

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

Your name and organisation

Name	Lynne Carroll, Head of Risk and Compliance
Organisation	Perpetual Guardian

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, we agree that beneficial ownership information is difficult to access. Accessing beneficial ownership information can at times be very time consuming, increasing the compliance costs associated with the AML/CFT requirements.

It would be helpful if more evidence was provided in the report about how this may reduce the occurrence of money laundering and act as a deterrent.

2

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

There would be a significant benefit for companies that are required to undertake AML on customers. This is because increased transparency would reduce the time involved in obtaining beneficial ownership information and potentially reduce compliance costs. We also concur that increased transparency will act as a deterrent for criminals and maintain New Zealand's reputation as a good place to do business by ensuring it keeps pace with international standards, such as FATF recommendation 24.

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?

We have no specific evidence of current compliance costs; however we estimate that at times identifying a beneficial ownership can take one to two hours.

4	<p>What impact do you think the options would have on businesses deciding whether to register as a company or limited partnership?</p>
	<p>There will of course be increased obligations on businesses with regard to maintaining the register however we consider the costs associated with this to be minimal. We also consider that this could in fact save time for companies who regularly receive beneficial ownership requests, particularly if those companies are listed or licenced and the register indicates that these entities do not need to provide beneficial ownership details because simplified due diligence can apply.</p>
5	<p>Do you have any comments on our preliminary assessment of the options?</p>
	<p>-</p>
6	<p>What is your preferred option?</p>
	<p>Our preferred option is option 3. Option 3 will enhance New Zealand's reputation and increase transparency. Whilst we agree option 2 will benefit law enforcement agencies and go some way to deterring criminal activity, we consider option 3 is the only option that will benefit companies required to undertake due diligence on customers. Public access will ensure that information about beneficial owners can be reliably obtained without extensive searches being undertaken.</p>
7	<p>What are your views on who should be captured as a beneficial owner of a corporate entity?</p>
	<p>We consider that individuals that fall into the categories set out in 109 a,b and e should be caught. We do consider 109c is necessary and consider it would be a step too far to include close family relationships, personal connections or contractual associations. With regard to 109d we consider it may be helpful to have this information on a register however senior management positions within different companies may differ particularly with regard to the level of effective control that they have. This may give rise to inconsistencies. If this were to be included, we consider this should be restricted to titles as opposed to names because senior management roles arguably will likely change more often than shareholders.</p>
8	<p>What information do you think should be collected about beneficial owners?</p>
	<p>The information collected for beneficial owners should be the same as the information collected for shareholders and directors by the Companies Office.</p>
9	<p>What information about beneficial owners do you think should not be publicly available, and in what circumstances?</p>
	<p>We do not consider that all information should be publicly available and do believe there may be some issues associated with having extensive personal details available on a public register. Significant consideration should be given to how this register may give rise to fraud and unnecessarily disclose personal information about an individual. Protections should be put in place to address this and we suggest the information disclosed publicly on the register should align with the information required to be disclosed by the Companies Office.</p>
10	<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>Our response to this question would be dependent on the proposed option taken with regard</p>

	to the register.
11	When do you think corporate entities should update the beneficial ownership information that they hold?
	In order for the register to be an effective and reliable tool, the beneficial ownership information should be updated when a corporate entity would reasonably be expected to be aware that there may be a change to beneficial ownership.
12	What are your views on the enforcement mechanisms that should be available to the Registrar?
	We consider that the proposed mechanisms set out in 124b and c are acceptable as they are subject to thresholds e.g. persistent non-compliance. The enforcement mechanisms should reflect the requirements and obligations of directors with regard to the companies register.
13	Do you think there are any types of corporate entities that should be excluded from the options?
	Companies subject to simplified due diligence should be excluded from providing beneficial ownership information such as listed or licensed companies. The register should however reference this exclusion so that this can be relied on for AML purposes. Excluding 'low risk' small companies is unnecessary and this may only give rise to ambiguity because the level of risk associated with a company can vary and be dependent on the type of business undertaken. This will also ensure that shell companies are captured.
14	What are your thoughts on how frequently, and in what circumstances, the registers should be updated?
	The register should be updated as and when an entity becomes aware of a change.
15	What are your views on what verification should be undertaken?
	The interpretation of 'proactive verification of the information provided using a risk based approach' may vary and give rise to ambiguity. Entities should be able to rely on the information within the register.
16	What are your views on having a unique identification number for beneficial owners?
	This may increase efficiencies as some individuals will have links to several companies. In addition, this may remove confusion as two or more individuals may share the same name.
17	Do you have any views on whether any changes are needed to the requirements for company share registers?
	The share register on the Companies Office should be subject to the same requirements as the beneficial ownership register to ensure consistency and transparency.
18	Are there any other factors that MBIE should consider?
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19	Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?

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20	Are there legitimate purposes for using a nominee director? What would the implications be if nominee directors were expressly prohibited?
21	Do you have any information about problems with companies or limited partnerships on the overseas registers?
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22	Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?
	Yes for transparency reasons and because it is difficult to find the beneficial owners for companies where we need to search overseas sources.
23	Do you have any information about problems related to TCSPs?
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24	Are there any other areas of concern?
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Other comments