

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Beneficial Ownership and Director Residential Addresses: Release of Discussion Documents

Proposal

1 I seek Cabinet's agreement to release for public consultation the two attached discussion documents on:

1.1 *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships;*

1.2 *Publication of Directors' Residential Addresses on the Companies Register.*

Executive summary

2 New Zealand is a great place to do business. A significant factor in this success is the corporate governance regulatory system. At a high level, the system is designed to enable high-performing businesses, to hold entities accountable and to maintain market confidence by setting rules and incentives for how these entities are structured, managed and dissolved. However, we cannot rest on our good reputation. It is important that we continually identify ways to ensure the integrity and effectiveness of the system.

3 To this end, I am seeking Cabinet agreement to release two discussion documents for public consultation. The two documents explore policy options to support the corporate governance regulatory system in continuing to balance its objectives.

4 The first document seeks the public's opinion on what requirements there should be on New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners. Three policy options are included in this document. Once public submissions have closed, officials will undertake further design work, including a cost-benefit analysis, before finalising their advice to me.

5 The second document seeks feedback on whether, if a director identification number (DIN) is introduced, it remains appropriate for directors of New Zealand companies to have their residential address published on the companies register.

6 I am still considering whether to introduce a DIN. However, I am interested in the public's views on whether publishing directors' residential addresses on the companies register remains necessary if we were to introduce a DIN. Two potential options for how to treat directors' residential addresses in the register are included in this document. Once public submissions have closed, officials will undertake further work before finalising their advice to me, as part of their broader advice on whether to introduce a DIN.

7 These documents will be used to identify the public's preferences and concerns on these two subjects. Strong views may be expressed about how to balance the privacy of

company directors and beneficial owners, with the effectiveness and the transparency of the system. Stakeholders may also be concerned about compliance costs.

Background

- 8 New Zealand is one of the easiest places in the world to do business¹ and enjoys a strong international reputation for low corruption and high integrity. To continue achieving this, we need to maintain a high-performing corporate governance regulatory system, by balancing efficiency and integrity:
- 8.1 Efficiency: the system is easy to access and use for entities and the public, and the costs of administering the system are proportionate;
 - 8.2 Integrity: businesses, investors, regulators and the public trust the information available about entities and they can rely on it for making decisions. The key aspects contributing to integrity are transparency, accountability and accuracy. Transparency is important for effective corporate governance and the efficient operation of markets. Transparency promotes accountability and informed decision making by businesses, investors and customers.
- 9 I have instructed officials to undertake work on two policy measures which could contribute to the efficiency and transparency of the corporate governance regulatory system:
- 9.1 improving the transparency of beneficial ownership information;
 - 9.2 introducing a director identification number (DIN) and considering what changes could be made to the requirements for directors' residential addresses as a consequence of having a DIN.

Beneficial ownership information

- 10 In 2016, New Zealand committed to “exploring the establishment of a public central register of company beneficial ownership information” at the London anti-corruption summit.
- 11 A beneficial owner is the natural person(s) who ultimately owns or exercises effective control over an entity². A beneficial owner can control an entity indirectly, for example through intermediary companies or limited partnerships. Identifying beneficial owners is crucial for law enforcement to detect and deter crime, as well as for businesses, consumers and investors to know who they are doing business with.
- 12 This document refers to companies and limited partnerships collectively as corporate entities.

A director identification number and directors' residential addresses

- 13 In 2016, a report by the Insolvency Working Group recommended introducing a unique identification number for company directors (a DIN)³. Most submitters supported

¹ New Zealand is ranked first in ease of doing business and in starting a business by the World Bank's 2018 *Doing Business* rankings, and is ranked second in Forbes' *Best Countries for Business* 2018 list.

² This definition is based on the Financial Action Task Force's (FATF) definition of a 'beneficial owner'.

³ This is outlined in recommendation 12 of the report.

introducing a DIN. However, submissions indicated that further work was needed to develop the recommendation.

