



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Modernising the Companies Act 1993 and Making Other Improvements for Business	Date to be published	15 August 2024

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business	Office of the Minister for Commerce and Consumer Affairs
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business ECO-24-MIN-0149 Minute	Cabinet Office
31 July 2024	Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption	MBIE
31 July 2024	Appendix 2: Amendments to RSB 3 proposals	MBIE
31 July 2024	Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes	MBIE
31 July 2024	Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN	MBIE
31 July 2024	Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships CAB-21-MIN-0539.01 Minute	Cabinet Office
31 July 2024	Appendix 6: NZBN legislative proposals – additional detail	MBIE
31 July 2024	Appendix 7: Business registers and associated legislation in scope for NZBN changes	MBIE

Information redacted

YES / NO (please select)

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 Confidential advice to Government.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Better Visibility of Individuals Who Control Companies and Limited Partnerships

Portfolio Commerce and Consumer Affairs

On 20 December 2021, following reference from the Cabinet External Relations and Security Committee, Cabinet:

Creating a new register

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

Initial identification of beneficial owners

- 3 **agreed** to require:
 - 3.1 companies and limited partnerships to:
 - 3.1.1 take reasonable steps to ascertain who their beneficial owners are likely to be;
 - 3.1.2 where they determine that someone is likely to be a beneficial owner, take reasonable steps to ascertain the following information about them: full legal name; an email address used by the person; their residential address or an address for service; and
 - 3.1.3 where they obtain such information, provide it to the Registrar;

- 3.2 individuals who are shareholders or limited partners to take reasonable steps to ascertain whether they are or have become a beneficial owner, to inform their company or limited partnership if they are, and to respond to any requests in relation to their beneficial ownership status;
- 3.3 individuals who are aware, or ought reasonably to be aware, that they are or have become beneficial owners to provide the information referred to in paragraph 3.1.2 above to their company or limited partnership;
- 4 **agreed** that existing New Zealand companies and limited partnerships should have a transitional period (for example, up to 12 months) to notify the Registrar of their beneficial owners' identification details, except that, where they qualify as 'large' within the meaning of section 45 of the Financial Reporting Act 2013 and/or they have one or more offshore directors or beneficial owners, this period should be shorter (for example, only up to six months);
- 5 **agreed** that, subject to ensuring consistency with relevant concepts in legislation such as the Financial Markets Conduct Act 2013, an individual should be considered a beneficial owner if they:
- 5.1 hold, directly or indirectly, a minimum percentage ownership interest in a company or limited partnership;
- 5.2 hold, directly or indirectly, a minimum percentage of the voting rights in a company or limited partnership;
- 5.3 have the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company or general partners of a limited partnership;
- 5.4 directly or indirectly have the right to exercise, or actually exercise, significant influence or control over a company or limited partnership;
- 5.5 directly or indirectly have the right – where a trust (or other organisation which is not a legal entity) would satisfy any of the above conditions under paragraphs 5.1-5.4 above if it were an individual – to exercise, or actually exercise, significant influence or control over the activities of that trust or other organisation;

Public display of some information

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

Ability of various parties to request suppression of public information

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

Access to information on the corporate role-holder register

- 8 **agreed** that New Zealand Police, New Zealand Customs, Inland Revenue, the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, Land Information New Zealand, the Overseas Investment Office, the New Zealand Security Intelligence Service, the Reserve Bank of New Zealand, the Financial Markets Authority, the Serious Fraud Office and any other entity prescribed in regulations should have the right to request access to:
- 8.1 in respect of a specific beneficial owner, their date of birth, place of birth, email address, residential address, phone number, nationality/countries of residence, and their corporate role-holder identifier; and
 - 8.2 in respect of a specific director or general partner, their date of birth, place of birth, email address, residential address, and corporate role-holder identifier;
- 9 **agreed** that reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and any other class of entity prescribed in regulations, should have the right, upon payment of an appropriate charge, to request access to:
- 9.1 the residential address of a specific beneficial owner, director or general partner;
 - 9.2 where they obtain the prior written consent of the individual concerned, the information set out in paragraphs 8.1 and 8.2 above;
- 10 **authorised** the Minister of Commerce and Consumer Affairs to consult with the agencies listed in paragraph 8 above and the Privacy Commissioner on the drafting of the conditions for access and on-sharing of that information;
- 11 **noted** that the Minister of Commerce and Consumer Affairs will investigate whether agencies should be given secure, real-time access to information held by the Registrar of Companies;

Introducing a unique identifier

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

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

Enforcement (breach of obligations)

- 20 **agreed** that, for breaches of obligations that are ‘bright-line’ (such as failing to give the Registrar a notification by a particular date), infringement offences should be created, with the following levels of penalty:
- 20.1 for individuals, an infringement fee of \$500 or a fine imposed by the court not exceeding \$1,500;
 - 20.2 for bodies corporate, an infringement fee of \$1,000 or a fine imposed by the court not exceeding \$3,000;
- 21 **agreed** that, for breaches of obligations that are not ‘bright line’ (such as failing to take reasonable steps to ascertain who the beneficial owners are likely to be), criminal offences with an appropriate *mens rea* (fault) element should be created, with the following levels of penalty:
- 21.1 for individuals, a fine not exceeding \$10,000;
 - 21.2 for bodies corporate, a fine not exceeding \$50,000;

Enforcement (other)

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

Sundry issues

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

Scope

- 28 **agreed** that the proposals outlined in the paper under ERS-21-SUB-0051 will not apply to listed issuers if they are already subject to equal or more stringent public disclosure requirements;

Financial implications

- 29 **agreed** that the capital expenditure and one-off operating expense required to implement the corporate role-holder register outlined in paragraph 2 above, and the corporate role-holder identifier outlined in paragraph 12 above, should be funded from an allocation from proceeds of crime recovered under the Proceeds of Crime (Recovery) Act 2009, which has been treated as Crown non-tax revenue;

30 **approved** the following changes to appropriations to give effect to the policy decisions in paragraphs 2, 12, and 29 above, with a corresponding impact on the operating balance and net core Crown debt:

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

31 **noted** that the ongoing operating expenses to provide for a beneficial ownership register and an identifier system are estimated to be \$3.4 million per annum;

32 **noted** that further analysis is required on the appropriate source of funding (eg Crown and/or third-party) to meet the ongoing operating expenses;

33 **invited** the Minister of Commerce and Consumer Affairs to report back to Cabinet on the appropriate source of funding for ongoing operating expenses before issuing final drafting instructions to the Parliamentary Counsel Office;

Legislative implications

34 **noted** that a legislative bid for a Corporate Governance (Transparency and Integrity) Bill will be made in 2022, with a legislative priority of 4 (to be referred to a select committee in 2022);

35 **invited** the Minister of Commerce and Consumers Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

36 **authorised** the Minister of Commerce and Consumer Affairs to make decisions that are consistent with the above paragraphs, on any minor or technical matters that may arise during the drafting process;

37 **agreed** that the resulting draft bill be released as an exposure draft in 2022;

38 **invited** the Minister of Commerce and Consumer Affairs to thereafter report back to Cabinet with the final text of the draft bill, with a view to its introduction to the House.

Michael Webster
Secretary of the Cabinet

Secretary’s Note: This minute replaces ERS-21-MIN-0051. Cabinet agreed to amend paragraph 33.