

2 August 2018

Business Law  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140  
New Zealand  
via email: [corporate.law@mbie.govt.nz](mailto:corporate.law@mbie.govt.nz)

Dear Sir or Madam

## Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Ministry of Business, Innovation and Employment on the discussion document - *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*. We have focused our feedback on the key areas and questions where we consider we can add the most value to the consultation. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

### Key points

- We understand the reasons for increasing transparency of beneficial ownership of companies and partnerships. We consider it important for the response to strike the right balance between achieving increased transparency in situations which pose identifiable risks without imposing an additional compliance burden on legitimate entities.
- We consider the proposed 'self-reporting' regime for identifying beneficial ownership may not result in better law enforcement. The persons controlling a corporate entity being used to facilitate criminal activities are unlikely to fully comply with any self-reporting requirements associated with a beneficial ownership register.
- We recommend government agencies focus on better use and analysis of existing information of beneficial ownership, particularly focusing on entities with characteristics identified as being associated with criminal activity.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at [REDACTED] 29(1)(a) or phone [REDACTED] 29(1)(a)

Yours sincerely,

[REDACTED] 29(1)(a)

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## Appendix A

### Overarching comments

As the discussion document notes, New Zealand is an easy and trusted place to do business and we understand why it is important to maintain this. The risks associated with opaqueness of beneficial ownership threaten to undermine New Zealand's good reputation. We understand it is also important for New Zealand to play its part in the international effort to combat the misuse of corporate entities by criminals.

However, we consider it important for the response to address these risks to strike the right balance. One that achieves increased transparency of beneficial ownership in situations which pose identifiable risks without imposing an additional compliance burden on legitimate entities. We consider more work is needed to determine the most appropriate approach to specifically target criminal behaviour.

Traditional law enforcement strategies for dealing with those with little regard for the law have relied on the capture of data, the timely and efficient sharing of such data amongst relevant agencies, and robust data analytics monitored by well-trained and experienced individuals. Before placing additional information demands on companies, we suggest it would be worthwhile for government to conduct a stocktake of its existing data sources and sharing protocols and consider the potential for better utilisation of the data that already exists.

The relevant agencies could then actually construct ownership chains using existing data to identify where the real knowledge gaps of particular concern to regulators arise. Additionally, key agencies could analyse existing data to identify 'problem' structures or 'blacklist' countries, which do not share ownership data on request. They could also apply more detailed and targeted requirements to companies with the specific set of characteristics identified by the Police in paragraph 22.

### Questions

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?**

We agree with the nature of the problem but have no specific views on the size. We support the conclusion made in paragraph 13 not to consider a beneficial ownership register for trusts.

We note that the definition of the beneficial owner refers to ownership or the exercise of effective control over a corporate entity. However, the key persons controlling a widely held corporate entity are the directors, not shareholders (the beneficial owners). This corporate veil is a deliberate design of company law to separate shareholders from the company they own. We understand that the privacy and separation that this offers can be used for illegitimate as well as legitimate purposes.

A number of jurisdictions already require reporting of significant shareholdings. We consider that requiring additional disclosure regarding shareholders does not seem relevant, shareholders are simply investors whereas the control of a company is undertaken by the directors. Directors make decisions on the operations and investments of the company, not shareholders. Likewise, the beneficial owners of a trust are the beneficiaries and the trustees exercise control. However, we note that the situation for a closely held company would be quite different as the shareholder owner(s) can influence effective control.

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

As outlined in the paper, the benefits would include the prevention of crime-related activity and an overall increase in transparency.

3. Do you have any information on your organisation’s current compliance costs to supply or collect beneficial ownership information?

We are a member body and so this question is not applicable to our organisation. Our members are all individuals, however we consider this cost may be difficult to quantify for many of them.

The majority of the information currently collected relates to the immediate (first tier) ownership of entities. This is a deliberate design of company law - a company is entitled to treat the shareholder on the register as the owner. This means the company is not a party to disputes arising over the ownership of the shares. Additionally, there are practical reasons for this as entities should not be asked for information they cannot obtain, or could only obtain if they received remarkable levels of co-operation from shareholders.

Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?

