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Business Law
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Submission on beneficial ownership of NZ companies and limited partnerships

Thank you for the opportunity to provide feedback on the Discussion Document regarding increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships (the **Discussion Document**).

ANZ Bank New Zealand Limited (**ANZ**) supports the proposal to increase transparency of the beneficial ownership of companies and limited partnerships. We would like to specifically draw your attention to our key messages set out below.

ANZ's responses to the specific questions set out in the Discussion Document are set out in Appendix I.

Key Messages

- 1. ANZ supports a modified Option 2. In essence, this would be a combination of elements of Options 2 and 3, where information captured by the Companies Office is able to be shared with law enforcement agencies and with reporting entities that are required to collect and verify customer due diligence information under the Anti-Money Laundering and Countering the Financing of Terrorism Act (AML/CFT Act).**
- 2. ANZ submits that the Companies Office must verify the identity of beneficial owners to the standards required by the AML/CFT Act in order to realise the greatest benefits of the increase in transparency.**

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, Onepath Life, UDC Finance, ANZ Investments, ANZ Securities and Bonus Bonds.

The ANZ corporate group comprises 18 New Zealand incorporated companies, with 37 separate directors. There are also 3 Australian companies that are part of the Australia and New Zealand Banking Group which are registered as overseas companies in New Zealand.

Contact for submission

ANZ welcomes the opportunity to discuss our submission with MBIE officials. Please contact Jason Moss, Head of Regulatory Affairs, at [REDACTED] 29(1)(a) .

Once again, we thank MBIE for the opportunity to comment on the Discussion Document.

Yours sincerely

[REDACTED]
29(1)(a)

David Bricklebank

General Counsel & Company Secretary

Appendix I – ANZ’s responses to specific questions in the Discussion Document

1. Do you agree with the nature of the problem? Do you have any views on the size of the problem? Do you have any evidence to support these views?

ANZ agrees with the nature of the problem. New Zealand is a desirable location for the laundering of proceeds of crime, due to the ease of carrying out business in the country and the strong reputation that New Zealand has internationally as a country with low levels of perceived corruption. However, there is a delicate balance to be struck between the ease of setting up and carrying out legitimate business, and the deterrence of activity of criminals (domestically and internationally).

2. What do you think are the benefits from increased transparency of beneficial ownership information?

Increased transparency of beneficial ownership information may discourage potential money launderers or terrorism financiers from setting up New Zealand companies and limited partnerships if they perceive the controls to be tighter. It may also assist reporting entities under the AML/CFT Act with the process of conducting customer due diligence on corporate entities and limited partnerships.

However, this is subject to the assumption that the information provided is accurate. Increased transparency benefits are only likely to be realised where the information supplied is verified by the Companies Office to a high standard and sufficient consequences are in place for those who wilfully avoid or falsify their beneficial ownership information.

3. Do you have any information on your organisation’s current compliance costs to supply or collect beneficial ownership information? Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?

Compliance costs to ANZ in collecting and verifying beneficial ownership information would be more or less the same under the different options.

However, there is an opportunity to significantly reduce compliance costs for many thousands of reporting entities if the Companies Office verified beneficial ownership (and director) information to the standard required by the AML/CFT Act. This could allow reporting entities to access and place reliance on that verified information, without each having to duplicate the same effort. In effect, the Companies Office registers could become an independent and reliable “source of truth” which could be relied upon by reporting entities needing to undertake customer due diligence on companies and limited partnerships.

4. What impact do you think the options would have on businesses deciding whether to register as a company or limited partnership?

If beneficial ownership declarations apply to both companies and limited partnerships, legitimate businesses should face minimal impact. Many New Zealand companies are small-medium enterprises (SMEs), where the beneficial ownership information is readily available and is more or less already declared to the Companies Office (e.g. simple company structures with two directors who are equal shareholders).

5. Do you have any comments on our preliminary assessment of the options?

ANZ NZ has no comment.

6. What is your preferred option?

ANZ supports a modified Option 2. In essence, this would be a combination of elements of Options 2 and 3, where information captured by the Companies Office is able to be shared with law enforcement agencies and with reporting entities that are required to collect and verify customer due diligence information under the AML/CFT Act.

7. What are your views on who should be captured as a beneficial owner of a corporate entity?

ANZ supports utilising the current definition of “beneficial owner” under the AML/CFT Act.

