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

The Problem

We acknowledge that there is overwhelming evidence that criminals make use of the anonymity associated with corporate structures in order to launder money.

We understand and support moves to make this more difficult including through measures requiring the identification of beneficial owners.

However, we believe that any proposal which seeks to place identifying details of those persons in ultimate beneficial control of Companies or Limited Partnerships on a register (whether available to the public at large or on a restricted basis to Government agencies) is likely to have a disproportionate (and negative) impact on businesses in New Zealand.

The Current Rules and NZVCA's Position

As background (and as summarised in paragraphs 65 to 67 of MBIE's discussion paper (**Discussion Paper**)), under current rules, there are already significant requirements placed upon Companies and Limited Partnerships to identify their ownership structure. Not least of these are the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML Act**) which require Limited Partnerships (amongst others) to maintain comprehensive records of the ownership of their Limited Partners.

Although it is our understanding that MBIE does not regard the current rules as providing sufficient transparency in relation to the ultimate beneficial ownership of Companies or Limited Partnerships we believe that the current requirements already provide an appropriate balance between the requirement for transparency and the needs of business. Our preference, therefore, is that there be no additional compliance burdens placed upon NZ business (and the investment industry in particular). Our views in this regard are particularly strong in respect of Limited Partnerships for the reasons set out below.

Our Understanding of the Proposals

We understand the proposed options for resolving the perceived shortcomings of the current regime to be:

- ***Option 1 (paragraphs 68 and 69 of the Discussion Paper):*** Companies and Limited Partnerships (together, **Corporate Entities**) will be required to hold details of their ultimate beneficial owners but disclosure of this information would only be required on request from the Registrar who may only share that information with certain government agencies.
- ***Option 2 (paragraphs 70 to 72 of the Discussion Paper):*** Corporate Entities would be required to provide up to date information relating to their ultimate beneficial ownership to the Registrar but that information would only be made available to certain government agencies.
- ***Option 3 (paragraphs 73 and 74 of the Discussion Paper):*** Corporate Entities would be required to provide up to date information relating to their ultimate beneficial ownership to the Registrar and that information will be made publicly available.

The NZVCA's Preferred Approach

The NZVCA was established in order to represent the interests of persons making and managing private investments in New Zealand Companies.

Since the introduction of the Limited Partnerships Act in 2008, many of these investments have been made by means of Limited Partnerships. This is consistent with global practice in the investment industry.

One significant attraction of the Limited Partnership structure is the confidentiality which it affords to its investors. The Discussion Paper notes (at paragraph 13) that "privacy and confidentiality have historically been recognised as among the central virtues of trusts". We believe that this concept applies, equally, to the role of Limited Partner within a Limited Partnership.

Any proposal which involves compromising this confidentiality (by making details of the Limited Partners available to the public) will necessarily reduce the attraction of New Zealand as an investment target. If this is done in a manner which is inconsistent with other comparable jurisdictions the prejudicial effect will be magnified.

Given the importance of the Limited Partnership to the business models of our members (and although we believe that the current regulatory settings are appropriate for Companies), we oppose any change to the current disclosure regime applicable to Limited Partnerships. At the very most, we would consider Option 1 to be the high-water mark of acceptable regulation in respect of the disclosure of information relating to Limited Partners. We note that any support we were to offer for Option 1, in respect of Limited Partners would remain subject to being satisfied that the Registrar could only call for ultimate beneficial ownership information in respect of Limited Partners in a very limited set of circumstances.

We believe that the maintenance of current regulatory settings in respect of Limited Partnerships (or, at most, the application of Option 1) is justified on a number of bases:

- As noted in paragraph 11 of the Discussion Paper, where criminal misuse has been uncovered, the majority of cases have involved New Zealand companies (as opposed to Limited Partnerships). We disagree that if the proposals were applied to Companies and not to Limited Partnerships that this would result in criminals turning to Limited Partnerships – given the complexity associated with Limited Partnership structures, this is not, in our view a credible alternative.
- As noted in paragraph 137 of the Discussion Paper, information about the General Partner of a Limited Partnership is already publicly available. As you will be aware, many of these General Partners are companies and will therefore be subject to whatever arrangements become applicable to those entities. This will give an enhanced degree of visibility over those persons who control the Limited Partnership.
- The General Partners of Limited Partnerships are already subject to obligations to conduct customer due diligence under the AML Act. There is already, therefore, a significant regulatory burden placed upon the General Partner to ensure that any new Limited Partner is not simply a conduit for criminals. Any enhancement to this regime would simply place an impractical administrative burden upon our investment industry.
- The investment community in New Zealand is small, as is the pool of institutional capital which ultimately funds the Limited Partnerships which comprise our PE/VC industry. The industry participants have a good familiarity with each other and it is extremely unlikely that a substantial new investor could be introduced to the community without that investor having had a significant degree of formal (and informal) due diligence done upon it.

- It is likely to be extremely difficult, in the context of typical investment structures to determine which Limited Partners hit the “ownership” and “control” thresholds given that these issues are determined, not purely through the ownership of shares or limited partnership interests but also by the rights offered through private documents such as the Limited Partnership Agreement or Shareholder Agreement. It is simply not practicable to make those documents public and, without them, there will be no real way of policing the thresholds.
- Any obligation upon the General Partner of a Limited Partnership to determine (and disclose) the ultimate beneficial ownership of the Limited Partners in that Limited Partnership will impose a significant time and cost burden upon the General Partner (noting that, unlike in the context of a Company, the General Partner will be undertaking diligence upon third party entities most of which will be resident offshore).