The compliance costs for legitimate businesses are potentially substantial if the beneficial ownership concept is implemented without careful consideration of the current risks, existing data sources and the use made of it by Government agencies, the costs and benefits.

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

Some businesses may reconsider their options.

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

The assessment factors seem appropriate, however there is no factor which covers the accuracy of the information. We understand that a key objective for increasing transparency of beneficial owners is to detect persons engaged in criminal activity. We also note concerns expressed in the paper that information is not always accurate and requests for information may tip off criminals. We consider it unlikely that such persons will fully comply with any self-reporting requirements associated with collecting this information. And if they do “comply”, the information could be inaccurate or misleading. As a consequence, we consider the proposed ‘self-reporting’ regime for identifying beneficial ownership outlined in the discussion document may not result in better law enforcement.

We consider the analysis of the assessment factors to be a little superficial. For example, paragraph 83 states that Option 3 would be more likely to support the operation of the AML/CTF system, although it notes that reporting entities would still need to undertake their own verification of the information. Paragraphs 98 and 99 go on to say that any reduction in compliance costs for reporting entities would be ‘modest’.

Further, we note that the Financial Action Task Force (FATF) Recommendation 24 does not require companies to provide beneficial ownership information. Rather, it states that “*countries should 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*”. In meeting this aim, the interpretative note to Recommendation 24 states that “countries should ensure that either:

- a) Information on the beneficial ownership of a company is obtained by that company and made available at a specified location in their country; or
- b) There are mechanisms in place so that the beneficial ownership of a company can be determined in a timely manner by a competent authority” and in doing this countries can use existing information such as information held by other competent authorities and stock exchanges.

We therefore recommend that a wider range of options are considered, including the use of existing information.

#### 6. What is your preferred option?

We consider the range of suggested options to be narrow as they only include options where the company collects information on their beneficial owners.

As noted earlier, we believe that better data verification, usage and exchange between Government agencies could enable more effective identification of beneficial owners and be less costly for legitimate New Zealand businesses.

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

Alignment with the AML definition makes sense.

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

As noted earlier, our primary position is that we don't support the proposed options. However, if one of the proposed options should proceed, we consider items a, b, c, d, and f in paragraph 111 to be appropriate but we don't consider e), date and place of birth to be necessary.

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

No information should be publicly available as a right. We consider an application should be made with an explanation as to why access is sought.

#### 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?

We note that if one of the proposed options is pursued, the obligation would need to be on the beneficial owner as the corporate entity would have no current mechanism for obtaining such information beyond that currently held.

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

If one of the proposed options is pursued, we consider an annual confirmation/update process may be appropriate as well as updates following a major change in ownership or structure. This could be achieved in the main via the annual Companies Office return filing.

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

As noted, if the corporate entity does not have any mechanism for obtaining the information, they should not be the subject of enforcement mechanisms. The current enforcement mechanisms in paragraph 124 b and c seem appropriate and the suggestion of an infringement notice for beneficial owners seems reasonable.

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

We consider listed and widely-held companies pose little risk and should be considered for exemption from any proposed beneficial ownership reporting requirements. These entities are already subject to substantial disclosure requirements, there are practical difficulties company and share registry officials would encounter in gaining additional traced shareholding data beyond that already held and the shareholdings in such companies are considered relatively low risk in the eyes of regulators.

Similar comments apply to shares held by superannuation funds, offshore pension funds, charities and mutual associations.

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

If one of the proposed options is pursued, the register should be updated on an annual basis as noted in our response to question 11.

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

The appropriate types of verification will depend on the final design of the selected option. We consider that it would be more appropriate to provide our views on verification at that stage.

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

Whilst we acknowledge the concept is good, we have concerns about how it would be practically implemented and managed, particularly for non-New Zealand residents.

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

No specific comments

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

No specific comments

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

No specific comments

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

No specific comments, however, we have suggested that there is the opportunity to add appointers of nominee directors to the public register as part of the introduction of a Director Identification Number (DIN).

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

No specific comments

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

We note that this would capture all branches of overseas companies. Our comments made in relation to widely held companies at question 13 would be equally applicable here, unless there were concerns with the legislative requirements in place in the country of incorporation.

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

No specific comments

24. Are there any other areas of concern?

No specific comments

## Appendix B

### About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.