- 14 To that end, MBIE released a discussion document on whether to introduce a DIN in May 2017 [EGI-17-MIN-0090 refers]. 11 of the 13 public submissions supported a DIN, while two submitters felt that a DIN should only be introduced if directors' residential addresses were no longer publicly available.
- 15 There may be an opportunity to address directors' concerns about their privacy and safety if a DIN is introduced. Therefore, I consider that it is useful to undertake public consultation on how to treat residential addresses in the register before making a decision on whether to introduce a DIN.

Public consultation on the transparency of beneficial ownership information

- 16 I am seeking Cabinet's agreement to release a discussion document on *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*. The purpose of this document is to seek the public's views on what requirements there should be on New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners. I particularly seek feedback on the benefits and costs of increasing the transparency of beneficial ownership.
- 17 The discussion document focuses on companies and limited partnerships, as these entities have similar characteristics which may make them attractive to criminals⁴. There is a risk that if only companies were considered, criminals would shift to using limited partnerships.

Rationale for increasing the transparency of beneficial ownership in New Zealand

- 18 The misuse of corporate entities to disguise criminal activity is an international problem. To facilitate money laundering, terrorism financing, drug or arms trafficking, tax evasion or the hiding of assets, criminals can disguise the true ownership of an entity using intermediaries and different business structures in multiple jurisdictions.
- 19 New Zealand is not a major centre for financial crime, but it is not immune. The Police estimate that each year, \$1.35 billion from the proceeds of fraud and illegal drugs is laundered through corporate entities in New Zealand. Overseas criminals may also seek to profit from New Zealand's positive reputation by misusing New Zealand corporate entities. High-profile money laundering cases may also impact on international partners' trust in New Zealand.
- 20 Identifying beneficial owners is a crucial piece of information for detecting and countering the misuse of corporate entities. It helps law enforcement to identify people responsible for criminal activity or people with relevant information to support an investigation. It also helps reporting entities⁵ under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (AML/CFT Act) assess the money laundering or terrorist financing risk of their customers. Beneficial ownership information

⁴ For example, companies and limited partnerships have separate legal identity, can enter into contracts and can open bank accounts in the name of the company or limited partnership.

⁵ Reporting entities include most financial service providers and certain professional service providers, such as lawyers, accountants, real estate agents, and trust and company service providers. Reporting entities must undertake due diligence on any new customer and some existing customers, including identifying the beneficial owners of some customers.

is also important for other businesses, as knowing who controls a corporate entity can help assess the risk of doing business with it.

- 21 International standards on the transparency of beneficial ownership information are evolving. New Zealand may be seen as not playing its role in international efforts to combat money laundering and terrorism financing if we do not keep pace with relevant standards⁶. Australia was downgraded from “largely compliant” to “partly compliant” following recent evaluations of their compliance with the Financial Action Task Force (FATF) recommendations. Their lack of clear processes for obtaining and recording beneficial ownership information, and not requiring legal entities to obtain and hold up-to-date information, were factors in the downgrade.
- 22 There are existing tools to collect beneficial ownership information. The AML/CFT Act requires reporting entities to identify the beneficial owners of new clients and some existing clients. The Registrar of Companies (the Registrar) can require corporate entities to provide beneficial ownership information under the *Companies Act 1993* and *Limited Partnerships Act 2008*. Police and Inland Revenue can also request beneficial ownership information in some circumstances.
- 23 However, there are shortcomings with these tools:
 - 23.1 Accessing beneficial ownership information is often difficult or impossible: Information is only collected for some corporate entities, which may not include some high-risk entities. This information is also not widely accessible, leading to duplication of effort. The information is also not collected centrally, meaning that analysing data to identify trends and anomalies is also difficult. As a result, the New Zealand Police is struggling to find the information it needs and to meet requests from international partners.
 - 23.2 Beneficial ownership information is not always accurate: As information can be costly and resource-intensive to access and verify, some reporting entities may not be able to verify the information provided by clients. Reporting entities also have a competing incentive to ensure their service to clients is swift and easy.
 - 23.3 Criminals can be tipped off by requests for information: Certain tools to request information risk tipping off criminals that law enforcement is interested in the corporate entity. This can be counterproductive to investigations, meaning that some of the existing powers are often not used.

