



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HIKINA WHAKATUTUKI



## Discussion Document

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

June 2018

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# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships. Submissions close on Friday, 3 August 2018.

Questions are posed throughout the document to guide your submission. Your submission may respond to any or all of these questions. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <http://www.mbie.govt.nz/info-services/business/business-law/supporting-the-integrity-of-the-corporate-governance-system/increasing-transparency-beneficial-ownership-nz-companies-and-ltd-partnerships>. This will help us to collate submissions and ensure that your views are fully considered.

You can make your submission:

- by sending your submission (in a Microsoft Word or pdf document) to:  
[corporate.law@mbie.govt.nz](mailto:corporate.law@mbie.govt.nz)
- by mailing your submission to:

Business Law  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Please send any questions you have about the submissions process to: [corporate.law@mbie.govt.nz](mailto:corporate.law@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers. We may contact submitters directly if we require clarification of any matters in submissions.

## Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website.

MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or that you wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the *Official Information Act 1982*. Please set out clearly in your submission or in the email accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the *Official Information Act*.

## Private information

The *Privacy Act 1993* establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

# Glossary

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<b>AML</b>	Anti-money laundering
<b>AML/CFT Act</b>	<i>Anti-Money Laundering and Countering Financing of Terrorism Act 2009</i>
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force An intergovernmental body established to develop and promote national and international policies to combat money laundering and terrorist financing.
<b>GDP</b>	Gross domestic product
<b>IACCC</b>	International Anti-Corruption Coordination Centre
<b>IRD</b>	Inland Revenue Department
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>NGO</b>	Non-governmental organisation
<b>NZBN</b>	New Zealand Business Number
<b>OIO</b>	Overseas Investment Office
<b>PSC</b>	Person with significant control
<b>TCSP</b>	Trust and company service provider
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland

# Key concepts

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<b>AML/CFT reporting entity</b>	Persons and organisations who have obligations under the <i>AML/CFT Act</i> . These obligations include carrying out due diligence on customers and reporting suspicious transactions. Reporting entities include most financial service providers and certain professional service providers (eg lawyers, accountants, real estate agents and TCSPs).
<b>Beneficial owner</b>	The natural person(s) who ultimately owns or exercises effective control over a corporate entity.
<b>Corporate entities</b>	In this paper, we are using ‘corporate entities’ to refer to companies and limited partnerships.
<b>Nominee director</b>	A director appointed to act on behalf of another person or organisation.
<b>Nominee shareholder</b>	Someone who holds shares on behalf of another person or organisation.
<b>Shell company</b>	A company that is used as a vehicle to conduct transactions but does not have significant operations or assets.

# 1 Introduction

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New Zealand is a great place to do business...

1. New Zealand is one of the easiest places in the world to do business<sup>1</sup>. Starting a company is simple, quick and low cost – allowing firms to get on with growing their business.
2. New Zealand is also well regarded internationally. Our trustworthy reputation and low rates of corruption<sup>2</sup> give other countries confidence to do business with us and attract investment into New Zealand.

...and we want to keep it that way

3. Unfortunately, our good reputation also makes New Zealand an attractive country for criminals who want to set up a company here to give a veneer of legitimacy to their activities. While New Zealand is not a major international centre for financial crime, there have been cases where New Zealand companies have been used for criminal purposes, particularly by criminals based overseas.
4. Corporate entities in this paper, companies and limited partnerships – can be used by criminals to distance themselves from their activities. Complex ownership structures with multiple layers, including other corporate entities and trusts, make it difficult for law enforcement agencies to identify the individuals behind a corporate entity and hold them to account. Criminals can use corporate entities to launder money by moving the proceeds from crime into the economy to make it appear to be from legitimate sources.
5. The misuse of corporate entities by criminals is an international problem. Collective action is needed both to detect and prosecute criminals and to put in place laws and practices that reduce the opportunities for criminals to use corporate entities. If only a few countries make changes, criminals will simply relocate their activities.
6. New Zealand needs to play its part in the international community's efforts to combat crime, money laundering and terrorism financing. Failing to take action risks damaging our reputation. This may make it harder for our firms to do business and reduce foreign investment into the economy.

New Zealand has already taken action

7. New Zealand has undertaken several steps in recent years to help combat the misuse of companies and other entities by criminals. These include:
  - a. extending the anti-money laundering and countering the financing of terrorism (AML/CFT) regime to cover more businesses (including real estate agents and conveyancers, lawyers and accountants, some businesses that deal in expensive goods, and betting on sports and racing)

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<sup>1</sup> For example, New Zealand is ranked first in the ease of doing business and in starting a business categories in the World Bank's *Doing Business* rankings [www.doingbusiness.org/reports/global-reports/doing-business-2018](http://www.doingbusiness.org/reports/global-reports/doing-business-2018) and second in Forbes' Best Countries for Business 2018 [www.forbes.com/best-countries-for-business/list/](http://www.forbes.com/best-countries-for-business/list/)

<sup>2</sup> Transparency International's *Corruption Perceptions Index 2016* [www.transparency.org/country/NZL](http://www.transparency.org/country/NZL)

- b. requiring the registration of foreign trusts with one or more New Zealand resident trustees (New Zealand foreign trusts)
- c. introducing a residency requirement for New Zealand company directors and the general partners of New Zealand limited partnerships
- d. providing the Registrar of Companies with new powers to investigate companies and limited partnerships.

## We want to know if more should be done

- 8. It is impossible for us to entirely prevent corporate entities being used to facilitate criminal activities. However, we can make it easier to detect criminal activities and reduce the attractiveness of New Zealand to criminals.
- 9. Knowing the identity of the actual person controlling a corporate entity – the beneficial owner – is a crucial piece of information for law enforcement. Many countries are looking at ways to improve the transparency of the beneficial ownership of their corporate entities.
- 10. The main focus of this paper is on what requirements there should be on New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners. Our preliminary assessment of the options is based on a number of assumptions that we need to test before we can finalise our advice to Ministers. We welcome your thoughts on the potential benefits and costs. We are also interested in hearing about any other actions that could be taken to address concerns about New Zealand corporate entities being used by criminals.

## This paper focuses on companies and limited partnerships

- 11. This paper is focused on combating the criminal misuse of New Zealand companies and limited partnerships. Where criminal misuse has been uncovered, the majority of cases have involved New Zealand companies. We have included limited partnerships in this paper because they have similar characteristics to companies<sup>3</sup> which may make them attractive to criminals. There is a risk that if only companies were considered, criminals would simply shift to using limited partnerships.
- 12. MBIE is responsible for a number of other types of entities (eg incorporated societies, friendly societies, credit unions). We have not included these other entities as they are less likely to be seen as an attractive alternative to companies or the concept of beneficial ownership would be difficult to apply (eg friendly societies and credit unions are mutual organisations where one member has one vote).
- 13. We are aware that trusts can also be used by criminals. Trusts would be captured by the options in this paper where the beneficial owners of corporate entities are people who control a trust. However, we have not considered a beneficial ownership register for trusts in this paper. Privacy and confidentiality have historically been recognised as among the essential virtues of trusts, and a register would be a significant departure from that. Further, a register would come with significant compliance costs to private individuals and businesses, and administrative costs to government. A register has the potential to be a significant change and require considerable analysis. As part of its review of the law of

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<sup>3</sup> For example, limited partnerships are able to enter into contracts and open bank accounts in the name of the limited partnership.

trusts<sup>4</sup>, the Law Commission concluded that a system of registration for trusts should not be introduced for these reasons. The Law Commission also considered a compulsory or voluntary register of trusts engaged in business as part of a suite of measures for trusts that have a corporate trustee, in order to encourage disclosure of status as a trustee. The Law Commission concluded that all of the proposals relating to corporate trustees required future re-examination. This review of corporate trustees is not part of the Law Commission's current work programme. The focus of the Ministry of Justice has been on the *Trusts Bill 2017* and no policy work on the concept has been undertaken to date.

## What this paper covers

14. The five key parts of this paper are:
  - **Section 2** outlines what beneficial ownership is and why it is important to know who is controlling a corporate entity. This section also discusses the drivers for this work.
  - **Section 3** sets out why the existing tools for accessing beneficial ownership information are insufficient.
  - **Section 4** summarises our initial assessment of three options to improve access to beneficial ownership information.
  - **Section 5** discusses some key design features that relate to the three options in section 4.
  - **Section 6** asks if there are other actions that could combat the use by criminals of companies and limited partnerships in New Zealand.
15. There are questions throughout this paper to guide your submission. We welcome other relevant comments.

## What happens next

16. Submissions close on **Friday, 3 August 2018**. Instructions on how to make a submission are on pages 4-5.
17. All relevant matters raised in submissions will be taken into account in MBIE's advice to the Minister of Commerce and Consumer Affairs. We plan to also undertake further work to try to quantify the potential benefits and costs of the options before we finalise our advice to Ministers. Depending on which option the government decides on, MBIE may undertake further public consultation on the design of that option.
18. If the government decides to make legislative changes, the public would have another opportunity to comment on any changes as part of the Select Committee's consideration of those changes.

