

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?

- The 'Panama Papers' and other recent scandals have highlighted how criminals are misusing companies and trusts for money laundering, tax evasion, corruption and other crimes. Criminals increasingly use corporate vehicles to disguise their ownership of assets or their involvement in transactions to avoid detection and to enjoy their criminal proceeds.
- There have been numerous global reports from international bodies of which New Zealand is a member highlighting this problem over the past 20 years. For example, a small selection of these reports includes:
 - The FATF / Egmont Group report [Concealment of Beneficial Ownership](#) (2018) highlights the misuse of companies, trusts and other corporate vehicles to disguise and convert the proceeds of their crimes.
 - The OECD report [Behind the Corporate Veil](#) (2001) which showed how corporate entities including companies and trusts are often misused for money laundering, bribery and corruption, shielding assets from creditors, tax evasion, self-dealing, market fraud and other illicit activities.
 - The World Bank and UNODC's StAR Initiative report [The Puppet Masters](#) (2011) which showed that the vast majority of grand corruption cases involved the misuse of companies and trusts by corrupt officials to move funds and hold assets
- New Zealand is not immune from these problems. As the discussion document notes (paragraphs 34), there have been a number of high profile international criminal cases involving NZ companies. To add to this list, a report by Global Witness, [Grave Secrecy](#) (2012), has also highlighted the involvement of NZ companies in the largest corruption scandal seen in Kyrgyzstan, while NZ shell companies are implicated in the Unaoil scandal.

- NZ authorities have identified this risk. The NZ Police Financial Intelligence Unit's [National Risk Assessment](#) (2018) states that “[t]rusts, companies and other legal persons or arrangements are extremely attractive vehicles for money launderers and terrorism financiers to hide a personal identity and that of the beneficial owner” (page 33). The NRA further highlighted that the “[c]reation of trusts and companies was a common method used in the professionally facilitated cases examined in the NRA, while hiding beneficial ownership using methods such as trust structures was observed in all of the sample of real estate cases”.
- In order to effectively fight money laundering, corruption and tax evasion, authorities need to be able to trace money. This means having timely access to sufficient, accurate and up-to-date information about companies, trusts, and the people who ultimately own and control them.
- Transparency is essential to prevent NZ companies and trusts from being misused by criminals – this is why understanding the true owners or controllers of the entity (the “beneficial owner”) are so important.
- TINZ has welcomed the Government’s response to the “Panama Papers” to make changes for foreign trusts and to extend anti-money laundering (AML) regulations to lawyers, accounts and real estate agents. This is a positive step
- However, these measures are not enough. Global experience has shown that public company registers remain the main source of information both for investigations by national authorities and for due diligence by financial institutions. This has been highlighted by many organisations including Transparency International in its policy brief on [Ending Secrecy to End Impunity: Tracing the Beneficial Owner](#) (2014).
- The reliance on the regulated financial sector, and soon the designated non-financial businesses and professions (DNFBPs), is positive but a multi-pronged approach is needed.
- TINZ has consistently called on the Government to establish a beneficial ownership register for companies and trusts.

2

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

- Increased transparency of beneficial ownership would help to protect NZ’s reputation by:
 - Deterring criminals from using NZ corporate vehicles, and
 - Helping law enforcement to “look through” corporate vehicles in their investigations to detect money laundering, corruption, tax evasion and other crimes.
- The beneficial ownership register would also help regulated businesses to comply with their AML obligations.
- It would provide a faster alternative than simply relying on financial institutions and DNFBPs as the register provides a ‘one stop shop’ for investigators to trace the beneficial ownership within minutes. This is particularly helpful when complex webs of ownership are involved.
- Another key benefit is enhanced international cooperation. A public register of beneficial ownership would enable foreign authorities to trace the beneficial owners of NZ corporate vehicles and allow NZ law enforcement to provide more effective international cooperation.

