

Submission on discussion document: *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*

Your name and organisation

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Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Responses to discussion document 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?

Generally, we agree with the nature of the problem, especially overseas. However, speaking to the size of the problem in New Zealand, we wish to express the view that it is declining due to the implementation of financial reporting regimes like the Common Reporting Standard (“**CRS**”) and the Foreign Account Tax Compliance Act (“**FATCA**”) being introduced to combat tax evasion; the expansion of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“the **AML Act**”) to combat money laundering and the financing of terrorism; and the requirement for foreign trusts to register with and disclose to the IRD information pertaining to controlling persons in line with the New Zealand foreign trust disclosure rules (“**NZFTDR**”) established under the 2017 amendment to the Tax Administration Act 1994 (“the **TAA**”). These regimes apply not only to lawyers and accountants but also to other providers who establish, administer and manage companies and limited partnerships for or on behalf of individual clients.

2

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

No benefits beyond the current level of transparency. As mentioned above, there are reporting regimes in place that have mechanisms to sufficiently address the issue. The AML Act was recently extended to apply to real estate agents, lawyers, accountants, conveyancers, the New Zealand Racing Board, and some high-value dealers in a staggered manner. The AML Act applies to law firms from 1 July 2018. Sufficient time should be allowed to pass before conclusions are drawn on the success of the extension of the Act.

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?

Current compliance costs for our organisation, which has a dedicated internal compliance team, are around NZD500,000 to NZD800,000 per year. Outsourcing compliance duties to a provider currently costs around NZD1,000,000 to NZD1,200,000. There would certainly be increased costs if any of the options proposed by MBIE were implemented. We submit that the costs would outweigh the benefits; the ultimate costs would be borne by the clients whom, as a result, would be dissuaded from conducting their business in New Zealand and this will therefore cause a loss to the New Zealand economy.

4

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

An inherent negative implication would be the impact on business dealings and negotiations. Business depends on and is underpinned by the ability for corporations to carry out their dealings with one another under a certain degree of confidentiality. It is usual for the parties to enter into a non – disclosure agreement before commencing negotiations and/or providing confidential information. Investors may feel uncomfortable (and perhaps commercially disadvantaged) about their private contractual arrangements being made public. Ultimately, business in New Zealand is largely built upon privacy and confidentiality. A globalised world needs transparency, yet this should not come at the cost of the freedom to conduct safe, secure and confidential business.

If the details of a beneficial owner of a company or limited partnership are made public, it may put that individual or their family in danger, who would otherwise have legitimate reasons to preserve their privacy. For example, a public register of beneficial ownership may put the beneficial owner or their family at substantial risk of physical or emotional harm, especially those in jurisdictions where personal security is of real concern. Whilst extreme, the risk of kidnappings is a reality that should not be overlooked, citing the famous example of Freddy Heineken. Connecting an individual to a successful company can have the obvious impact of connecting that person to wealth; giving the wider public this information has potentially dangerous consequences.

Further, in a business context the disclosure of beneficial ownership can disadvantage one party to a negotiation. To provide an example, where two parties are bargaining over the price of a deal, if one party were to identify that the beneficial owner of the opposing party's company were substantially wealthy, then this would give them an unfair advantage in the negotiations knowing how far they can drive the price up. Additionally, it could allow one party to obtain information regarding that particular individual's circumstances or values which could be taken advantage of in negotiations.

We need to weigh up acting in the public's interest with the individual's rights to privacy. Apart from government agencies, the police and FIU, who else has a legitimate interest to access the information?

Generally, in light of the reporting regimes that have already been implemented and the above points, we do not support public disclosure of beneficial ownership of companies and limited partnerships. This is likely to deter foreign investment and business and may even push New Zealand individuals and businesses to conduct their business elsewhere.

5

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

Option 1: Corporate entities to hold up-to-date information about their beneficial owners

We agree with this option, in many cases this is already catered for by the mechanisms of CRS, FATCA, the AML Act and the NZFTDR. Where the current systems fail to meet this standard, we agree that measures should be put in place. It seems obvious that a prudent and legitimate corporate entity should keep records on its beneficial owners, and in the context of TCSPs, providers should keep these records on their clients (as a protection for themselves if anything).

Option 2: Beneficial ownership information is included on the registers with restricted access

Option 2 is similar to option 1, we do not expressly disagree with this approach but argue that the benefit would be sufficiently covered by option 1 where the information can be provided to government agencies upon receipt of a valid request under law. Option 2 would create an unnecessary administrative burden on both corporate entities and the Companies Office.

Option 3: Beneficial ownership information is included on the registers with public access

We disagree with this option for the reasons outlined at '4.'

What is your preferred option?

Option 1, reasons outlined above.

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

The ultimate beneficial owner, being the individual (not company or other entity) that has a direct financial and beneficial interest in the shareholding/interest in the corporate entity.