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<sup>4</sup> For the Law Commission's review of trust law see: [www.lawcom.govt.nz/our-projects/law-trusts](http://www.lawcom.govt.nz/our-projects/law-trusts)

## 2 Why the transparency of beneficial ownership is important

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### Corporate entities can be used to hide criminal activities

19. Internationally there is concern about corporate entities being involved in money laundering. It is difficult to estimate how much money is laundered internationally each year. The United Nations Office on Drugs and Crime estimates that the amount of money laundered globally in one year is around 2 to 5 per cent of global GDP<sup>5</sup>.
20. New Zealand is not a major international centre for financial crime, but we are not immune. The Police Financial Intelligence Unit estimates that each year approximately \$1.35 billion from the proceeds of fraud and illegal drugs is generated for laundering in New Zealand<sup>6</sup>. We do not have a formal estimate of how much is laundered from New Zealand tax or other crimes. There is also not a satisfactory estimate of the amount of laundering into New Zealand, or through New Zealand based corporate entities, from the proceeds of crime generated offshore.
21. Information from overseas financial intelligence units indicates that money laundering involving New Zealand companies often originates overseas. Money laundering using New Zealand companies often involves company bank accounts that are in offshore jurisdictions.
22. The Police have identified the following characteristics as indicators of companies that may be involved in money laundering or terrorism financing<sup>7</sup>:
  - a. Companies are registered in New Zealand but do not undertake any business activities here. They may have no IRD number or New Zealand bank account and use a virtual office as their registered address.
  - b. Companies that use nominee directors and/or shareholders. If the same person is the director or shareholder for a large number of companies, this may be an indicator that they are a nominee director or shareholder.
  - c. Companies with complex ownership structures that are mostly based overseas.
  - d. New Zealand companies that are set up from overseas, for instance by an offshore trust and company service provider (TCSP).
23. While we believe that the vast majority of New Zealand corporate entities are legitimate businesses, we are unable to quantify how many are involved in illegal activities and it would be difficult to do so.
24. We do know that an analysis of 57 domestic cases involving the recovery of high value proceeds from crime found that shell companies and similar arrangements were used in

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<sup>5</sup> UNODC website: [www.unodc.org/unodc/en/money-laundering/globalization.html](http://www.unodc.org/unodc/en/money-laundering/globalization.html)

<sup>6</sup> Ministry of Justice website: [www.justice.govt.nz/justice-sector-policy/key-initiatives/aml-cft/](http://www.justice.govt.nz/justice-sector-policy/key-initiatives/aml-cft/)

<sup>7</sup> Financial Intelligence Unit New Zealand Police (January 2015) *Quarterly Typology Report Second Quarter*

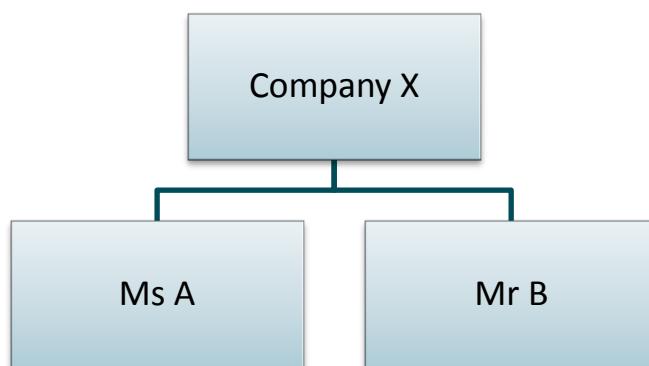
*2014-2015*. Available at: [www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents](http://www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents)

cases accounting for 30 per cent of the total assets recovered<sup>8</sup>. In a sample of international requests for information to the Financial Intelligence Unit, 60 per cent of requests where a link to New Zealand was established related to a New Zealand company. In 75 per cent of those cases, no New Zealand bank accounts were identified. This indicates that a large proportion of companies that authorities are interested in may not have any business activities in New Zealand.

Beneficial owners are the actual people who own or control a corporate entity

25. A ‘beneficial owner’ of a corporate entity is any natural person who ultimately owns or exercises effective control over the corporate entity<sup>9</sup>. This is distinct from the legal owners, which may be another entity (eg another company) or an intermediary (eg nominee shareholder).
26. It is easy to determine beneficial ownership where the beneficial owners and legal owners are the same natural person.

**Figure 1: Example of simple ownership structure**

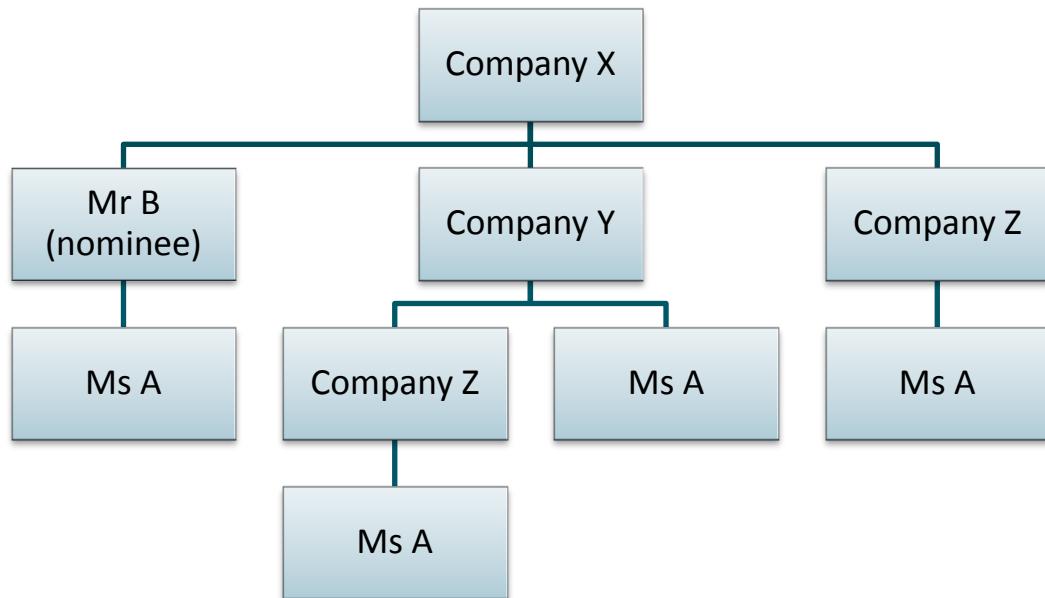


27. In figure 1, both Ms A and Mr B are the shareholders (legal owners) and beneficial owners of Company X.
28. It can be more difficult to identify who is the beneficial owner of Company X if more complex ownership structures are used.

<sup>8</sup> Financial Intelligence Unit New Zealand Police (January 2015) *Quarterly Typology Report Second Quarter 2014-2015*. Available at: [www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents](http://www.police.govt.nz/advice/businesses-and-organisations/fiu/news-and-documents)

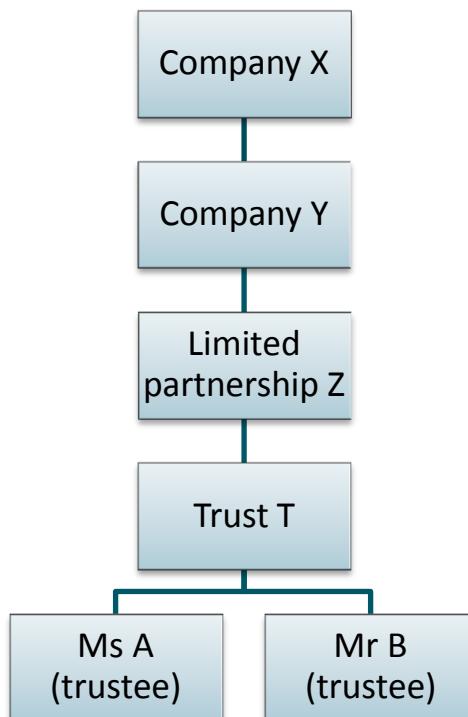
<sup>9</sup> This is based on the definition of beneficial owner used by the Financial Action Task Force (FATF). [www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf)

**Figure 2: Example of complex ownership structure**



29. In figure 2, the shareholders of Company X are Mr B, Company Y and Company Z. However, the beneficial owner of Company X is Ms A.
30. Identifying a company's beneficial owner(s) may require looking through multiple layers of ownership. These layers could involve different types of entities and legal arrangements, such as trusts.

**Figure 3: Example of multiple layers of ownership**



31. In figure 3, the shareholder of Company X is Company Y. In this example, the beneficial owners may be Ms A and Mr B (as the trustees of Trust T) if there are no other individuals (eg a protector) who have effective control over Trust T.