8. What information do you think should be collected about beneficial owners?

The information collected by the Companies Office should align, at a minimum, with the requirements of the AML/CFT Act, and include:

- Name;
- Date of birth;
- Residential Address; and
- Nationality.

The information supplied should be verified by the Companies Office to the standard required by the AML/CFT Act. Collection of the same information would minimise the impact on corporate entities and ensure there are not conflicting standards for entities to conform to (e.g. verification of identity to the standard required by the AML/CFT Act vs verification of identity to a lower standard applied by the Companies Office).

9. What information about beneficial owners do you think should not be publicly available, and in what circumstances?

Our preferred approach is that beneficial ownership information is not publicly available.

We note the current MBIE Discussion Paper on removing director’s addresses from the register (*Publication of directors’ residential addresses on the Companies Register*). In particular, due to the issues around personal safety and security, we believe the residential address information outlined in our response to Question 8 should not be available publicly. This information should only be made available in accordance with clear legal requirements or express consent.

10. What are your thoughts on the obligations that should be placed on beneficial owners? Do you have any views on how these obligations should be enforced?

The obligations to correctly declare beneficial ownership information, and provide any documentation requested by the Companies Office to verify this, should sit with both the beneficial owner and the related corporate entity. There should be a resultant offence for providing false/misleading information.

11. When do you think corporate entities should update the beneficial ownership information that they hold?

Currently, corporate entities must notify the Registrar of a change in directorship within 20 working days. We submit that the same timeframe for notifying changes in beneficial ownership information is appropriate, to ensure the information is kept up to date and relevant for AML/CFT reporting entities.

12. What are your views on the enforcement mechanisms that should be available to the Registrar?

Without adequate enforcement mechanisms, there will be a minimal deterrent effect for corporate entities that attempt to disguise beneficial ownership. Enforcement mechanisms that result in removal of the entity from the register (deregistration) could have a deterrent effect, provided the directors and beneficial owners identified as being involved in false/non-declaration are prevented from establishing new companies.

13. Do you think there are any types of corporate entities that should be excluded from the options?

Listed companies already provide a large amount of publicly available information and should not be required to provide beneficial ownership information.

14. What are your thoughts on how frequently, and in what circumstances, the registers should be updated?

Please refer to our response to Question 11.

15. What are your views on what verification should be undertaken?

ANZ submits that the Companies Office should be involved in verifying the identity of directors and beneficial owners of companies to the standards required under the AML/CFT Act. If designed and implemented correctly, this has great potential to realise significant efficiency gains and compliance cost reductions across the broad range of business sectors that are subject to AML/CFT compliance obligations. These reporting entities could place reliance on the identity verification checks performed by the Companies Office, without each needing to duplicate those checks for themselves.

16. What are your views on having a unique identification number for beneficial owners?

ANZ supports the introduction of a unique identification number, assuming this work is undertaken in conjunction with identification numbers for shareholders and directors.

17. Do you have any views on whether any changes are needed to the requirements for company share registers?

ANZ has no comment.

18. Are there any other factors that MBIE should consider?

The current MBIE Discussion Paper on removing directors addresses from the companies' register (*Publication of directors' residential addresses on the Companies Register*) should be taken into account when determining what information is required to be disclosed on the public register relating to beneficial owners. ANZ submits that the obligations should be aligned.

19. Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?

The Discussion Document (at para 22) notes that New Zealand companies involved in money laundering offshore may not undertake any business activities in New Zealand. These companies may have no IRD number or a New Zealand bank account. Accordingly, these companies may not otherwise be subject to any process of identity verification of directors/beneficial owners by New Zealand reporting entities such as registered banks. Requiring these entities to verify the identity of their directors and beneficial owners may help to combat the misuse of corporate entities.

20. Are there legitimate purposes for using a nominee director? What would the implications be if nominee directors were expressly prohibited?

ANZ considers that, in general, nominee directors are unlikely to be legitimately required.

21. Do you have any information about problems with companies or limited partnerships on the overseas registers?

ANZ has no comment.

22. Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?

Yes. The Registrar of Companies should be granted power to remove an overseas company or limited partnership from the overseas registers in circumstances where the overseas corporate entity fails to comply.

23. Do you have any information about problems related to TCSPs?

ANZ has no comment.

24. Are there any other areas of concern?

ANZ has no additional comments.