- As the discussion document notes, New Zealand is falling behind international efforts to combat the misuse of corporate vehicles as other countries implement a public beneficial ownership register. Without increased measures in place, New Zealand risks being targeted as a ‘weak link’ in the international financial system – a vulnerability that has already been exploited by international crime groups as noted in the high-profile cases.
- [*Transparency International*](#) has highlighted that adding information on beneficial owners to existing reporting obligations of FIs and DNFBPs would be the most cost-effective and efficient choice. It identified two cost-benefit analyses commissioned by the European Commission and by the UK Companies House which show that the benefits of collecting information on beneficial ownership are multiple, as fiscal compliance would increase and enforcement expenses for the government would fall (page 3).
- Ultimately, increased transparency would benefit New Zealand by contributing to reduced money laundering, tax evasion, corruption and other crimes. This is a significant benefit to NZ and the global community to:
 - reduce predicate crimes through deterrence and detection
 - increase the confiscation of criminal assets, targeting the profit-motives of crime groups
 - reduce the criminal proceeds reinvested in criminal activities, and
 - support a ‘level playing field’ as it would reduce the number of legitimate businesses which compete against businesses funded by criminal proceeds.

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?

- TINZ would not incur compliance costs as it is not a reporting entity under the AML/CFT legislation.
- However, as noted above, [*Transparency International*](#) (page 3) has highlighted two cost-benefit analyses that demonstrate that a beneficial ownership register is a the most cost-effective and efficient choice.
- In particular, a register would help financial institutions and DNFBPs to comply with their obligations under the AML/CFT laws which would reduce compliance costs.
- TINZ encourages the Government to consider the findings of these two studies commissioned by the European Commission the UK Companies House and to develop and publish a cost-benefit analysis for New Zealand.

4

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

- We have no comment on this issue

5

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

- TINZ welcomes the preliminary assessment of the options. This forms a starting point for the discussion for the development and implementation of a beneficial ownership

register.

- However, the assessment factors used in Chapter 4 do not cover the important potential benefits for the criminal justice system, international cooperation, and increased tax revenue.
- Accordingly, TINZ recommends including additional factors as follows:
 - Would it support in the detection, investigation, and prosecution of money laundering, tax evasion, corruption and other crimes, and increased confiscation of criminal proceeds and assets?
 - Would it lead to additional tax revenue?
 - Would it support effective international cooperation between NZ law enforcement agencies and their foreign counterparts?
- These are critical potential benefits of a beneficial ownership register that should be taken into account when considering the options.
- Accordingly, Option 3 would have the following additional potential benefits:
 - It would enhance the ability of law enforcement agencies to detect, investigate and prosecute criminal offences as a public beneficial ownership register would provide a fast and powerful tool for investigators to trace funds and assets, and obtain evidence, when identifying companies in investigations.
 - It would enhance the ability of law enforcement agencies to confiscate the proceeds of crime.
 - It would support the IRD in enforcing NZ's tax obligations and detect tax evasion. TINZ recommends that MBIE consults with IRD to determine the estimated benefits.
 - A public Beneficial Ownership register supports international cooperation as NZ's foreign counterparts could review the register themselves before making any formal international cooperation requests such as mutual legal assistance or extradition, increasing the efficiency of the international cooperation process. This may also assist international cooperation with respect to taxation.
- To a lesser extent, some of these benefits would apply to Option 2. However, these benefits likely to apply to Option 1 to only a limited extent.

6

What is your preferred option?

- TINZ's preferred option is Option 3. A public beneficial ownership register is the most effective mechanism to provide transparency.
- Option 3 would be the most effective option to deter and detect criminals, support law enforcement investigations, prosecutions and confiscations, increase tax revenue, support international cooperation, and support the AML/CFT system.
- These are powerful benefits and Option 3 would provide the most value to develop a mechanism that works in practice.
- While Option 3 may incur greater implementation costs than Option 1, it will introduce savings for financial institutions and DNFBPs as it would support their AML/CFT efforts.
- A public register is preferable to Option 2:
 - It would enhance **international cooperation**. Criminal organisations establish complex corporate structures across a number of jurisdictions to disguise the hide the beneficial ownership. A public register would allow NZ law enforcement and its foreign counterparts to uncover transnational criminal networks (see

[Global Witness](#) 2017).

