

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

Your name and organisation

Name	Justin Hygate
Organisation	Global Registries Limited

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?

Yes. Anonymous shell companies or anonymous parties within limited partnerships enable corruption, fraud, organised crime and tax evasion. New Zealand trades on a global reputation of being free from corruption

https://www.transparency.org/news/feature/corruption_perceptions_index_2017

Our corporate registers have been subject to abuse by global players as we balance the need for Ease of Doing Business and the integrity of our registers. The companies register along with the FSPR have been subject to abuse in particular.

<https://www.interest.co.nz/opinion/86769/gareth-vaughan-argues-companies-office-needs-pull-finger-and-help-fma-out-if-nzs>

The wider the access to high quality data on who owns what, the harder it will be for corrupt individuals to hide. Organisations such as Transparency International, Global Witness along with projects such as Open Ownership are setting the agenda to redress the abuses of corporate registers.

The UK introduced the world's first fully open register of the real owners of its companies in 2016. While the Persons of Significant Control register has the potential to make it much more difficult for criminals and the corrupt to launder dirty cash through UK companies, analysis by Global Witness suggests significant issues with ensuring data quality and compliance. New Zealand can benefit from this early attempt. And can leverage the open standards being promoted by the OpenOwnership project*, upon whose standards the UK data was able to be so well analysed. See:

<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/>

* OpenOwnership is driven by the leading transparency NGOs: Transparency International, Global Witness, ONE, the Web Foundation, Open Contracting Partnership, and the B Team, along with OpenCorporates, and initially funded by the Department for International Development (UK).

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

They would support New Zealand's global reputation. They would reduce the opportunity for abuse of our economic tools for nefarious aims (terrorism, human trafficking, environmental damage and the raft of other uses, alongside pure greed and tax evasion) that the absence of transparency enables.

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?

I believe the compliance costs are minor. Corporate entities are required to comply with annual renewal processes to regulators or registrars already. Information on ownership is already known (for small entities it is very easy and for large listed entities there are share registrars in place).

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

There are issues around competitive advantage, IP and 'first mover' type decisions. For example if a well-known business player were to be publicly associated with an entity (as a beneficial owner) then that may provide competitors with information they might otherwise not have had. I am not convinced that the public register would prove fatal to innovation or investment. On balance I think New Zealand would benefit from a transparent and corruption free reputation.

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

They're great. I am pleased to see the discussion on both this issue and on director addresses.

6 What is your preferred option?

A public (electronic) register of beneficial owners. Free to search and access.

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

The same set of criteria as is covered by the UK's Persons of Significant Control Act. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf

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

Full legal name, date and place of birth along with current residential address.

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

Date and place of birth along with current residential address (in keeping with the proposed changes to directors addresses).

1 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 should be; initial disclosure of ownership along with updates (if their shareholding(s) change).

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

At incorporation, and then at a minimum as part of the Annual Return process. It may also be possible to trigger an update in the case where a corporate entity is sold or where the majority ownership changes.

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

An ability to seek confirmation at any time as to who the beneficial owners are. An ability to seek evidence of identity. An ability to fine and or prosecute for non-compliance. An ability to remove an entity from the register for non-compliance.

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

No

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

As noted above at incorporation, and then at a minimum as part of the Annual Return process. It may also be possible to trigger an update in the case where a corporate entity is sold or where the majority ownership changes.

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

In the first instance self-disclosure such as with the UK's Persons of Significant Control register. <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

This can be enhanced by requiring formation agents, lawyers and accountants to validate identity and ownership where they act for an entity.

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

I am in favour, the benefits of having the ability to both easily maintain records (as an owner) and to 'map' ownership goes to the heart of the beneficial ownership regime. Unique identifiers, such as those suggested for directors (both here and in Australia) provide certainty and ease of compliance.

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

The need to accommodate evidence of identity, and the unique identification number.

1 Are there any other factors that MBIE should consider?

I believe strongly that any beneficial ownership registers should be public and that they should be compliant with international open data standards*.

Open data is digital “structured” or “machine-readable” data that is “made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed by anyone, anytime, anywhere.”

In other words, any user of open beneficial ownership data should be able to access the data, search it freely and/or download it as structured data -- for example, a .csv file that can be imported into Excel -- , and use it for any purpose. See

<https://openownership.org/uploads/Briefing%20on%20beneficial%20ownership%20as%20open%20data.pdf>

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

The registers of banned and prohibited directors might be a tool that could accommodate the details of officers of entities proven to be misused.

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

I do not believe there are legitimate purposes for the use of nominee directors. The New Zealand Companies Office has long refused to recognise ‘alternate’ directors. This is also the correct approach. The public and business community need to have confidence that the named directors of an entity are correct and have accountability.

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

None other than those I read about in the media and sites such as interest.co.nz

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

The same rules MUST apply to companies and limited partnerships on the overseas registers. Additional steps should be taken to confirm the authenticity of the individuals involved (evidence of identity). It is consistently these entities and individuals who bring New Zealand’s reputation into disrepute.

2 Do you have any information about problems related to TCSPs?

No

2 Are there any other areas of concern?

No

Other comments