Options for increasing the transparency of beneficial ownership

- 24 The discussion document outlines three high-level options:
 - 24.1 **Option 1 – Corporate entities hold beneficial ownership information:** This option would require corporate entities to hold up-to-date information about their beneficial owners and to supply this information upon request by the Registrar, who can pass it on to law enforcement agencies.
 - 24.2 **Option 2 – Beneficial ownership information is included on the company and limited partnership registers with restricted access:** This option would

⁶ The FATF sets most of the international standards on beneficial ownership information. Recommendation 24 requires countries to “ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities”.

require corporate entities to provide information on their beneficial owners to the Registrar and to keep it up-to-date. This information would be included on the companies and limited partnerships registers but would only be available to law enforcement agencies⁷.

24.3 **Option 3 – Beneficial ownership information is included on the registers with public access:** This option would have the same requirements as option 2. However, beneficial ownership information would be publicly available on the registers.

25 Chapter 4 of the attached discussion document provides a preliminary analysis of the options. Of the three options considered, MBIE's preliminary preference is **option 3**. Officials consider that this option would be most effective at deterring criminals from using corporate entities and would provide useful information to law enforcement agencies. Public access would also assist with the integrity of the information on the registers as it would be more open to scrutiny by other businesses or non-governmental organisations (NGOs). Officials also consider that this option balances privacy and transparency objectives appropriately.

26 However, a number of assumptions need to be tested through public feedback before MBIE finalise their advice to me. More information is needed on the anticipated compliance costs of each option for businesses. The discussion document invites public feedback on these potential costs. Initial discussions with industry organisations indicate mixed views on the potential compliance costs. The actual compliance costs will depend on the complexity of the corporate entities' ownership structure and the final design choices. Officials will undertake a cost-benefit analysis before finalising their advice to me.

27 The document also seeks public suggestions on other measures that could be implemented to reduce the misuse of companies and limited partnerships to hide or facilitate criminal activities. Possible additional options listed in the discussion document include:

27.1 collecting more information about corporate entities;

27.2 requiring corporate entities to have an IRD number;

27.3 strengthening the Registrar's powers.

28 I wish to gather the public's views on these and any other additional options.

Public consultation on how to treat directors' residential addresses on the companies register

29 I also seek Cabinet's agreement to release for public consultation a discussion document on the treatment of company directors' residential addresses on the companies register, if a DIN is introduced.

30 A DIN may present an opportunity to address company directors' concerns about having their residential addresses published on the register.

⁷ This is likely to include Crown Law Office, Department of Internal Affairs, Financial Markets Authority, Government Communications Security Bureau, Inland Revenue, MBIE, Ministry of Justice, Customs, Security Intelligence Service, Police, Reserve Bank, Serious Fraud Office and their international counterparts.

Problems with publishing directors' residential addresses on the companies register

- 31 Directors are concerned about their residential address being publicly displayed on the companies register. Some directors are concerned for their safety due to the nature of their business. Others have personal security concerns, for example they may have restraining orders against someone. Other directors have expressed concerns that their data may be used for fraudulent purposes.
- 32 The Companies Office receives complaints and requests to suppress or remove residential information from the register from directors and their representatives on a regular basis.

Rationale for publishing directors' residential addresses

- 33 Directors are responsible for the performance of a company and ensuring that it meets its legal obligations. People need to be able to contact directors in order to hold them accountable.
- 34 Directors' residential addresses are published on the companies register to enable third parties to contact directors directly, including serving legal documents. Furthermore, residential addresses provide a data point to enable users to distinguish between or connect directors with the same or similar names.
- 35 However, there are alternative solutions which may achieve the same outcome as publishing residential addresses. An address for service could provide third parties with an avenue to contact directors and serve legal documents. Additionally, a DIN could provide a more accurate data point to enable users to distinguish between directors, and to connect directors and companies.
- 36 Given the above and the concerns raised by directors, I consider that a decision is needed on whether it remains appropriate to publish directors' residential addresses on the companies register.