## Identifying the beneficial owner is important for detecting and deterring crime...

32. Criminals can obscure the true ownership of a corporate entity using a web of intermediaries and different business structures based in multiple jurisdictions. It can be difficult to untangle this web and know who the actual person controlling the entity is because of the absence of information in many cases. These complex ownership structures can be used to enable money laundering, terrorism financing, drugs or arms trafficking, tax evasion and the hiding of assets.
33. Beneficial ownership information can assist law enforcement agencies to identify the natural persons who may be responsible for the underlying criminal activity or who may have relevant information to progress an investigation<sup>10</sup>.
34. There have been a limited number of high profile cases involving New Zealand companies, including:
  - a. SP Trading Limited: involved in smuggling military weapons from North Korea (possibly to Iran) in 2009.
  - b. Tormex Limited: over US\$680 million was moved through accounts held by Tormex during 2007 and 2008. Investigations revealed that Tormex was being used to facilitate money laundering for organised crime groups including the Sinaloa drug cartel in Mexico.
35. In these cases more effective access to beneficial ownership information could have played a role in detecting crime, prosecuting the individuals involved or deterring the use of New Zealand companies.
36. Access to beneficial ownership information would also support New Zealand's work with the newly established International Anti-Corruption Coordination Centre (IACCC)<sup>11</sup>.

## ... and protecting legitimate businesses

37. Transparency is important for effective corporate governance and the efficient operation of markets. Transparency promotes accountability and informed decision making by businesses, investors and customers.
38. Knowing who owns and controls a company is important for other businesses. Beneficial ownership information can be used to assess the risks of doing business with a particular company. Unknowingly doing business with a company with a beneficial owner who has criminal links can open up a business to fraud or damage their reputation if they are inadvertently involved in a crime such as money laundering.
39. Under the *Anti-Money Laundering and Countering the Financing of Terrorism Act 2009* (AML/CFT Act), reporting entities<sup>12</sup> need to be able to identify the beneficial owner of a customer to make reliable estimates about the level of money laundering and terrorist financing risk associated with that customer.

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<sup>10</sup> FATF Guidance on Transparency and Beneficial Ownership [www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf)

<sup>11</sup> The IACCC brings together specialist law enforcement officers from multiple agencies around the world, including the New Zealand Police and Serious Fraud Office, to tackle allegations of grand corruption.

<sup>12</sup> Reporting entities include most financial service providers and certain professional service providers, such as lawyers, accountants, real estate agents, and trust and company service providers.

## Other countries are increasing the transparency of beneficial ownership to help combat the misuse of companies

40. The international trend is towards more robust measures to counter the use of complex structures to hide criminal activity. High profile cases and document leaks have helped drive this trend. The ‘Panama Papers’ demonstrated the high scale of corruption and criminality that occurs through companies and other structures, such as trusts, internationally<sup>13</sup>. In response, international bodies, such as the Financial Action Task Force (FATF) and the Global Forum on the Transparency and Exchange of Information for Tax Purposes, are adopting higher standards for their members.
41. Within this broader trend, transparency of beneficial ownership has emerged as one of the priority areas for action. In 2016, following the release of the Panama Papers, a large anti-corruption summit was held in London. Of all potential measures to combat corruption, transparency of beneficial ownership information generated the largest number of commitments from summit participants.
42. The most common solution emerging internationally is some form of beneficial ownership register. A register requires businesses to take reasonable steps to identify their beneficial owners and disclose that information. The use of beneficial ownership registers is a recent development and their effectiveness is yet to be evaluated. Annex 1 includes a summary of the key features of some overseas beneficial ownership registers.
43. At the London summit, New Zealand committed to “exploring the establishment of a public central register of company beneficial ownership information”.

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<sup>13</sup> The Panama Papers were a leak of a reported 11.5 million files from the Panama-based law and trust services firm, Mossack Fonseca.

# 3 Why the existing tools are insufficient

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There are existing tools to access beneficial ownership information

44. Beneficial ownership information is of particular interest to the domestic activities of the Police, Inland Revenue (IRD), Overseas Investment Office (OIO) and AML/CFT reporting entities.
45. Additionally, IRD and the Police have obligations to support equivalent overseas bodies to access information about businesses operating or incorporated in New Zealand. This includes information about their beneficial owners. Often these businesses are part of a chain of ownership that cuts across multiple jurisdictions.
46. The current tools available to access beneficial ownership information are outlined below.

## AML/CFT Act

47. Under the AML/CFT Act, all reporting entities must conduct due diligence on any new customer as well as existing customers in certain circumstances. Where this customer is a corporate entity, due diligence includes identifying its beneficial owners.
48. The degree of verification done on the information provided is based on an assessment of the customer's risk. Verification is primarily conducted using publicly accessible sources, such as the companies register and overseas equivalents. Where there is insufficient public information, the reporting entity may need to undertake its own investigation.
49. The Police may be able to access and, as appropriate, further disseminate the beneficial ownership information collected by reporting entities.

## Companies Act and Limited Partnerships Act

50. The companies register has publicly available information on company directors and some shareholders. The limited partnerships register has publicly available information on general partners. This information can sometimes be sufficient to identify a beneficial owner, although generally only for corporate entities that are at low risk of being involved in money laundering.
51. The Registrar of Companies has powers under the *Companies Act 1993* and *Limited Partnerships Act 2008* to require companies and limited partnerships to provide beneficial ownership information for law enforcement purposes. These provisions were put in place in 2014. However, the Registrar has not received a request from other regulators to exercise this power due to concerns about tipping off criminals of an investigation into the activities of the corporate entity (see discussion on this issue below).

## Other tools

52. Once a formal investigation is underway, the Police may be able to source beneficial ownership information using their statutory powers and court orders.
53. IRD also has powers for accessing beneficial ownership information under the *Tax Administration Act 1994*.

## But our existing tools do not meet our needs...

54. The current tools to access beneficial ownership information have several shortcomings:
  - a. Beneficial ownership information is often difficult or impossible to access.
  - b. Where information is available, it cannot always be relied upon to be accurate.
  - c. Some existing tools can tip off criminals.

### Beneficial ownership information is difficult to access

55. There are several situations in which beneficial ownership information is not accessible.
56. The most significant situation is where corporate entities are incorporated in New Zealand but not trading here. They are not required to register with IRD and may not engage with an AML/CFT reporting entity. This means that the information that is readily available on these corporate entities is limited to what is on the companies and limited partnerships registers. Beneficial ownership information could be requested under the *Companies Act* or *Limited Partnerships Act*, but this risks tipping off criminals (see below).
57. Where information about beneficial owners is currently collected, it is not widely accessible. For example, information collected by an AML/CFT reporting entity is not available to private businesses, anti-corruption non-governmental organisations (NGOs), journalists and other reporting entities. One consequence of this is a duplication of effort by reporting entities and their customers.
58. Beneficial ownership information is not centralised. This prevents the analysis of large quantities of data to identify patterns (eg a large number of corporate entities claiming the same individual as a beneficial owner) or to match information with other sources, such as overseas registers.

### Information is not always accurate

59. Where information is available, it may not be reliable. Proactively verifying that the claimed beneficial owners are the true beneficial owners, and that no others exist, is time consuming and resource intensive. Some reporting entities may not have the resource or expertise to undertake full verification.
60. Reporting entities also have competing priorities. They want to provide customers with an experience that is as swift and easy as possible, while meeting their compliance requirements.

### Requesting information will tip off criminals

61. Certain existing tools for accessing information risk tipping off criminals that there is interest in who is the beneficial owner of the corporate entity. This can be counterproductive to an investigation. International law enforcement agencies requesting assistance will typically not want any steps taken that may reveal their investigation.

### ... which is leading to poor outcomes

62. The above shortcomings mean that:
  - a. Domestic law enforcement agencies find it difficult to get the information needed to deter and detect crime that involves the use of corporate entities with complex

ownership structures. It can be difficult to provide information to international agencies seeking our assistance.

- b. Where public and private organisations can access information, collecting and verifying the information is often time consuming, expensive and duplicates the efforts of others.
- c. New Zealand's reputation as a good place to do business is potentially at risk:
  - New Zealand may become a more attractive jurisdiction for money laundering and other criminal activity that makes use of complex corporate structures as other countries move to increase the availability of beneficial ownership information.
  - New Zealand may be viewed as not playing its role in international efforts to combat money laundering and terrorism financing if we do not keep pace with international standards, such as FATF recommendation 24 (see Annex 2). Recommendation 24 includes ensuring law enforcement agencies have access to adequate, accurate and timely information on the beneficial owners of corporate entities. Recent FATF mutual evaluations have been critical of countries that did not require corporate entities to obtain and hold up-to-date information on beneficial ownership.

Damage to our reputation could make it harder for our firms to do business overseas or reduce overseas investment in our economy.

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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?

# 4 Options for increasing the transparency of beneficial ownership

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63. This section identifies some options for increasing the transparency of information about the beneficial owners of companies and limited partnerships. It also outlines our preliminary analysis of the potential benefits and costs of these options. Your submission will help inform our final analysis.

