

# In Confidence

OFFICE OF THE MINISTER  
OF COMMERCE

The Chair  
**Cabinet Economic Growth and Infrastructure Committee**

## **Misuse of New Zealand Companies and Limited Partnerships**

### **Proposal**

That Cabinet agree to a number of measures aimed at reducing the misuse of New Zealand companies

### **Executive Summary**

There is evidence that individuals and groups (particularly offshore interests) are misusing the New Zealand company incorporation regime and consequently threatening the international reputation of New Zealand.

Cabinet has agreed to some measures to address such misuse, which have been included in the Companies and Limited Partnerships Amendment Bill (the Bill) [EGI Min (10) 17/5 refers]. The Bill is currently before the Commerce Committee.

Since 2010, 248 New Zealand companies have been identified as being allegedly involved in facilitating crimes. This averages at more than eight companies a month, a significant increase from a rate of less than three companies a month between 2006 and 2010.

The removal of New Zealand from the European Union banking and corporate “white list” in February 2011 further highlighted the misuse of New Zealand companies. The activities of New Zealand registered shell companies have been linked to this removal, although the European Union’s requirements relate primarily to anti-money laundering and terrorism financing controls. These will be addressed through the commencement of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 next year. The proposals in this paper relate to company and limited partnership incorporation and enforcement processes.

In light of the adverse impact of these issues on New Zealand’s reputation as a well regulated jurisdiction, I recommend that Cabinet consider a number of further changes to the Companies Act 1993. The objective of these proposals remains to maintain and enhance the current high reputation of New Zealand as a place to do business. The proposals have been considered against the following requirements:

- a. An efficient company registration regime should remain a competitive advantage for New Zealand;
- b. Any measures should be effective in reducing misuse of the company registration regime;
- c. The costs of legitimate businesses should be minimal unless the benefits can be clearly demonstrated to outweigh those costs; and
- d. That, where possible, there are benefits of aligning with the Australian regime.

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I consider the amendments detailed below to meet these requirements. I have also been advised that they would not impact on New Zealand's World Bank ranking for either starting a business or for ease of doing business.

These measures, which are outlined in a table in **Annex 1**, can be grouped into three categories:

### ***Accountability –***

- Requiring companies to have a director who is either a resident of New Zealand or a resident director in a prescribed enforcement country (initially Australia). Having a director who is resident in New Zealand or Australia will ensure that someone accessible to enforcement agencies is legally liable for the actions of the company.
- This measure will impact approximately 4,200 out of the 550,000 companies on the Register (0.77 per cent). Note however, around 1,200 of the 4,200 companies affected have been categorised as “high risk” by the Companies Office. It is therefore estimated that fewer than 3,000 legitimate companies will be affected by this change.
- These companies will need to hire a New Zealand resident director, at a cost ranging from a few thousand dollars to around \$50,000. This will only be an additional cost for these companies if they choose to hire an additional director rather than replacing an existing overseas based director.

### ***Transparency –***

- Requiring disclosure of the date and place of birth of directors. This measure will better enable the identification of directors and will have negligible costs on business.
- Requiring companies to disclose their ultimate holding company, if they have one. This measure will provide public transparency so that persons dealing with a company can know where “control” ultimately lies. The costs on companies impacted by this measure will be low.

### ***Enforcement –***

- Expanding the Registrar's power to seek information on the ultimate ownership and control of a company.

I recommend that these changes are applied to the Limited Partnerships Act 2008, to the extent that they are applicable. I further propose that Cabinet delegate responsibility to the Minister of Commerce, the Minister of Economic Development and the Minister of Finance to determine the extent to which these measures are applied to limited partnerships and the appropriate transitional provisions required to implement these measures.

The Bill would provide the appropriate legislative vehicle for progressing the recommended measures. If agreed, these proposals will be included as recommendations in the Ministry of Business, Innovation and Employment's departmental report to the Commerce Committee.