- It would increase the integrity and accuracy of the data. The ability for multiple parties to review the data such as financial institutions, DNFBPs, media and NGOs would improve the quality of the data on the register.
- While, compared to Option 2, there are privacy concerns regarding the level of information made publicly available. However, with appropriate safeguards in place to protect individuals such as case-by-case exemptions for personal security, this can provide a level of protection while at the same time maximising the value of the register.
- This has been managed in the UK, and similar protections could be put in place adapted to New Zealand circumstances. The level of individuals seeking an exemption may not be high. For example, in the UK, freedom of information requests made by Global Witness have highlighted that only 270 individuals have applied to have their information withheld on the basis that it would put them at risk, and only 5 of these have been granted (see page 5, [Global Witness](#) 2017).

7

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

- International standards set by the FATF provide a valuable starting point for determining the beneficial owner. The FATF defines a beneficial owner as:
 - *Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.* (Glossary to the FATF Recommendations 2012).
- TINZ supports aligning with the definition used in the AML/CFT legislation. This would ensure that the definition of beneficial owner covers the natural person who can exercise control over the company by any means, whether it is through direct or indirect ownership or control.
- TINZ supports the threshold for the 'ownership test' at 25%. This is consistent with the FATF Standards which provide an example of 25%, as well as other jurisdictions which have implemented the Standards.
 - This is also consistent with the FATF guidance on [Transparency and Beneficial Ownership](#) (2014).
- TINZ submits that the New Zealand Government's [guidance on beneficial ownership](#) (2012) should also be considered as it provides a valuable interpretation of the definition.
- In particular, the position of the AML/CFT supervisors is that a beneficial owner is an individual who satisfies any one element, or any combination of the following three elements (paragraph 14):
 - a. who owns more than 25 percent of the customer
 - b. who has effective control of the customer
 - c. the persons on whose behalf a transaction is conducted
- This guidance includes an example of a senior management official as a person with effective control (paragraph 23).
- The discussion paper at paragraph 110 highlights the various approaches when the 'ownership test' is not met.
- TINZ suggests that the beneficial ownership register should record the fact that no individual met the 'ownership test', and then capture the individuals exercising effective control on the register such as senior management officials or the directors.

8

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

- TINZ supports the collection of the proposed information on beneficial owners in paragraph 11.
- This is broadly consistent with that required for customers under the AML/CFT Act 2009. It is appropriate to align the requirements for beneficial owners in the corporate registry with the customer requirements on businesses regulated under the AML/CFT laws given the similar objectives – to deter and detect criminal activity.
- TINZ also supports the inclusion of the following information:
 - IRD number
 - Nationality
 - Country of residence
- This information on the beneficial owners is consistent with Transparency International recommendations globally (see p.17 of the [Technical Guide: Implementing the G20 BO Principles](#)). It would ensure that law enforcement agencies would have sufficient information to further their investigations, regulated businesses could use the registry for customer due diligence, and the IRD would have sufficient transparency to enforce New Zealand's tax laws.
- The additional information on IRD number, nationality and residence would be beneficial to enforce New Zealand's taxation laws, including international cooperation through the Automatic Exchange of Information.

9

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

- TINZ recognises the importance of personal protection of beneficial owners and there should be a mechanism in place to prevent harm to individuals.
- Regarding the publication of information, the approach taken in the UK to publish
- TINZ considers it appropriate to have a case-by-case exemption regime on an evidence basis, in line with the approach in the UK, rather than wholesale or class-based exemptions.
- As noted above, the UK has not experienced a large number of individuals seeking an exemption. Freedom of information requests made by Global Witness have highlighted that only 270 individuals have applied to have their information withheld on the basis that it would put them at risk, and only 5 of these have been granted (page 5, [Global Witness 2017](#)).

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?

- TINZ considers that obligations should be placed on the beneficial owners to provide accurate and timely information to the company.
- This should include administrative and criminal offences for the failure of beneficial owners to provide accurate and timely information. This should include specific timeframes within which to inform the company when there is a change in beneficial ownership.
- The role of the Companies Office is critical here to monitor and enforce the requirements on beneficial ownership, and apply effective, proportionate and dissuasive sanctions for

non-compliance.

- Paragraph 119 highlights another critical element to enforce the requirements on beneficial owners. The company themselves should have the authority and legal requirement to take action when a beneficial owner has not been disclosed. This includes, as noted in the UK, providing companies authority to place restrictions on a share right or interest. Other countries have also required the company to restrict dividend payments.
- The company Directors and representatives should also be held personally liable for non-compliance with company obligations.
- Enforcement is a challenging area and the Companies Office should be provided with sufficient resources to proactively monitor and enforce the obligations on companies and beneficial owners.