## Assessment factors

64. It is important to find the right balance between deterring criminals and allowing genuine businesses to easily set up and run a corporate entity. In assessing the options, we have considered the following factors:
  - a. Would it deter criminals from using companies and limited partnerships?
  - b. Would it support the effective and efficient operation of the AML/CFT system?
  - c. Can any privacy impacts be managed appropriately?
  - d. Does it comply with international standards? (specifically FATF recommendation 24)
  - e. Are the compliance costs proportionate and reasonable?

## Status quo

65. When a company or limited partnership applies to be registered they must provide information about themselves to the Registrar of Companies. This information includes their registered office, their directors/general partners, their shareholders/limited partners and (for companies) their ultimate holding company<sup>14</sup>.
66. Once they are registered, details about the corporate entity and any documents registered by the corporate entity are publicly available on the companies or limited partnerships register. Some information is kept confidential to protect people's privacy, for instance directors' dates and places of birth and the names of the limited partners. Corporate entities must update specific information (eg changes in directors/general partners) within required timeframes. Other information (eg about their shareholders) is required to be updated annually through an annual return form. Documents, such as director consent forms and annual returns, are able to be viewed by the public on the registers.
67. Information about beneficial owners is not collected. As outlined in section 3, the Registrar may request this information for law enforcement purposes.

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<sup>14</sup> An 'ultimate holding company' is a body corporate that is a holding company of the company and that is itself not a subsidiary of any body corporate (section 2(1), *Companies Act*).

## Options

### Option 1: Corporate entities to hold up-to-date information about their beneficial owners

68. Corporate entities would have an explicit obligation to hold up-to-date and accurate records of their beneficial owners.
69. Corporate entities would only have to provide this information to the Registrar when requested to do so. The Registrar would be able to share this information with law enforcement agencies, including the government agencies currently identified in section 366 of the *Companies Act* and section 79 of the *Limited Partnerships Act*<sup>15</sup>.

### Option 2: Beneficial ownership information is included on the registers with restricted access

70. Corporate entities would be required to identify their beneficial owners and to keep accurate and up-to-date information about their beneficial owners.
71. Corporate entities would be required to provide information about their beneficial owners when they apply for registration as a company or limited partnership. This information would need to be updated at certain times (see section 5).
72. Beneficial ownership information would be included on the companies and limited partnership registers but it would not be publicly available. The Registrar would be able to share this information with law enforcement agencies.

### Option 3: Beneficial ownership information is included on the registers with public access

73. As with option 2, corporate entities would be required to identify their beneficial owners, keep this information up-to-date and provide this information to the Registrar.
74. Beneficial ownership information would be publicly available on the companies and limited partnership registers.

### . Discarded options

75. We considered whether a non-legislative option, such as encouraging corporate entities to voluntarily release their beneficial ownership information, would meet the objectives.
76. We have discarded this option because it is unlikely to be effective. A non-legislative option is unlikely to deter criminals or improve law enforcement's access to beneficial ownership information. Corporate entities that are controlled by criminals would not voluntarily release information about their beneficial owners. A voluntary approach is unlikely to achieve the scale needed to obtain the same benefits for the AML system, other businesses and the public as a legislative change. It would also be unlikely to meet international standards.
77. We have also considered whether small businesses should be excluded from any of the options. However, the types of corporate entities that are at high risk of being involved in money laundering are likely to share the same characteristics as a small business (eg no or a small number of employees, one or two directors and shareholders). Excluding small businesses would not stop corporate entities being used for criminal activities. It could also

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<sup>15</sup> The government agencies listed are Crown Law Office, Department of Internal Affairs, Financial Markets Authority, Government Communications Security Bureau, IRD, MBIE, Ministry of Justice, Customs, Security Intelligence Service, Police, Reserve Bank, Serious Fraud Office and their international counterparts.

encourage them to set up entities in a way that gets around the exemption. We are seeking feedback on whether other types of exclusions may be warranted in section 5.

## Preliminary assessment of options

### Would the option deter criminals from using corporate entities?

78. We think that option 1 would have little deterrence effect. Law enforcement agencies would not be able to access beneficial ownership information without tipping off criminals to their interest. Criminals would continue to use corporate entities if they judge that there is a low probability that they would be asked for their beneficial ownership information. If they do receive a request, they may simply choose to close down that corporate entity as it costs little to replace it.
79. Option 2 should have some deterrence effect as law enforcement agencies would be able to access beneficial ownership information without tipping off criminals. Collecting information in a central location would enable analysis of the data to identify corporate entities that may be of interest to law enforcement agencies. It could identify businesses that have a common beneficial owner or be used to cross check the accuracy of the data with other sources.
80. Option 2 should make it less attractive to criminals to set up corporate entities if they want to avoid having to provide beneficial ownership information. The alternative would be to provide false information which increases the chances of anomalies being detected and their corporate entity being investigated.
81. The impacts of option 2 would also apply to option 3. In addition, there may be greater deterrence under option 3 from having the information publicly available and more open to scrutiny, including by NGOs and journalists, increasing the probability that false information would be detected. This may also improve the accuracy of the information on the register as the public can report suspected false information to the Companies Office for investigation<sup>16</sup>. It may reduce the costs to domestic and overseas law enforcement agencies as they could access the information directly (instead of through requests for information).

### Would the option support the effective and efficient operation of the AML/CFT system?

82. We think that options 1 and 2 would have limited impact on the operation of the AML/CFT system. There may be some efficiency gains if corporate entities were able to provide information about their beneficial owners to reporting entities more quickly. However, because the information would not be publicly available, any cost savings due to duplication in the current system would be unlikely.
83. Option 3 is more likely to support the operation of the AML/CFT system. It could help reporting entities identify who were the beneficial owners of their customers, although they would still need to undertake their own verification of the information.
84. More broadly than the AML/CFT system, option 3 would also enable other businesses access to the information, which may help with their due diligence processes. It would give NGOs and journalists access to information to support their investigations, which would further increase transparency.

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<sup>16</sup> The Companies Office currently receives information from the public on possible errors on the registers. For example, for the last financial year there were around 160 complaints about director or shareholder residential address information.

## Can privacy impacts be managed appropriately?

85. Existing privacy protections would apply to all three options, including on the collection, use and storage of beneficial owners' personal information.
86. Under options 1 and 2, personal information would not be publicly available. However, with option 3, individuals' personal information would be publicly accessible. For some individuals, such as existing directors or shareholders, their information may already be public but the fact that they are a beneficial owner would not be. As discussed in section 3, there is a public interest in knowing who is controlling a corporate entity. This public interest could be seen as outweighing individuals' privacy.
87. To address privacy concerns, some personal information about a beneficial owner could be kept confidential and not be available on the public register. There could be specific circumstances when a beneficial owner's identity is not made publicly available (see section 5).

## Would the option comply with international standards?

88. All of the options are likely to be viewed as being compliant with FATF recommendation 24 in its current form. However, international standards in this area are still evolving. Option 1 may not be viewed as compliant in the future if the standard moves towards the centralised collection of beneficial ownership information. We do not know how likely it is that there will be a shift.

## Are the potential compliance costs proportionate and reasonable?

89. Our advice to Ministers will include looking at the overall compliance costs and where these costs fall. Some questions we have are:
  - a. Would the option create new compliance costs for businesses? Would these costs be passed on to consumers?
  - b. Would it discourage legitimate businesses from registering a corporate entity?
  - c. Would it reduce compliance costs within the wider AML/CFT system?
  - d. Would there be an overall reduction in compliance costs or would there be a shift in who bears the costs of compliance?
90. We also plan to undertake further work to try to quantify the potential compliance costs for corporate entities. We are interested in any information you have on the existing compliance costs for corporate entities and AML/CFT reporting entities. We are also interested in your thoughts on the potential compliance costs of the three options.
91. Our initial thoughts on the potential compliance costs are summarised below.

### Corporate entities

92. There would be one-off costs and ongoing costs for all three options. We think that the one-off costs would make up most of the compliance costs.
93. One-off costs would include corporate entities becoming familiar with their obligations and identifying their beneficial owners (eg sending information requests to people who may meet the criteria for being a beneficial owner and then assessing their responses). For corporate entities with simple ownership structures it should be relatively easy for them to identify their beneficial owners. Around 96 per cent of registered companies are small

businesses. In many cases their beneficial owners and legal owners would be the same person, so their compliance costs should be low.

94. The costs of identifying beneficial owners would be higher for corporate entities with complex ownership structures. For example, if their beneficial owners are in different jurisdictions, there are a number of layers in the ownership chain or there are different types of entities such as trusts.
95. Some corporate entities may already incur the costs of identifying their beneficial owners if they have to provide this information to reporting entities. Under option 3, corporate entities' existing costs may be reduced where they currently have to supply the same information to multiple reporting entities.
96. Ongoing costs would be incurred from keeping beneficial ownership information up-to-date. These costs would depend on how often beneficial owners (or their personal information) changed. Under option 1, there would also be ongoing costs responding to any requests for information from the Registrar. These costs are likely to be low. Under options 2 and 3, there would be the ongoing costs of updating the information on the registers. Similarly, we think these costs would be low for most corporate entities.
97. The actual compliance costs would be strongly influenced by the obligations placed on corporate entities and beneficial owners (see section 5).