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## Background

- 1 Criminals use multiple layers of corporate structures to hide a variety of serious crimes including money laundering, trafficking arms and illegal substances, and fraud, often with the assistance of lawyers, accountants, financial service providers and company formation agents. Corporate structures can be used by criminals to mask the source of funds used to buy property, conceal true ownership of property, maintain control of criminal proceeds and assets and obscure the link between illegal activity and assets. These layers make it exceptionally difficult for law enforcement agencies to identify individuals and hold them to account.
- 2 There is evidence that individuals and groups (particularly offshore interests) are misusing the New Zealand company incorporation regime and consequently threatening the international reputation of New Zealand. High profile or repeated instances of foreign-controlled New Zealand companies engaging in criminal activities overseas are likely to seriously impact New Zealand's international standing.
- 3 The primary causes of this increase in misuse of New Zealand's company registration system are:
  - a. The unprecedented promotion of New Zealand incorporated companies to wholly overseas interests by trust and company service providers (TCSPs);
  - b. The lack of information required about the beneficial ownership and control of New Zealand companies in comparison to similar well regulated jurisdictions such as Australia; and
  - c. The ability of persons based overseas to register a company in New Zealand via the internet or a TCSP, with no substantive link to, or apparent intention of operating in, New Zealand.
- 4 The Government has introduced a number of reforms to strengthen New Zealand's company registration system, while at the same time maintaining its reputation as a good and easy place in which to conduct business. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML-CFT Act), which comes into force on 30 June 2013, will impose a number of due diligence requirements on New Zealand based TCSPs. These providers will be reporting entities under this Act, requiring them to undertake identity verification and risk assessments and to report any suspicious matters to the NZ Police Financial Intelligence Unit. Overseas-based TCSPs will not be subject to this requirement.
- 5 In addition, the Companies and Limited Partnerships Amendment Bill (the Bill) includes a number of measures intended to reduce the misuse of New Zealand's companies regime and to give the Registrar of Companies (the Registrar) enhanced powers to respond to risks relating to the integrity of information recorded on the companies register (agreed by Cabinet in 2010 [EGI Min (10) 17/5 refers]).
- 6 The Bill passed its first reading in the House on 24 July 2012 and was referred to the Commerce Committee for consideration. The Committee has received 13 submissions on the Bill, a number of which propose that further measures to reduce the potential for misuse of New Zealand companies should be included in the Bill.

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### Developments

- 7 Since Cabinet's decision in 2010, a number of further incidents of the misuse of New Zealand entities for money laundering, fraud and tax evasion in overseas jurisdictions have come to light. Since 2010, the New Zealand Police Financial Intelligence Unit and Interpol have received 171 requests for assistance regarding 248 companies allegedly facilitating crimes. This averages at more than eight companies a month, a significant increase from the rate of less than three companies a month between 2006 and 2010. In almost all cases, limited information is able to be provided concerning the activities of the companies concerned, or who ultimately controls them.
- 8 A number of these cases have received considerable media attention and may have already damaged New Zealand's reputation as a well regulated jurisdiction. While the Companies Office is undertaking increased risk assessment of companies, there are limits to the effectiveness of this work under the current legislation. There has been specific criticism of the measures included in the Bill as not going far enough to prevent pervasive misuse of New Zealand-registered companies.
- 9 The misuse of New Zealand companies was further highlighted after New Zealand was removed from the European Union banking and corporate "white list" in February 2011. The activities of New Zealand registered shell companies have been linked to this removal, although the European Union's requirements relate primarily to anti-money laundering and terrorism financing controls. The commencement of the AML-CFT Act will put in place the measures required by the European Union in this area.
- 10 I am also aware of reputational issues involving the misuse of building societies and the Financial Service Providers Register. Officials are examining whether further measures are required to address these issues and will provide me with advice on these matters by the end of the year.
- 11 It is my view that in light of this information a number of further amendments to the Companies Act 1993 and the Limited Partnerships Act 2008 should be considered in order to improve the accountability, transparency and enforcement of these regimes. These proposals have developed out of Cabinet's request for further measures to improve 'legal person transparency' and assist the investigation and prosecution of serious crime [DES (11) 2/3 refers]. These measures are outlined in a table in **Annex 1**. They have been considered against the following requirements:
  - a. An efficient company registration regime should remain a competitive advantage for New Zealand;
  - b. Any measures should be effective in reducing misuse of the company registration regime; and
  - c. The costs of legitimate businesses should be minimal unless the benefits can be clearly demonstrated to outweigh those costs.
- 12 I consider the amendments detailed below to meet these requirements. I have also been advised that they would not impact on New Zealand's World Bank ranking for either starting a business or for ease of doing business.