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

Currently under AML, CRS, FATCA, NZFTDR and our organisation's internal policies we collect the following:

- certified/notarised passport copies and proof of address;
- tax residency and tax identification number ("TIN");
- details of source of wealth; and
- self-certification documents.

Further to the above, our compliance team carries out independent checks of the beneficial owners to screen for any red flags (i.e. court proceedings; criminal convictions; and connections to politics and governments).

Under the AML Act, law firms will be audited by the Department of Internal Affairs to check if their records, compliance program and risk assessment comply with the AML Act. This is a further check to ensure that reporting entities comply with the Act.

8	<p>What information about beneficial owners do you think should not be publicly available, and in what circumstances?</p>
	<p>The information on the beneficial owners themselves should not be publicly available. This should only be available to government agencies upon valid request, as per MBIE's suggested option 1.</p>
9	<p>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?</p>
	<p>Beneficial owners who conduct their business and operations through law firms, accounting firms, or other institutions should be obliged to provide those institutions with information regarding their identity, residency, tax information and contact details, once a year so this can be provided to government agencies upon valid request. In many cases, the aforementioned is catered for and regulated by the AML Act, CRS, FATCA and the NZFTDR.</p> <p>Where beneficial owners are conducting their business and operations independently of law firms, accounting firms, or other institutions, they should have information concerning their identity, residency, tax information and contact details prepared and updated and be willing and able to provide this to government agencies (i.e. New Zealand Companies Office) upon valid request. Like in the TAA (i.e. failure to provide information requested to law firm in a CRS self-certification), financial penalties could be imposed on the individual who fails to provide the information to the relevant government agency.</p>
10	<p>When do you think corporate entities should update the beneficial ownership information that they hold?</p>
	<p>Annually.</p>
11	<p>What are your views on the enforcement mechanisms that should be available to the Registrar?</p>
	<p>Enforcement mechanisms exist under current regimes, citing section 17 of the TAA (as well as other financial/criminal penalties for failure to provide information and/or comply under the TAA and AML Act) as an example. An extension of this section to MBIE/the Companies Office would be sufficient for addressing this issue.</p>
12	<p>Do you think there are any types of corporate entities that should be excluded from the options?</p>
	<p>Entities should be treated equally under mechanisms for disclosing beneficial ownership, otherwise this could have potentially negative 'avoidance' effects whereby certain individuals may be inclined to set up certain corporate entities over others to avoid disclosure. We would like to express the opinion however that disclosure should not apply to individuals who are tax resident in jurisdictions who fail to meet the standards of the Financial Action Task Force ("FATF") and that are categorised as 'High Risk' due to high levels of corruption and the persecution of individuals holding assets overseas.</p>
13	<p>What are your thoughts on how frequently, and in what circumstances, the registers should be updated?</p>
	<p>Referring to above answers, we are of the opinion that a register of beneficial owners should not be implemented but rather the information be made available to government agencies</p>

upon valid request.

14 What are your views on what verification should be undertaken?

Law firms, accounting firms and other institutions should verify information concerning their clients by requesting:

- certified/notarised passport copies and proof of address;
- tax residency and tax identification number (“TIN”);
- details of source of wealth; and
- self-certification documents.

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

We respectfully disagree with this suggestion; this would cause an unnecessary administrative and compliance burden when the information on beneficial owners should rather be provided to government agencies upon valid request (as per option 1).

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

We believe that the public disclosure of share registers on the Companies Register would be a positive development; it would lend assistance when trying to understand the historic changes to a particular company’s previous shareholders.

17 Are there any other factors that MBIE should consider?

No comments.

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

We are of the opinion that the current mechanisms sufficiently combat the misuse.

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

We make no comments on the use of nominee directors, other than the point that the concept conflicts with many principles of company law.

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

A number of member countries of the European Union have not yet allowed public disclosure of the beneficial ownership information that has been/ is being collected. They are weighing up acting in the public’s interest with the individual’s rights to privacy. They are weighing up who else (besides government agencies, etc.) have a legitimate interest to access. Should all members of the public have access to the information or should only certain groups be permitted to have access (i.e. lawyers, accountants, regulated corporate/trust service providers, journalists etc.) to the information? Do journalists have a legitimate interest to access the information?

21 Do you think there should be obligations on companies and limited partnerships on the

	overseas registers to provide information about their beneficial owners?
	No, this will deter overseas companies and investors from conducting business with New Zealand.
22	Do you have any information about problems related to TCSPs?
	For trust and company service providers, there is already a large compliance burden on this industry following the implementation of CRS, FATCA, NZFTDR and the extension of the AML Act to ensure the present and ongoing collection of beneficial ownership information. We are of the opinion that these current regimes have legitimised the industry and restored public faith. Any further obligations or restrictions pose a threat to the continuation of the TCSP industry altogether.
23	Are there any other areas of concern?
	No comments.

Other comments