#### **Reporting entities**

98. Reporting entities currently incur compliance costs identifying and verifying the beneficial owners of corporate entities. Options 1 and 2 are unlikely to have any impact on these costs.
99. Option 3 may make it easier to identify beneficial owners but reporting entities would still need to undertake their own verification that the information is accurate and to verify the identity of the beneficial owners. There may be some reduction in compliance costs under option 3, but these may be modest (as we assume verification requires more resourcing than identification).

#### **Companies Office**

100. There are likely to be costs from incorporating beneficial ownership information into the registers and to verify and enforce any new requirements on corporate entities. With options 1 and 2 there may be additional costs responding to requests for information from law enforcement agencies. These costs may be passed on to corporate entities through the annual return or registration fees.

## Summary of the preliminary assessment

101. Table 1 has a summary of our preliminary assessment of the three options compared with the status quo.

**Table 1: Summary of preliminary assessment**

	Option 1	Option 2	Option 3
A) Deters criminals	0	+	++
B) Supports AML system	0	0	+
C) Protects privacy	0	0	-
D) Meets international standards	+	++	++
E) Minimises compliance costs	-	-	-

**Key:**

- ++ much better than status quo
- + better than status quo
- 0 about the same as status quo
- worse than status quo
- much worse than status quo

## Preferred option

102. Based on the work we have done so far, MBIE's preliminary preferred option is option 3. We think that this option would be more effective at deterring criminals from using corporate entities and would provide useful information to law enforcement agencies. Public access would assist with the integrity of the information on the registers as it would be more open to scrutiny. There would be benefits to other businesses, investors and consumers from public access to beneficial ownership information. MBIE considers that this option would have an appropriate balance between privacy and transparency.
103. However, our preliminary preferred option is based on some assumptions that we need to test further. The key assumptions are that:
- a. Public access to beneficial ownership information would support the efficiency and effectiveness of the AML/CFT system. There may be some reduction in the costs of identifying beneficial owners for individual reporting entities and corporate entities.
  - b. There is only a small difference in compliance costs for corporate entities between option 1 and options 2 or 3.
    - i. Most of the compliance costs for corporate entities would be in identifying their beneficial owners. These costs would be the same for all three options (assuming that all corporate entities would comply with option 1 even though they may never be asked for this information).
    - ii. The costs to record and update beneficial ownership information on the registers would be modest.

2	What do you think are the benefits from increased transparency of beneficial ownership information?
3	Do you have any information on your organisation's current compliance costs to supply or collect beneficial ownership information?
4	Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?
5	What impact do you think the options would have on businesses deciding whether to register as a company or limited partnership?
6	Do you have any comments on our preliminary assessment of the options?
	What is your preferred option?

# 5 Key design features

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104. This section seeks your thoughts on some of the key design features that could be applied to the options set out in section 4.
105. The first six design features are applicable to all three of the options identified:
  - a. Who should be defined to be a beneficial owner?
  - b. What information should be collected about beneficial owners?
  - c. What obligations should there be on beneficial owners?
  - d. When should corporate entities update their beneficial ownership information?
  - e. What enforcement mechanisms are needed?
  - f. Should there be any exclusions?
106. The remaining design features that are applicable to options 2 and 3 are:
  - a. When should the register be updated?
  - b. What verification should be undertaken?
  - c. Should beneficial owners be assigned an identification number?
  - d. Should there be any changes to the requirements for a company share register?
107. We also ask if there are any other factors we should consider.

## Who should be defined to be a beneficial owner?

108. Our initial view is that the definition of ‘beneficial owner’ should align with that used in the AML/CFT legislation (see box 1). This would ensure consistency between the two systems. Corporate entities would not have to understand different requirements or provide different information depending on whether they are providing information to the Registrar or a reporting entity.
109. Individuals may be a beneficial owner of a corporate entity because, for example, they:
  - a. own more than 25 per cent<sup>17</sup> of the corporate entity
  - b. hold or control more than 25 per cent of the voting rights in a company
  - c. control the corporate entity through close family relationships, personal connections or contractual associations
  - d. hold senior management positions in the corporate entity and, thereby, exercise control over the daily or regular affairs of the corporate entity
  - e. can appoint or remove the corporate entity’s directors, general partners or senior managers.

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<sup>17</sup> This threshold (more than 25 per cent) is used in the AML/CFT Act and is commonly used in other jurisdictions.

## Box 1: Definition of beneficial owner in AML/CFT legislation

### Section 5 of the AML/CFT Act

Beneficial owner means the individual who—

- a) has effective control of a customer or person on whose behalf a transaction is conducted; or
- b) owns a prescribed threshold of the customer or person on whose behalf a transaction is conducted.

### Regulation 5 of the AML/CFT (Definitions) Regulations 2011

For the purposes of paragraph (b) of the definition of beneficial owner in section 5 of the Act, the prescribed threshold is more than 25%.

110. It is possible that a corporate entity would not have a beneficial owner (for example, where no one person holds or controls more than 25 per cent of the voting rights). We are interested in your views on how this situation should be treated. One approach (used in the UK) could be to require a corporate entity to record that they have no beneficial owners. The Republic of Ireland takes a different approach, requiring that the names of senior managing officials be recorded.

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

### What information should be collected about beneficial owners?

111. We consider that the following information should be collected about beneficial owners:
- a. full legal name
  - b. residential address
  - c. address for service
  - d. email address
  - e. date and place of birth
  - f. the basis on which they are a beneficial owner (eg owns/controls more than a certain percentage of the shares; right to appoint and remove directors).
112. We are interested in whether it would be useful to collect any other information about a beneficial owner.
113. If information about a beneficial owner is publicly available (option 3), we are interested in your views on what information should be kept confidential (ie not available to the public). For example, a director's date and place of birth is confidential and MBIE is currently consulting on whether directors' residential addresses should continue to be publicly

available<sup>18</sup>. In the UK, a beneficial owner's day of birth is confidential while their month and year of birth is public.

114. There may be some circumstances in which a beneficial owner's information should not be available on the public register. At a minimum, section 108 of the *Domestic Violence Act 1995* would apply so that a protected person could apply to the Registrar to have their information suppressed.
115. We are interested in whether any other circumstances should apply. For example, in the UK, a beneficial owner may apply to have all of their information suppressed on the public register where there is a serious risk of violence or intimidation. This information could still be made available to law enforcement agencies. We are interested in whether there are any other circumstances a beneficial owners' identify may need to be suppressed. Some examples could include where there is a high risk they may become a victim of fraud or where they work in a sensitive area.

8

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

9

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

## What obligations should there be on beneficial owners?

116. We are interested in what obligations should be placed on beneficial owners. Most jurisdictions require potential beneficial owners to respond to information requests from the corporate entity. Some countries require potential beneficial owners to proactively identify themselves to the corporate entity if they do not receive a request for information. These requirements are to help corporate entities to establish who their beneficial owners are. It could be possible for someone to challenge a request for information if they consider that it is not warranted (eg there are not reasonable grounds for the corporate entity to suspect that person is a beneficial owner).
117. There can also be requirements on beneficial owners to notify the corporate entity of any changes in their details or if they may no longer be a beneficial owner.
118. Our preliminary view is that all of these obligations would help corporate entities to comply. We are interested in whether any other requirements may be necessary.
119. It could be difficult to enforce these obligations particularly if the beneficial owner is not in New Zealand. We are interested in your views on what sanctions may be effective. For example, in the UK, companies may place restrictions on a share right or interest if someone fails to respond to a request for information (eg stopping a share being sold or transferred or not allowing shareholders to exercise voting rights).

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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?

<sup>18</sup> Information on this consultation can be found at: <http://www.mbie.govt.nz/info-services/business/business-law/supporting-the-integrity-of-the-corporate-governance-system/publication-directors-residential-addresses-on-companies-register>

## When should corporate entities update their beneficial ownership information?

120. All of the options would require corporate entities to have up-to-date information about their beneficial owners. We are interested in what obligations there should be on corporate entities to ensure the information is up-to-date. This could include one or more of the following:
  - a. updating beneficial ownership information when a corporate entity is advised of any changes
  - b. making enquiries when a corporate entity should be reasonably aware that there may be a change in their beneficial ownership (eg asking a new shareholder or director if they are acting on behalf of someone else)
  - c. regularly checking with their beneficial owners (or potential beneficial owners) if there are any changes (eg asking all their beneficial owners once a year if there are any changes in their information or status as a beneficial owner).
121. Corporate entities would find it easiest to comply if they only had to update their beneficial ownership information if they were notified of any changes. However, this relies on beneficial owners advising the corporate entity of any changes. This could mean that in some circumstances beneficial ownership information may not be accurate. For example, if someone is not aware that they may be a beneficial owner or of the requirements on beneficial owners then they may not contact the corporate entity. Alternatively, if someone wishes not to be identified as a beneficial owner they may deliberately choose not to contact the corporate entity.
122. Requiring corporate entities to make enquiries when there are reasonable grounds to suspect that there may be changes would help to ensure information is up-to-date without placing unnecessary costs on corporate entities. However, there may be uncertainty about what is 'reasonable' and whether the corporate entity has met its obligations.
123. Requiring corporate entities to regularly check their beneficial owners' information is most likely to ensure that their records are up-to-date. However, it may also impose unnecessary compliance costs, particularly where beneficial owners (and their details) change infrequently.

