

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

Your name and organisation

Name	Jillian Walsh, Corporate Counsel
Organisation	Public Trust

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	<p>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?</p> <p>At a general level we agree that it can sometimes be difficult to access beneficial ownership information, particularly in complex structures. A statutory requirement to procure and maintain beneficial ownership information would assist to address these difficulties.</p>
2	<p>What do you think are the benefits from increased transparency of beneficial ownership information?</p> <p>From an AML/CFT compliance perspective, increased transparency of beneficial ownership information would be useful as an additional source of identity verification information.</p>
3	<p>Do you have any information on your organisation's current compliance costs to supply or collect beneficial ownership information?</p> <p>Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?</p> <p>As Public Trust is a Crown Entity, further guidance as to what beneficial owner information of Crown Entity subsidiaries is to be provided is required before we can estimate our compliance costs. However, as a Crown Entity with a stable beneficial owner, we do not expect our compliance costs to increase significantly.</p>
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>The options may have some deterrence effect, however may not be completely effective if there is no way of verifying the information, or compelling beneficial owners to provide the information.</p>

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

We query how the preferred option 3, which results in a worse than status quo result for the protection of privacy, aligns with MBIE's consultation on the publication of directors' residential addresses on the companies register, which moves towards better safety/security for directors. We acknowledge that the role of beneficial owners and directors in a company can be different, however there could still be a risk that the personal information of beneficial owners is misused. This may be a particular concern for beneficial owners who are senior managers of the entity.

We query how the disclosure would operate for a trust which is a shareholder or beneficial owner of a company. Under the AML/CFT Act, any individual with effective control over the trust and its property, or with the power to amend trust deeds or remove or appoint trustees are considered beneficial owners of the trust. This includes the settlor, trustees, protector and named/final beneficiaries, who may need to be disclosed on the register. There is currently no register of trusts and this information is not publicly available. Requiring settlors and named/final beneficiaries of trusts to be included on the beneficial owner register would be disclosing to the public information that, under the proposed disclosure requirements in the Trusts Bill, was not intended to be publicly available.

6 What is your preferred option?

We query whether a modified option 2, which allows access to registered users of the Companies Office, would be appropriate. This would ensure that users accessing the information are verified, can be located, and are using the information for a legitimate purpose (to the extent that this can be verified by registration alone). It would afford beneficial owners some protection of privacy as their personal information is not available to the general public on an unrestricted basis.

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

We agree with the definition of a beneficial owner being aligned with the definition in the AML/CFT Act but note our comments in relation to trusts, at question 5 above.

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

We agree that the information in the suggested list in paragraph 111 should be collected and held by the company.

As noted in question 3, we query how information about beneficial owners of Crown Entity subsidiaries is to be collected and presented, considering the beneficial owner is a responsible Minister in their official capacity.

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

To protect the privacy of beneficial owners, we consider that only the beneficial owner's name and address for service should be publicly available. As the information cannot be relied upon for AML/CFT customer due diligence purposes (meaning that financial institutions will still need to verify the information themselves) we do not see a need for all the information listed in paragraph 111 to be publicly available. However, in the absence of a unique identification number, a second (unique) identifier would be needed to distinguish between beneficial owners with the same name, and to link to the beneficial owner's other ownership interests and roles.

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>We consider that there should be an obligation on beneficial owners to notify the entity of key changes, for example if they commence or cease being a beneficial owner, or changes in contact details. However, careful consideration must be given to whether such an obligation would be effective in complex structures.</p>
11	<p>When do you think corporate entities should update the beneficial ownership information that they hold?</p>
	<p>Ideally the obligation to update beneficial ownership information should be aligned with current obligations for directors and shareholders. However, we note that such an obligation may be difficult to comply with practically.</p>
12	<p>What are your views on the enforcement mechanisms that should be available to the Registrar?</p>
	<p>We agree that additional enforcement tools, especially those that do not require a formal process or court action, would be useful – for example, infringement notices with or without a fine.</p>
13	<p>Do you think there are any types of corporate entities that should be excluded from the options?</p>
	<p>No comment</p>
14	<p>What are your thoughts on how frequently, and in what circumstances, the registers should be updated?</p>
	<p>We suggest that key changes (such as the commencement or ceasing of a beneficial owner) and address for service should be updated within a certain period of the change, as this will ensure that the identity of beneficial owners plus a means of contacting them is always up to date. However, other contact details such as residential address and email address could be updated either at the time of the change or at annual return time.</p>
15	<p>What are your views on what verification should be undertaken?</p>
	<p>We suggest that beneficial owners have a duty to provide correct, up to date information to entities and entities may request evidence or verification of the information, which must be provided by the beneficial owner on request.</p> <p>We query how the Companies Office will verify the information provided by companies and note that if an objective of the change is to deter money laundering, the same procedures or standards of verification as under the AML/CFT Act may be required. If the information is verified to the same standards as under the AML/CFT Act, we query whether it could be relied upon for AML/CFT compliance (without needing the financial institution to further verify the information).</p>
16	<p>What are your views on having a unique identification number for beneficial owners?</p>
	<p>We consider that it would assist in protecting the safety/security of beneficial owners, however agree that it would be difficult to effectively implement given the large base of potential beneficial owners.</p>

17	Do you have any views on whether any changes are needed to the requirements for company share registers?
	The requirements for share registers could be expanded to include details of beneficial owners. This would help embed the new requirements into a company's BAU processes.
18	Are there any other factors that MBIE should consider?
	No comment
19	Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?
	No comment
20	Are there legitimate purposes for using a nominee director? What would the implications be if nominee directors were expressly prohibited?
	No comment
21	Do you have any information about problems with companies or limited partnerships on the overseas registers?
	No comment
22	Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?
	No comment
23	Do you have any information about problems related to TCSPs?
	No comment
24	Are there any other areas of concern?
	No comment

Other comments