Options for treating director residential addresses

- 37 The paper seeks to balance the corporate governance system's efficiency and integrity objectives, while also taking into account the privacy implications of having personal information publicly available.
- 38 As part of this consideration, the following options for treating director residential addresses are included in the discussion document:
 - 38.1 **Option 1 – Allow directors with safety concerns to use an address for service:** Allow directors with specific safety concerns to apply for their residential address to be replaced with an address for service on the public register;
 - 38.2 **Option 2 – Allow all directors to use an address for service:** Allow any director to use an address for service on the register instead of their residential address.
- 39 Directors would still have to provide their residential address to the Registrar for either option, even if it is not made publicly available.

- 40 MBIE's preliminary preferred option is **option 2**. A DIN could replace residential addresses to support the integrity of the register, and the use of an address for service would ensure that only the necessary personal information is publicly available. Officials consider that **option 2** is likely to be efficient for the Companies Office to implement and for the public to use.
- 41 The discussion document tests these assumptions with the public. The document also seeks input on possible approaches to historic data and future access to directors' residential addresses.

Timing

- 42 Subject to Cabinet agreement, the discussion documents will be released at the same time, for a period of six weeks.
- 43 I intend to seek Cabinet agreement on any changes to the requirements for beneficial ownership and directors' residential addresses and on whether to introduce a DIN by the end of 2018.

Stakeholder views

- 44 Officials anticipate that stakeholders will have the following views on beneficial ownership:

44.1 [] The discussion document will help to gather some more information about the potential costs.

44.2 []

44.3 []

- 45 On directors' residential addresses:

45.1 []

45.2 [] I consider that this concern would be mitigated by the introduction of a DIN.

Consultation

Government Agencies

46 Agencies consulted on this paper: the Treasury, Police (Financial Intelligence Unit), Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand, Inland Revenue Department, Ministry of Justice, New Zealand Customs Service, Office of the Privacy Commissioner, Overseas Investment Office, Ministry of Health, Department of Prime Minister and Cabinet (PAG) and the Government Chief Privacy Officer.

Private Sector

47 Officials informally met with the following organisations to discuss beneficial ownership: BusinessNZ, New Zealand Shareholders Association, New Zealand Bankers Association, the New Zealand Law Society, Insurance Council of New Zealand and Chartered Accountants Australia and New Zealand. Both topics were discussed with the Institute of Directors.

48 [] Where appropriate, officials have incorporated private sector stakeholders' views into the discussion documents.

Financial implications

49 No financial implications arise from the release of the attached discussion documents.

Human rights, gender and disability implications

50 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

51 No gender or disability implications arise from this paper.

Legislative implications

52 No legislative implications arise from the release of the attached discussion documents.

Quality of the impact analysis

53 The Regulatory Impact Analysis Review Panel (RIARP) chair has reviewed the attached discussion documents prepared by the Ministry of Business, Innovation and Employment. As the discussion documents contain the necessary elements of an Impact Analysis, this paper is exempt from requiring a separate Impact Statement at this stage. RIARP consider that the information and analysis summarised in the discussion documents meet the criteria necessary for consulted parties to fairly consider the options available.

Publicity

54 I will release a media statement publicising the release of the discussion documents and encouraging the public to make submissions. MBIE will publish the discussion documents on its website and advise stakeholders when they are released.

55 I intend to proactively release this Cabinet paper and to publish it on MBIE's website, with any necessary redactions.

Recommendations

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

- 1 **agree** to release a discussion document on *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*;
- 2 **agree** to release a discussion document on the *Publication of Directors' Residential Addresses on the Companies Register*;
- 3 **authorise** the Minister of Commerce and Consumer Affairs to make editorial or minor content changes to these discussion documents prior to their public release;
- 4 **note** that the discussion documents will be released for public consultation for a period of six weeks;
- 5 **agree** to this Cabinet paper being published on the Ministry of Business, Innovation and Employment's website;
- 6 **note** that the Minister of Commerce and Consumer Affairs intends to seek Cabinet agreement on policy decisions for beneficial ownership, a director identification number and directors' residential addresses by the end of 2018.

Authorised for lodgement

Hon Kris Faafoi
Minister for Commerce and Consumer Affairs