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

## What enforcement mechanisms are needed to be effective?

124. There are some enforcement tools currently available to the Registrar that could be applied to these options:

- a. removal of a company or limited partnership from the companies or limited partnerships register (eg for failing to comply with its statutory obligations (*Companies Act* s318; *Limited Partnerships Act* s98A))
  - b. prosecution for knowingly making a false or misleading statement, with a maximum fine of \$200,000 or up to 5 years in prison (*Companies Act* s377)
  - c. disqualification from being directors or general partners (eg where there is persistent non-compliance with the relevant legislation (*Companies Act* s383, *Limited Partnerships Act* s103B)).
125. We are interested in your views on what other enforcement mechanisms could be available. One potential option could be to have infringement notices (instant fines) for corporate entities and/or beneficial owners who fail to provide information to the Registrar or a corporate entity.

12

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

### Should there be any exclusions?

126. We are interested in your views on whether any types of corporate entities should be excluded from the proposed options.

### Should publicly listed companies be required to hold beneficial ownership information?

127. Most comparable jurisdictions exclude publicly listed companies because they already have obligations to disclose information about their beneficial owners.
128. In New Zealand, the *Financial Markets Conduct Act 2013* has the following requirements on listed companies:
- a. Anyone who has a substantial holding in a listed company is required to release a substantial holder notice (section 276). A substantial holding is a relevant interest (including a beneficial interest) in more than 5 per cent of a class of quoted products with voting rights.
  - b. A substantial product holder is obliged to release a substantial product holder notice if their holdings move by more than 1 per cent (section 277).
  - c. Listed companies are required to disclose all substantial shareholders as at their balance date, in their annual report (section 293).
129. Additionally, a listed company also has the power to ascertain who has a relevant interest in quoted voting products of the company and the nature of that interest (section 290).
130. We are interested in whether you think publicly listed companies should be excluded from any of the options.

### Should low risk corporate entities be excluded from having their information on the register?

131. We have considered whether options 2 or 3 should only apply to some types of corporate entities. For example, corporate entities that are likely to be at low risk of being used by criminals would only have to hold up-to-date beneficial ownership information (option 1). If a corporate entity fell into particular risk categories, then they would need to provide

their beneficial ownership information to the Registrar (option 2 or 3). These categories could include corporate entities that do not have an IRD number, have overseas owners or use nominee shareholders or directors.

132. This approach would intend to reduce compliance costs for low-risk corporate entities, as they are unlikely to be of interest to law enforcement. However, our preliminary view is that this approach may have a number of drawbacks that would reduce or cancel out any potential savings, as listed below.
  - a. We think that the compliance costs for low risk, small corporate entities are likely to be low. These types of corporate entities can probably easily identify their beneficial owners, and their beneficial owners are unlikely to change frequently.
  - b. It could be difficult for the Companies Office to assess whether or not a corporate entity is excluded. Some of the risk factors (eg whether a company has a nominee shareholder) would be difficult to determine without further investigation. Responding to requests for information (to assess if a corporate entity is excluded) could create costs for corporate entities.
  - c. Risk can change over time. A targeted approach may encourage criminals to try to work around the requirements instead of deterring them from incorporating. While the risk factors could be updated to reflect new risks, this would in turn require corporate entities to reassess whether they are excluded or not.
  - d. To be effective, a targeted approach would need increased proactive enforcement and high penalties for non-compliance. The fear of prosecution, and some of the above factors, may encourage over-compliance (with low risk corporate entities providing beneficial ownership information when they do not have to).
133. If beneficial ownership information is publicly available (option 3), a targeted approach may reduce the benefits to the AML/CFT system and the public as they would not have access to information about the beneficial owners of all corporate entities. Corporate entities that are excluded may still need to provide beneficial ownership information to reporting entities.
134. We are interested in whether you think these drawbacks are valid, and if there are any other advantages or disadvantages.

#### Should limited partnerships be excluded from option 3?

135. Limited partnerships were set up to attract venture capital investment to New Zealand. Limited partnerships involve general and limited partners. General partners are responsible for the day-to-day management of the limited partnership. They are liable – jointly and severally with any other general partners and the limited partnership itself – for all of the debts and liabilities incurred by the limited partnership.
136. Limited partners provide the capital for the limited partnership. They are liable to the extent of their financial contribution to the limited partnership, provided they haven't been involved in the management of the limited partnership.
137. Information about the general partners is publicly available on the limited partnerships register. The Registrar must treat information about the limited partners as confidential, and the *Official Information Act* does not apply. Limited partners' information was made private because of concerns that potential investors might be discouraged from investing in a limited partnership if their personal details were made public.
138. If option 3 is progressed, we are interested in your views about whether the beneficial owners of limited partnerships should be publicly available. If this information is not made

public, option 3 would only apply to companies, and option 2 would apply to limited partnerships.

139. There could be an argument for keeping the beneficial owners of limited partnerships confidential, if the public availability of this information may deter venture capital investment. However, having different requirements for limited partnerships and companies may make limited partnerships more attractive to criminals.

13

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

## When should the register be updated?

140. We are interested in your views on how often beneficial ownership information should be updated on the relevant register, should option 2 or 3 be selected.
141. One option is to require companies and limited partnerships to update their beneficial ownership information as part of their annual return.
142. Another option is to require corporate entities to update the register within a specified timeframe; for example, within 'x' working days of the corporate entity becoming aware of a change in the beneficial owner. We are interested in your views on what would be an appropriate timeframe for updating the registers. Currently, companies have to notify a change in director within 20 working days. The UK requires updates within 14 or 28 days of a change in beneficial owner.
143. An annual update would be easier for both the government and corporate entities to administer. However, it means that the information on the register could become out-of-date, reducing its usefulness. Law enforcement agencies might not have access to current information. While it would be possible to get up-to-date information directly from the corporate entity, this might tip off criminals. It may also reduce any benefits to the AML/CFT system or wider public from beneficial ownership information being publicly available under option 3.
144. We are also interested in your views on the likely compliance costs. For example, if corporate entities have to update the register each time their beneficial owners change, how much time would it take to update the register in addition to updating their own records?

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

## What verification should be undertaken?

145. If beneficial owners' information is included on the registers, we are interested in hearing your thoughts about what type of verification would be appropriate.
146. We expect that the verification process would develop based on the final design of the selected option. Our initial view is that the Companies Office should undertake some proactive verification of the information provided to it using a risk-based approach. This

would focus on companies and limited partnerships that have particular risk characteristics.

15 What are your views on what verification should be undertaken?

### Should beneficial owners be assigned an identification number?

147. The government is currently considering whether to introduce an identification number for company directors, following public consultation last year<sup>19</sup>. We are interested in whether you think beneficial owners should be assigned a unique identification number.
148. If beneficial ownership information is included on the registers, then a unique identification number would make it easier to identify all of the corporate entities someone is a beneficial owner for by:
  - a. providing a way to link a beneficial owner to multiple corporate entities
  - b. preventing people from trying to disguise their links through different variations or spellings of their name
  - c. distinguishing between beneficial owners who have the same name.
149. This could make it easier for law enforcement agencies to analyse the register and identify people of interest. It could also assist journalists and NGOs if the information is publicly available.
150. However, it would be difficult to effectively implement an identification number given the potentially large number of beneficial owners. All beneficial owners would need to undergo some form of identity verification to ensure that they do not already have a number. This would be particularly resource intensive if beneficial owners are based overseas, because a manual verification process would be required.

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

### Should there be any changes to the requirements for a company share register?

151. Currently, companies are required to keep their own share register. A company will provide information about its shareholders to the Companies Office when it is incorporated. Listed companies provide the names and addresses of their 10 largest shareholdings. All other companies must provide the details of all their shareholdings. This information is updated through the annual return.
152. If beneficial owners are included on the companies register, we are interested in whether you think there should be any changes to the requirements for share registers.

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<sup>19</sup> A copy of that discussion document is available at: [www.mbie.govt.nz/info-services/business/business-law/insolvency-law-working-group/report-no-2-voidable-transactions-ponzi-schemes-other-corporate-insolvency-matters](http://www.mbie.govt.nz/info-services/business/business-law/insolvency-law-working-group/report-no-2-voidable-transactions-ponzi-schemes-other-corporate-insolvency-matters)

17

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

## Commencement and other factors

153. If there is a change from the status quo, then there would be a period of time before the changes took effect to give corporate entities, and beneficial owners, sufficient time to prepare. We don't currently have a view on how long this period would be, as it would depend on the final design of the option. However, we are interested in whether you have any views on the commencement and any other factors you think we should consider.

