership data can be released with only a number, allowing an assessment of the scope of an individual's beneficial ownership without necessarily identifying the individual."

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

	Option One – Status Quo	Option Two – regular ID verification	Option Three – identifier excluding beneficial owners	Option Four – identifier including beneficial owners
Effectiveness	0 Difficult to track an individual's corporate history, due to variations in how name is recorded	0 Would not improve the ability to track an individual's corporate history (and therefore would not help detect phoenixing or laundering), because different variations of name could still be used	+ Would improve the ability to track an individual's corporate history (for directors and general partners) and would therefore would help detect illegal phoenixing	++ Would improve the ability to track an individual's corporate history (for directors and general partners) and would therefore would help detect illegal phoenixing Would also help law enforcement in combatting money laundering. For example, when scanning generally for potential offences, they could trace inter-relationships that may be opaque, and potentially identify other entities that may be involved in or committing similar offending, and possibly follow lines of monetary flows for money laundering purposes
Privacy	0 Roleholders must share (non-verified) personal information once	- Because it requires an individual to prove their identity on multiple occasions, would increase the risk of divulgation of that information	- There is a risk that an identifier might be inappropriately used or disclosed. However this risk needs to be weighed against the certainty that, if an identifier is introduced, then the company and limited partnership registers would no longer need to display the residential addresses of directors	- - As with Option 3, there is a risk that an identifier might be inappropriately used or disclosed, but more information would be revealed than under Option 1 (not just the individual's positions as director and general partner, but also their position as beneficial owner). Again, however this risk

			and general partners. In other words, the (possible) privacy risks seem to be balanced by (certain) privacy benefits.	needs to be weighed against the privacy benefits (to directors only) of being able, as a result of the introduction of an identifier, to remove residential addresses from public display.
Integrity	0 Absence of identity verification suggests a small percentage of persons registered are likely to be fictitious	+ Would help remove the risk of fictitious persons (e.g. Mickey Mouse) being listed in the register	++ Would largely remove the risk of fictitious persons (e.g. Mickey Mouse) being listed in the register (at least for *directors* and *general partners*)	++ Would largely remove the risk of fictitious persons (e.g. Mickey Mouse) being listed in the register (for *directors*, *general partners* and *beneficial owners*)
Efficiency	0 For the individual roleholder, updating details is cumbersome For register users, it is time-consuming to attempt to track a roleholder's corporate history	- Significant transactional costs for any individual who holds (either simultaneously or over time) more than one role	+ For the individual required to obtain an identifier, there would be a one-off online registration — a relatively low compliance cost. It would however then be quicker for people holding multiple positions of director and/or general partner to update their details. For register users, use of the register would become more efficient. For the Registrar, the proposal to establish an identifier system would have a financial impact requiring capital and operating funding: - capital injection of $1.500 million to $2.000 million	+ For the individual required to obtain an identifier, there would be a one-off online registration — a relatively low compliance cost. It would however then be quicker for people holding multiple positions of director, general partner and/or beneficial owner to update their details. For register users, use of the register would become more efficient. AML reporting entities obliged to verify the identity of the beneficial owners of entities they deal with will have their costs reduced, knowing that the Companies Office has already done some of the identity verification process.

			- one-off operating costs of $0.620 million to $0.695 million - ongoing operating costs of $0.639 million in year 0 and then $1.278 million annually	For the Registrar, the proposal would have a financial impact requiring capital and operating funding similar to that for Option 3 (although the capital injection is likely to be nearer the higher end of the Option 3 range).
Overall assessment	0	-	++	++

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

95. Options 3 and 4 have scored the same in this evaluation. Indeed, both options would – by incorporating a robust identity verification process – greatly enhance the integrity of the information held on the registers.
96. However, while it is finely balanced, MBIE considers that Option 4 is subtly better. Option 4 is, for instance, clearly the most effective approach – it would assist in the fight against both illegal phoenixing and money laundering. While it would cost more than Option 3, it would also create more efficiencies for more people: directors, general partners and beneficial owners would be able to update their details more quickly and register users would find it easier to use if they wished to track an individual's corporate history.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	There would be a one-off online registration	Low Up to 2 hours ongoing costs per individual	High
	Risk to privacy if CRI is misused or disclosed	Medium (but not certain to eventuate)	High
Regulators	The proposal to establish an identifier system would have a financial impact requiring capital and operating funding.	Capital injection likely close to $2.000 million One-off operating costs of $0.620 million to $0.695 million Ongoing operating costs of $0.639 million in year 0 and then $1.278 million annually	High
Others (eg, wider govt, consumers, etc.)	Potential for the identifier to be used by directors and general partners operating offshore as a means of running scams	Medium (but not certain to eventuate, and mitigations available)	Medium
Total monetised costs		High	
Non-monetised costs		Low	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Would help individuals (many of whom will be regulated parties themselves) to judge risk of illegal phoenixing.	Medium	High
	Would be quicker for people holding multiple positions of director, general partner and/or beneficial owner to update their details.	Medium	High
Regulators	Would enhance the integrity of the Companies Office registers by largely eliminating the scope for directors, general partners and beneficial owners to use fictitious identities.	Medium	High

Others (eg, wider govt, consumers, etc.)	Would help enforcement agencies such as Police, Customs, DIA, the Financial Markets Authority, the Serious Fraud Office, and the immigration group within MBIE to detect illegal phoenixing and money laundering.	High	High
	Reductions in illegal phoenixing and money laundering would reduce harms suffered by victims of these crimes, including creditors, employees, and the tax collecting authorities.	High	High
Total monetised benefits		N/A	
Non-monetised benefits		Medium-High	

Section 3: Delivering an option

How will the new arrangements be implemented?

97. The implementation of the CRI will effected through a legislated regime, amending the current relevant legislation (Companies Act and Limited Partnerships Act) to cover requirements. In this regard, a legislative bid will be made in January 2022 by the Minister of Commerce and Consumer Affairs for a Corporate Governance (Transparency and Integrity) Reform Bill.
98. The registrar responsible for the companies and limited partnerships registers, and the Companies Office more broadly, will play an important role in the implementation and operation of this regime. We anticipate a communication and education campaign by the Companies Office to inform the affected regulated parties of the legislative changes and requirements.
99. This will be followed by a stipulated transition phase to enable entities to provide information. For existing directors, general partners and beneficial owners, CRIs under either option would be phased in over a transitional period. Looking forward, new directors, general partners and (under option 2) beneficial owners would need to obtain a CRI from the relevant registrar before they could be entered onto the companies or limited partnerships register.

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

101. 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 changes. In particular, feedback to the Companies Office from directors, general partners and beneficial owners will provide a valuable source or intelligence as to the effectiveness – or otherwise – of the proposals. 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.
102. More generally, officials regularly engage with businesses, law firms, and consumer organisations. These engagements provide an opportunity to test the impacts of the proposed reforms.
103. While there are currently no plans for a formal review of these proposals, MBIE regularly evaluates and reviews amendments to the law it administers. The changes could, for example, be evaluated three years after coming into force (subject to resource constraints). An evaluation or review at that time would allow the changes to have bedded in and any anticipated and desired impacts to show.
104. 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.