11

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

- Up-to-date information on beneficial owners is critical to enhance the integrity of the information so that it is valuable to law enforcement in their investigations.
- TINZ supports the three mechanisms suggested in paragraph 120. Corporate entities should update their beneficial ownership when changes are made. Changes to beneficial owners should be updated within a defined period, for example 30 days.
- This should also include reasonable endeavours when changes may have been made, as well as periodic checks such as on an annual basis.
- The changes should be recorded as they are made. The FATF has highlighted in jurisdiction mutual evaluation reports that an annual return of beneficial ownership information, rather than when changes are made, has had a negative impact on the effectiveness of the transparency measures.

12

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

- Supervision and enforcement of the obligations is essential to ensure an effective system. The FATF has highlighted that a characteristic of an effective transparency system is that:
 - *Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions (see Immediate Outcome 5 of the [FATF Methodology](#))*
- This should also include the power to request information from companies and other authorities and to sanction legal entities for non-compliance.
- The Registrar should not only have effective enforcement mechanisms in place, but also have the human, technological and financial resources for enforcement.
- The mechanisms outlined in paragraph 124 are important start.
- However, there should be specific administrative sanctions for non-compliance for providing information within specified timeframes which are applicable to both:
 - Beneficial owners, and
 - Corporate entities
- TINZ encourages MBIE to also consider additional sanctions on individuals such as company representatives and Directors.

- It is noted that false registration of companies is often a criminal offence in overseas jurisdictions (such as the United States). These can attract significant personal sanctions including imprisonment and high fines. High penalties such as these can provide a significant deterrent but only if the offences concerned are perceived as serious enough to warrant them.
- In the RMA, although such punishments exist, they are rarely used, at least partially because such offences are not regarded as “true crimes”. For sanctions to be effective they must be of a type that are deemed acceptable by the public and the judiciary.
- Infringement notices is another important tool which can be used in combination with more serious penalties as part of a graduated ‘tool kit’ for the Registrar to apply sanctions depending on the seriousness of the breach.

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

- In general, all types of corporate vehicles should be included unless there is strong evidence that a particular type of entity should be excluded. This will ensure certainty around the legal responsibilities of entities to provide beneficial owners. Compliance will not be onerous.
- Is noted that the FATF Standards apply to companies and require countries to take similar measures with respect to *other legal structures*.
- Limited partnerships present a similar level of risk of being misused by criminals as companies and it is thus particularly important that they are part of the regime.
 - This is already recognised in the New Zealand Police FIU’s [National Risk Assessment on ML/TF](#) (2018) which states that overseas criminals using New Zealand legal structures including companies, trusts and limited partnerships, are a known money laundering threat (page 14).

13

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

- Registers should be updated on an annual basis with a defined period to apply after changes of around 30 days

14

What are your views on what verification should be undertaken?

- Verification is a critical element of an effective Beneficial Ownership register. Verification is required to ensure that the information on the register is high enough quality to be used by enforcement agencies.
- In countries that have established a BO register, verification has been identified as a key weakness which reduces data quality, and therefore the value of having a register.
- Companies Office should have the mandate and sufficient human, technical and financial resources to collect, verify and maintain beneficial ownership information.
- The FATF calls on countries in its [BO guidance](#) to ensure accuracy of beneficial ownership information and states that, at a minimum, countries should ensure that “the company registry authority takes a proactive role, including checking of information against other sources (such as shareholder, population or national identity registers), to identify anomalies or inconsistencies” (page 22).

- The verification conducted by the Companies Offices should include measures for the verification of identity and for the verification of information provided to it, such as the method through which an individual exercises control of an entity.
- This could also include checking the registry information against information held by IRD.

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

- TINZ supports the introduction of the of a unique identification number for beneficial owners.

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

- TINZ has no comments on this point.

17 Are there any other factors that MBIE should consider?

- TINZ has no further factors to add.