18 Are there any other factors that MBIE should consider?

# 6 Other measures to combat misuse

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154. We are interested in your suggestions of any other actions that could be put in place to reduce the misuse of companies and limited partnerships. By ‘misuse’, we mean using corporate entities to facilitate or hide criminal activities such as fraud, drug and people trafficking, money laundering and tax evasion.
155. This section is split into two parts. The first identifies some measures that we think could be implemented relatively easily and at little cost. These measures will need further development, but we are interested in your initial views, particularly on the potential effectiveness of these measures. The second part outlines some areas that stakeholders have raised concerns about. We are interested in obtaining a better understanding about these concerns and more evidence on the scale of the problem and the harm caused.

## Possible additional measures

### A: Collect more information about corporate entities

156. Currently, companies may choose to include on the companies register information about what industry they are in and their principal place of business. This information is not verified.
157. The government is currently considering including industry information as public data on the New Zealand Business Number (NZBN) register<sup>20</sup>. If the proposal goes ahead, all corporate entities would need to provide this information for the NZBN register. This information could also be included on the companies and limited partnership registers.
158. Having additional information about corporate entities would enable anomalies to be detected. Industry information could be used to identify corporate entities that are more at risk of misuse. However, it would be difficult to verify this information which may increase compliance costs or lengthen the registration process. We are interested in your views on what (if any) additional information about corporate entities needs to be collected.

### B: Require companies to have an IRD number

159. When someone registers a company, they are able to apply for an IRD number at the same time. The majority of company registrations do so. Alternatively, companies could be automatically assigned an IRD number on registration.
160. As most companies already apply for an IRD number on registration, there should not be any additional compliance costs for this. It could allow IRD to request beneficial ownership information about the company under the *Tax Administration Act*. This could provide an additional source of beneficial ownership information to help verify its accuracy.
161. When applying for registration, a corporate entity must provide information on their registered office, their directors/general partners, their shareholders/limited partners and

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<sup>20</sup> Information on the consultation is available at: <http://www.mbie.govt.nz/info-services/business/better-for-business/proposed-changes-to-nzbn-primary-business-data/consultation>. Submissions closed on 20 June 2018.

(for companies) their ultimate holding company. The Registrar may also request additional information, such as proof of a director's identity. We are interested in whether corporate entities should have to meet any other requirements.

### C: Strengthening the Registrar's powers

162. The Registrar is responsible for taking compliance and enforcement action against those who fail to comply with or breach their statutory obligations. The Registrar's powers and tools include:
  - a. requiring a person to confirm that information provided to the Registrar is correct, or to correct that information
  - b. requiring relevant documents to be provided for inspection and taking copies of the documents
  - c. prohibiting someone from being a director of a company. In some circumstances this can be done through court order (eg for persistent non-compliance with the *Companies Act* or acting in a reckless or incompetent manner in the performance of their duties as a director) or through notice to that person (eg where the Registrar is satisfied that the mismanagement of a company led to it being put into liquidation)
  - d. removing a company from the register where the Registrar has reasonable grounds to believe that:
    - i. the company is no longer carrying out business
    - ii. the company has failed to respond to a request to confirm or correct information
    - iii. the company (or a director or shareholder) has intentionally provided inaccurate information
    - iv. the company (or a director or shareholder) has persistently or seriously failed to comply with duties under the *Companies Act*
  - e. inserting a warning note about a company on the register
  - f. taking prosecutions for breaches of statutory obligations, which may result in court ordered financial penalties or imprisonment for certain offences.
163. We are interested in what changes could be made to increase the powers and number of tools available to the Registrar. Some ideas we would like your thoughts on include:
  - a. Having additional enforcement tools that do not require court action, eg infringement notices, enforceable undertakings, administrative banning orders or removal orders. An infringement offence may be appropriate when there is a minor breach of the law (eg an obligation to keep records) and non-compliance is straightforward to determine (eg the corporate entity does not have that record). Additional enforcement tools would enable enforcement action to be undertaken more quickly and at lower cost than through the courts.
  - b. Expanding the grounds under which corporate entities can be removed from the registers, for example if they are convicted of breaches of AML/CFT Act. Removing companies that have been misused should increase the integrity of the register.

## Some areas of potential concern

### Nominee directors

164. We understand ‘nominee directors’ to mean someone who has been appointed as a director of a company but who acts on behalf of another person or organisation.
165. One indicator of a company at risk of being used for criminal purposes is the use of nominee directors. In the case of SP Trading, its sole director was a New Zealand-based nominee director who had signed a power of attorney handing over all authority for the running of SP Trading to two Ukrainian individuals.
166. The *Companies Act* does not distinguish between different types of directors – all directors have exactly the same duties.
167. We are interested in knowing more about when nominee directors are used, particularly what role they play in the governance of a company and what are the advantages and disadvantages of using nominee directors.

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

### Registered overseas companies

168. All companies incorporated outside of New Zealand (ie from any overseas country) that carry on business in New Zealand are required to be registered on the overseas companies register. There is no requirement for companies to have a New Zealand resident director in order to carry on business here, but they are required to provide details of:
  - a. the names and residential addresses of the directors of the company as at the date of the application for registration
  - b. evidence of the company’s incorporation and a copy of its constitution
  - c. the address of the company’s principal place of business in New Zealand
  - d. the full name and address of one or more persons resident or incorporated in New Zealand who are authorised to accept service of documents on behalf of the overseas company.
169. We have heard that some companies on the overseas register may misrepresent their status to portray themselves as a New Zealand registered company. This allows them to trade on New Zealand’s good reputation. Some overseas companies have been allegedly involved in financial crimes overseas.
170. We are interested in any examples you have of overseas companies misrepresenting their registration status and hearing about any other concerns you have about registered overseas companies.
171. This paper looked at the beneficial ownership requirements on New Zealand registered companies and limited partnerships. We are interested in whether there should also be obligations on overseas companies and limited partnerships that do business in New Zealand to provide the Registrar with information about their beneficial owners. If so, should this information be publicly available or kept confidential by the Registrar?

21	Do you have any information about problems with companies or limited partnerships on the overseas registers?
22	Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?

### Trust and company service providers

172. Trust and company service providers assist people with setting up a corporate entity. They may also provide registered address services or offer to act on behalf of the corporate entity (eg as a nominee shareholder or director).
173. We have heard some concerns about TCSPs being involved in setting up companies that have subsequently been linked to illegal activities. The Police have identified that companies at risk of misuse have often been set up from overseas, and an overseas-based TCSP may be involved in the registration process.
174. TCSPs based in New Zealand are already subject to some regulatory scrutiny. As part of the AML/CFT regime, they are subject to supervision by the Department of Internal Affairs and are required to undertake risk-based due diligence of their potential customers. The Companies Office carries out regular site visits of incorporation agents, including some TCSPs, to check that they hold the necessary books and records for their clients.
175. We are interested in hearing whether there are any areas of possible concern with the operation of TCSPs or other company formation agents.

23	Do you have any information about problems related to TCSPs?
24	Are there any other areas of concern?

## 7 Recap of 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?
- 2 What do you think are the benefits from increased transparency of beneficial ownership information?
- 3 Do you have any information on your organisation's current compliance costs to supply or collect beneficial ownership information?
- 4 Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?
- 5 What impact do you think the options would have on businesses deciding whether to register as a company or limited partnership?
- 6 Do you have any comments on our preliminary assessment of the options?
- 7 What is your preferred option?
- 8 What are your views on who should be captured as a beneficial owner of a corporate entity?
- 9 What information do you think should be collected about beneficial owners?
- 10 What information about beneficial owners do you think should not be publicly available, and in what circumstances?
- 11 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?
- 12 When do you think corporate entities should update the beneficial ownership information that they hold?
- 13 What are your views on the enforcement mechanisms that should be available to the Registrar?
- 14 Do you think there are any types of corporate entities that should be excluded from the options?
- 15 What are your thoughts on how frequently, and in what circumstances, the registers should be updated?
- 16 What are your views on what verification should be undertaken?
- 17 What are your views on having a unique identification number for beneficial owners?
- 18 Do you have any views on whether any changes are needed to the requirements for company share registers?

18	Are there any other factors that MBIE should consider?
19	Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?
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?
22	Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?
23	Do you have any information about problems related to TCSPs?
24	Are there any other areas of concern?

