

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?

We agree that there are at least two aspects to this problem: the abuse of companies for criminal purposes (e.g. for money laundering or corrupt activities) and insufficient information to allow companies, government departments, non-profit organisations and individuals to understand who they are doing business with. In our experience, there is also a third aspect, the inability of citizens to hold companies accountable for how they conduct business and to understand who really benefits from business activities, especially large projects such as major infrastructure projects, large scale procurement or the exploitation of natural resources.

These are global problems that many countries, both developed and developing economies, are tackling. A number of international organisations have initiatives to improve access to beneficial ownership information to tackle criminal activities, tax evasion or to improve accountability of the exploitation of natural resources. The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has 153 member countries, of which more than 100 have committed to automatic exchange of information between tax authorities, including the exchange of beneficial ownership information. The Financial Action Task Force has produced standards and guidelines on beneficial ownership disclosure for its 37 members but is seen as setting the standard more widely in this area. The 51 implementing countries of the Extractive Industry Transparency Initiative (EITI) have committed to reporting beneficial ownership information on companies active in the extractive sector by 1 January 2020. These are mainly resource rich countries in the developing world but also the UK and Norway. EITI has based its beneficial ownership definition on the FATF recommended definition. The UK and Ukraine (both EITI implementing countries) have already legislated for and implemented a beneficial ownership public register which covers most companies in their respective economies. Azerbaijan, which withdrew from EITI in March 2017, is nevertheless continuing with implementation of beneficial ownership disclosure as it sees benefit to its reputation as a destination for foreign

investment.

2

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

In our view, the benefits of increased transparency of beneficial ownership information are:

- Reduces the ability of criminals to use companies for illegal purposes such as money laundering, engaging in corruption or financing terrorism and organised crime;
- Reduces the scope for companies to engage in tax evasion through the use of complex corporate structures;
- Increases the understanding of citizens, government departments and regulators on who is really benefiting from economic activities, especially large scale business transactions, and therefore increases the ability to hold to account those who are benefiting on how they conduct business and their overall contribution to the economy;
- Improves the business environment for legitimate companies through giving timely access to information on who they are doing business with and thereby increasing confidence in the integrity of business partners, customers and suppliers. This is a benefit for existing businesses, but also assists in attracting new inward investment.

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?

4

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

5

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

6

What is your preferred option?

7

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

Beneficial owners can only be the individual natural persons who directly or indirectly own or control a company.

8

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

The following information should be collected:

- Name

- Level of ownership or control
- Nature of ownership or control
- Date ownership or control became effective
- Date of birth
- Nationality
- Contact address
- Unique identification number (e.g. tax identification number, passport number or similar). Also see below, answer to question 16.

9

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

Personal information such as date of birth and contact address should not be publicly available to reduce the risk of identify fraud and threats to personal security.

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?

Beneficial owners should be obliged to:

- Confirm that the information collected and reported is accurate
- Ensure that the information is kept up to date and to notify of any changes.

11

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

Beneficial information should be updated at least annually or when a change occurs.

12

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

The Registrar should have access to the following enforcement mechanisms:

- Demand that information is provided or updated within a specified (short) period of time;
- Impose fines for non-compliance or provision of inaccurate or incomplete information;
- De-register companies for repeated or prolonged non-compliance;
- Apply for individuals to be barred as company directors in extreme cases.

13

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

Companies that are wholly listed on a major stock exchange should be exempted from providing beneficial ownership as they are already subject to stringent corporate governance regulation. However, subsidiaries of listed companies should still be subject to the beneficial ownership reporting requirements.

14

What are your thoughts on how frequently, and in what circumstances, the registers should

	be updated?
	The registers should be updated at least annually and when companies report amended details.
15	<p>What are your views on what verification should be undertaken?</p> <p>In our experience, verification of beneficial ownership in other jurisdictions has proved one of the more difficult aspects of beneficial ownership disclosure. Companies and individuals are self-reporting and where there are foreign individuals involved, there may not be a method for verifying the information as registers may not be public or may not be up-to-date.</p> <p>Verification methods can include:</p> <ul style="list-style-type: none"> • A requirement for an executive director (e.g. the chief executive) to sign off on the veracity of information supplied in the knowledge that there are legal penalties for non-compliance as well as negative reputational impacts; • Cross-check against other databases such as company registers, tax payer information, passport applications and electoral registers; • Exchange of information with beneficial ownership registers in other jurisdictions.
16	<p>What are your views on having a unique identification number for beneficial owners?</p> <p>We believe that a unique identification number for each individual beneficial owner has several advantages as such a number:</p> <ul style="list-style-type: none"> • Allows individuals who have beneficial ownership of multiple companies to be identified, • Prevents confusion between individuals with similar or identical names, • Prevents confusion between different transliterations of the same name from a foreign language, especially languages which use a non-latin alphabet e.g. Cyrillic or Arabic, • Prevents an individual who has committed fraud or other crimes or been disbarred as a director from registering ownership or control of a new company.
17	<p>Do you have any views on whether any changes are needed to the requirements for company share registers?</p>
18	<p>Are there any other factors that MBIE should consider?</p>
19	<p>Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?</p>
20	<p>Are there legitimate purposes for using a nominee director? What would the implications be if nominee directors were expressly prohibited?</p>
21	<p>Do you have any information about problems with companies or limited partnerships on the</p>

overseas registers?

The problems that we have encountered with companies on overseas registers are:

- A lack of understanding about the meaning of beneficial ownership and the benefits of collecting and reporting such information. In particular, we have encountered a lack of understanding about the difference between legal and beneficial owners;
- Sensitivity over making such information publicly available due to the impact it will have on the privacy of individuals, especially for those who hold public office;
- Lack of verification of information provided;
- Refusal to provide information;
- Provision of incomplete information;
- Confusion caused by different practices in transliterating foreign names.

22

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

There should be an obligation to provide beneficial ownership information on the ultimate owners of New Zealand-registered companies, wherever those beneficial owners are resident. One of the issues we have encountered in other jurisdictions is the situation where a locally registered company is owned by a foreign company and the ultimate beneficial owners are some distance, both physically and in the corporate structure, from the local company. In such cases, those responsible for providing beneficial ownership information can be unfamiliar with the requirement and even with the concept. This can lead to delays in providing information or even refusal to do so. This is especially the case where they are based in jurisdictions that do not have a tradition of transparency and such information has long been regarded as a commercial secret.

23

Do you have any information about problems related to TCSPs?

24

Are there any other areas of concern?

Other comments

International best practice for disclosure of beneficial ownership is still developing, although there are various examples at the forefront of this issue. These include individual countries and supra-national organisations.

The challenge for any country looking to adopt a beneficial ownership disclosure regime is to balance the needs and desires of the national government, businesses and community stakeholders with developing international norms.

Although there is no agreed international standard, there is a significant amount that can be learnt from the experiences of other countries, in terms of:

- Developing appropriate definitions
- Engaging with positive and less positive stakeholders

- Deciding on mechanisms that work in the context of existing legislation, systems and institutional capacities.