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

- It is essential that the Companies Office should have sufficient human, technological and financial resources to monitor and enforce the requirements of the register.
 - Active enforcement is essential for the effectiveness of a Beneficial Owners register and to provide a 'level playing field' among NZ companies.
 - The need for a proactive Registrar to monitor requirements has been highlighted in various reports and guidance from international bodies such as the FATF and World Bank.
- TINZ also encourages the New Zealand Government to consider establishing a centralised national register of bank accounts as an effective tool to combat money laundering, including the misuse of corporate entities.
 - This measure has been used effectively by countries to investigate financial crime, including the misuse of companies and trusts.
 - This mechanism was also recently included in the European Union's [5th AML Directive](#) and it will be implemented coming period.
 - New Zealand should consider the feasibility of such a tool. It supports complex financial investigations by providing a centralised resource to determine the bank accounts of suspected individuals and entities.
 - This is particularly valuation to freeze and seize suspected proceeds of crime as authorities are able to quickly identify assets and take measures to prevent asset flight when criminals realise their activities are being monitored.

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

- Nominee directors represent a ML/TF risk as they facilitate the misuse of companies. The FATF's recent report [Concealment of Beneficial Ownership](#) (2018) highlighted that nominee directors and shareholders, particularly informal nominees (or "straw men"), are a key vulnerability.
- For this reason, the FATF has called on countries to prevent the misuse of nominee

directors by either disclosing the identity of the nominator or requiring nominee directors to be licenced ([FATF Recommendation 25](#)).

- TINZ supports the application of measures to mitigate the risks associated with nominee directors. This may include licencing nominees or prohibition.
- TINZ is unconvinced that any legitimate reasons for allowing nominee directors outweigh the risks they pose.

20

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

- TINZ has no comment on this point.

21

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

- TINZ considers that the same obligations should apply.

22

Do you have any information about problems related to TCSPs?

- Globally, implementation of AML/CFT obligations by Trust and Company Service Providers has not been effective. Evidence from the Panama Papers (see above) suggests that similar risks in the TCSP sector exist in New Zealand.
- The FATF's report [Concealment of Beneficial Ownership](#) (2018) highlighted that "The use of specialists and professional intermediaries is a key feature of schemes designed to conceal beneficial ownership, particularly in cases where the proceeds of crime are significant."
- Transparency International has highlighted in its [review of G20 countries](#) that globally, gatekeepers such as lawyers, accountants, real estate agents, and trusts and company service providers remain weak-spots in the fight against money laundering (page 14).
- Therefore, effective supervision, monitoring and control of TCSPs is critical. The DIA's role will therefore be important. This includes education and awareness raising but also risk-based monitoring and enforcement.
- The additional resources provided to the DIA for AML/CFT supervision under Phase 2 is a positive step.
- TINZ encourages the continued supervision of the TSCP sector using on a risk-based approach.

23

Are there any other areas of concern?

- TINZ considers that the beneficial ownership register should extend to trusts.
- The risks of trusts being misused by criminals is well known. It has been highlighted in international reports by the FATF and World Bank, and through the Panama Papers.
- The NZ Police FIU's [National Risk Assessment](#) (2018) highlights the risk of trusts being misused in a similar way to companies.
- The discussion paper itself acknowledges that MBIE is aware that trusts can also be misused by criminals.
- Therefore, if stronger transparency measures are required for companies, similar measures are also required for trusts.
- TINZ submits that the most effective measure to combat the misuse of trusts is to

establish a centralised register of trusts with similar features to that discussed above in relation to Companies.

- The discussion paper notes that privacy and confidentiality have been recognised as essential virtues of trusts. However, this is not a basis to exclude trusts from these tougher measures as it is these same features that make trusts attractive to domestic and international criminals.
- Establishing a register of trusts is in line with the global direction on this issue. For example, the EU's [5th AML Directive](#) has extended the requirement on EU Member States to establish centralised registries of trusts.
- New Zealand risks falling behind similar trust law jurisdictions which would make it more attractive to international criminals.
- The discussion paper states that this would come with significant compliance and administrative costs, although it acknowledges that no work has been done to support this statement.
 - TINZ notes that charitable trusts are already registered and is unconvinced by this statement.
- TINZ encourages the NZ Government to introduce a publicly accessible trust register similar to that envisaged for companies. To reduce compliance could be limited to trusts managing certain levels of assets, those which own real estate and those with a taxable income.
 - The EU approach, for example, does not cover all trusts, but those which present a higher risk such as trusts owning real estate or with a taxable income.

Other comments