# Annex 1: International registers

## Recent developments in selected countries

1. This annex provides a summary of the approaches taken by some other jurisdictions to beneficial ownership information (as at May 2018).
2. Where a beneficial ownership register has been put in place, a variety of different approaches have been taken. A summary of the key requirements on companies in three countries, the United Kingdom, Singapore and the Republic of Ireland, is included in this annex.
3. Recent developments in other jurisdictions include:
  - a. **The European Union:** Under the 4<sup>th</sup> AML Directive, European Union member states must ensure that their companies hold adequate, accurate and current information about their beneficial owners. States must also have a central register that is available to law enforcement and tax authorities and AML reporting entities<sup>21</sup>. On the 14 May 2018, the European Council agreed to amendments to the AML Directive. Member states will be required to allow public access to beneficial ownership information<sup>22</sup>. Member states have up to 18 months to include any changes in national legislation once the amended directive is published in the Official EU Journal.
  - b. **Hong Kong:** In March 2018, Hong Kong introduced a Significant Controllers Register for companies<sup>23</sup>. Many of the key aspects of the Hong Kong register are similar to Singapore's (eg a company-held register accessible to law enforcement agencies).
  - c. **Australia:** In early 2017, Australia publicly consulted on introducing a register<sup>24</sup>. The government is considering what action is needed.
  - d. **The United States:** In June 2017, Bills were introduced to the United States House of Representatives and Senate to require companies to disclose their beneficial owners when they are formed<sup>25</sup>. A previous Bill on beneficial ownership information failed in July 2016.

### The United Kingdom

4. The United Kingdom introduced a Register of Persons with Significant Control (PSC register) in 2016. The PSC requirements apply to companies, limited liability partnerships, Societas Europaeae and eligible Scottish Partnerships. Companies that have voting shares traded on a specified regulated market are exempt.
5. The UK has a central PSC register held by Companies House (the UK equivalent of the Companies Office). Companies are also required to keep their own PSC register. Companies can choose to keep their PSC register at Companies House instead. A company must keep a register even if they do not have any PSCs.

<sup>21</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_141\\_R\\_0003&from=ES](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_141_R_0003&from=ES)

<sup>22</sup> <http://www.consilium.europa.eu/en/press/press-releases/2018/05/14/money-laundering-and-terrorist-financing-new-rules-adopted/>

<sup>23</sup> [www.cr.gov.hk/en/scr/overview.htm](http://www.cr.gov.hk/en/scr/overview.htm)

<sup>24</sup> <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/>

<sup>25</sup> [www.congress.gov/bill/115th-congress/senate-bill/1454](http://www.congress.gov/bill/115th-congress/senate-bill/1454); [www.congress.gov/bill/115th-congress/house-bill/3089](http://www.congress.gov/bill/115th-congress/house-bill/3089)

6. Companies must take reasonable steps to identify if there are any people who have significant control over the company. A PSC is defined as:
  - a. an individual who:
    - i. directly or indirectly holds more than 25 per cent of the shares
    - ii. directly or indirectly holds more than 25 per cent of the voting rights
    - iii. directly or indirectly holds the right to appoint or remove the majority of directors
    - iv. otherwise has the right to exercise, or actually exercises, significant influence or control
  - b. a trust or firm without legal personality that would satisfy any of the above four conditions if it were an individual.
7. Companies must contact their PSCs to confirm if they meet the conditions for being a PSC and obtain information about them. This information includes:
  - a. name
  - b. date of birth
  - c. nationality
  - d. country, state or part of the UK where the PSC usually lives
  - e. service address
  - f. usual residential address
  - g. date the individual became a PSC for the company
  - h. which of the conditions for being a PSC the person meets
  - i. any restrictions on disclosing the PSC's information that are in place. It may be possible to suppress a PSC's information where there is serious risk of violence or intimidation.
8. Companies are able to record another legal entity on their register as a PSC if that legal entity has its own PSC register or its shares are traded on a specified market. For example, a search on the publicly available PSC register for Aston Villa Football Club Ltd will not directly disclose that Mr Jiantong Xia is a PSC. That information is obtained by searching a chain of UK incorporated companies from Aston Villa Football Club Ltd to Recon Football Ltd to Recon Sports Ltd to Recon Group UK Ltd to Mr Xia.
9. Companies must update their own register within 14 days of knowing of a change, and update the central register within a further 14 days. If they keep their own register at Companies House, they must update the register within 14 days of knowing of a change. When the PSC register was first introduced, the central register was updated as part of the annual confirmation process. This was changed in 2017.
10. Anyone with a proper interest may request access to a company-held register free of charge. The company may charge a fee to provide a copy of their register. All information about a PSC must be made available except for the PSC's residential address.
11. The central register is publicly available, except for a PSC's residential address and their day of birth (their month and year of birth is publicly available).
12. Someone who may be a PSC of a company must:
  - a. respond to any requests from the company for information or to confirm information

- b. alert the company that they may be a potential PSC if they have not heard from the company within one month of becoming a PSC
  - c. update the company if their information changes.
13. It is a criminal offence not to respond to an information request from a company. If someone repeatedly fails to respond, the company may apply restrictions on the shares or rights in the company held by that person. It is also an offence to provide false information on the register.
14. The information on the register is not actively verified by Companies House.
15. Further information on the UK's register is available at:  
[www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships](http://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships)

## Singapore

- 16. Singapore introduced a Register of Registrable Controllers in March 2017.
- 17. Companies, foreign companies and limited liability partnerships are required to keep a register, unless they are exempt. Exempted businesses include listed companies and companies that are Singapore financial institutions or wholly government owned.
- 18. Companies keep their own register. There is no central register. The legislation allows for the Minister to establish a central register "in the event that a central register becomes a new, internationally agreed standard which is implemented by major financial service centres globally".
- 19. A controller of a company is an individual or legal entity that has a significant interest or significant control over the company, including:
  - a. an interest in more than 25 per cent of the shares
  - b. holding shares with more than 25 per cent of the total voting power in the company
  - c. a right to share in more than 25 per cent of the capital or profits of the company
  - d. a right to appoint or remove directors who hold a majority of the voting rights at directors' meetings
  - e. holding more than 25 per cent of the rights to vote on matters that are to be decided upon by a vote of the members of the company
  - f. exercising or having the right to exercise significant influence or control over the company.
- 20. Companies must take reasonable steps to identify their controllers. They are also responsible for keeping the register up to date and correcting inaccuracies. They must send information notices to controllers that the company knows or has reasonable grounds to believe to have changed or are inaccurate. The register must be updated within 2 business days of receiving the information from controllers.
- 21. The information collected on controllers who are individuals is:
  - a. full name and any aliases
  - b. residential address
  - c. nationality
  - d. identification card number or passport number

- e. date of birth
  - f. date on which the individual became a controller of the company and the date they cease to be a controller (if applicable).
22. Companies can stop tracing their controllers once they reach another entity that also has a register. They must state on their register if they have no controllers.
23. The register is not available to the public. Companies must provide access to their register if requested by the Registrar, the Accounting and Corporate Regulatory Authority (ACRA) or law enforcement agencies (including Inland Revenue). Public agencies may only use the information on the register for the purposes of administering or enforcing the law.
24. The company is not liable if recipients fail to respond to a notice or provide inaccurate responses. They must note on their register if the controller has not confirmed their details. Companies can face financial penalties up to S\$5,000 for failing to comply with their requirements.
25. Further information on Singapore's register is available at:  
[www.acra.gov.sg/Register\\_of\\_controllers\\_resources/](http://www.acra.gov.sg/Register_of_controllers_resources/)

## The Republic of Ireland

26. Since November 2016, Irish companies have been required to hold their own beneficial ownership register. The requirements are in accordance with the EU's 4<sup>th</sup> AML Directive.
27. Companies must take reasonable steps to hold adequate, accurate and current information about their beneficial owners.
28. Companies are exempt if they are listed on a regulated market that is subject to disclosure requirements consistent with EU law or subject to equivalent international standards which ensure adequate transparency of ownership information.
29. The Irish Regulations use the definition of beneficial owner from the EU directive (see box 2).
30. The register must include:
- a. the name, date of birth, nationality and residential address of each beneficial owner (who must be a natural person)
  - b. a statement of the nature and extent of the interest held by each beneficial owner
  - c. the date that the beneficial owner was entered into the register, and the date that they cease to be a beneficial owner (if applicable)
  - d. if, having exhausted all possible means and provided there are no grounds for suspicion by the company, no natural persons are identified, or there is any doubt that the persons identified are the beneficial owners, the register must contain the names of the natural person(s) who hold the position of senior managing official(s) of the company.
31. If a company does not already hold information about its beneficial owner, it must give notice to that beneficial owner or to someone it has reasonable cause to believe knows who its beneficial owners are. The beneficial owner must reply within one month.
32. Someone who is a beneficial owner must notify the company if they do not receive a notice requesting beneficial ownership information. They must also notify the company of any relevant changes in beneficial ownership.

33. A central beneficial ownership register is being developed and was expected to be in place in early 2018. It is intended that initially access to the central register would be limited to law enforcement. Further work is being undertaken on the feasibility for the central register to be public and the levels of access, and will depend on the 5<sup>th</sup> AML Directive.
34. Further information on The Republic of Ireland's register is available at:  
[www.cro.ie/Registration/Beneficial-Ownership](http://www.cro.ie/Registration/Beneficial-Ownership)

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#### Box 2: Definition of beneficial owner for companies in EU Directive

Any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

- i. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information

A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, *inter alia*, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council.

- ii. if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point.

## Annex 2: FATF recommendation 24

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### FATF recommendation 24

#### Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing.

Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and designated non-financial businesses and professions undertaking the requirements set out in Recommendations 10 and 22.

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