## In Confidence

### Accountability Measure

#### Requiring New Zealand Companies to have a Resident Director

- 13 I recommend all New Zealand incorporated companies be required to have a director who is either a resident of New Zealand or a resident director in a prescribed enforcement country.
- 14 The Bill, as it currently stands, requires companies to have either a resident director or a resident agent. It includes an exemption for companies with resident directors in an enforcement country, which will include Australia. My proposal would involve removing the resident agent option from the Bill, but retaining the enforcement country exemption. The Companies Office would be able to require confirmation of residency on a risk assessed basis.
- 15 While the resident agent requirement was considered better than the status quo, it will only provide limited deterrence, as many criminals who seek to register a New Zealand company already use a local agent. The proposed duties for resident agents are not onerous and the penalties for non-compliance are light. There is no obligation for a resident agent to know much at all about the company they represent. In fact, it would be in their interests to know less rather than more about any such company.
- 16 Resident agents will therefore be of limited help to enforcement agencies and will in many cases not be legally liable for the actions of the company. Also, as there is no clear legislative precedent for such a company officer, the legal requirements necessary to underpin their functions and duties are novel and untested.
- 17 Requiring a resident director (without the alternative of a resident agent) would ensure that there is a person in New Zealand to hold criminally liable for the company's actions. Of the companies that have been identified as being involved in money laundering, fraud and tax evasion in overseas jurisdictions, a large number do not or did not have a resident director. I note that requiring a resident director is also consistent with the approach taken in a number of other jurisdictions, including Australia.
- 18 In addition, requiring a resident director would create a significant barrier for overseas based TCSPs that register companies in New Zealand. That is, offshore based TCSPs will need to seek the agreement of a New Zealand resident to act as a director for these companies, which may be difficult considering the legal liability associated with acting as a director. As noted above, New Zealand based TCSPs will be required to undertake due diligence and report suspicious matters to the Department of Internal Affairs under the AML-CFT Act.
- 19 The exemption of companies with resident directors from prescribed enforcement countries (Australia initially) is a compromise designed to ensure that this change does not impact Australia-based New Zealand companies, which currently make up the majority of companies without a New Zealand resident director. Additional countries will also be able to be prescribed if the Government is confident that they would impose New Zealand criminal fines.

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### *Impact*

- 20 The requirement for a resident director would therefore only impact the less than one per cent of New Zealand registered companies that are estimated not to already have a resident director in either New Zealand or Australia (4,200 out of 550,000). This figure is an estimate because information regarding directors' country of residence is only available for about 85 per cent of companies.
- 21 Around 1,200 of the 4,200 companies affected have been categorised as "high risk" by the Companies Office since risk assessment began in 2010. These companies are still on the register as they meet the current registration requirements. Many of these companies have been created by the 77 TCSPs that the Companies Office monitors. A number of companies that have previously been placed in this category have subsequently been tied to criminal activity. Deterring these entities from continuing to trade on New Zealand's reputation is a benefit rather than a cost to the New Zealand economy.
- 22 Therefore less than 3,000 of the companies affected are likely to be legitimately carrying on business in New Zealand. It should be noted a significant number of these companies are likely to be shell companies that have not yet been identified by the Companies Office.
- 23 I acknowledge that some companies may wish to have New Zealand subsidiaries, without New Zealand based directors, for legitimate governance reasons; however, these companies will have a range of options with different costs for complying with the new requirement.
- 24 Firstly, legitimate companies with substantive operations in New Zealand could hire a New Zealand based director. According to the Institute of Directors, average directors' fees are in the order of \$33,000 per year. The larger companies will pay an average of \$50,000 while at the very small end of the scale the fees would be around a few thousand dollars. These costs will only be incurred if a company decides to increase the size of its board rather than replacing an existing director. There may also be additional costs associated with the complication and inconvenience of having a director who is based in a different country to the rest of a company's board.
- 25 Companies that incorporate in New Zealand in order to hold intellectual property will need to hire a resident director, however I expect that the director fees would be low, reflecting the fact that the company is inactive.
- 26 Some resident directors may choose to act as a "proxy" for an overseas person by signing away their day-to-day powers over to another person, as allowed by the Companies Act. These proxy directors may have a lower level of legal liability for the actions of the company and would be less effective in assisting enforcement agencies. However, this could also provide a lower cost compliance option for overseas-based New Zealand companies that do not wish to have an actual director based in New Zealand.
- 27 Alternatively, persons based offshore are able to incorporate in their country of residence and still operate in New Zealand, without the need to have a New Zealand resident director.
- 28 I consider the benefits of this proposal to outweigh the costs that will be imposed on the relatively small number of legitimate companies affected.

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### *Consultation*

- 30 The majority of submissions to the Select Committee on the Bill have identified the limitations of the resident agent option, as stated above, with the Institute of Directors in New Zealand and the New Zealand Shareholders Association submitting that the resident agent option should be removed in favour of simply requiring a resident director.
- 31 The NZ Police, Reserve Bank, Financial Markets Authority and Ministry of Justice consider that this measure would significantly improve the effectiveness of enforcement actions. The Inland Revenue Department considers that the resident director requirement may also aid in their auditing of New Zealand companies, by providing a New Zealand based director to provide the required information and who is liable in certain circumstances for the tax obligations of the company.

## **Transparency Measures**

### **Requiring a Date of Birth and Place of Birth**

- 32 I recommend that company directors be required to provide their date of birth and place of birth. While Cabinet has previously decided not to adopt these measures, I consider them to be worth re-evaluating in light of recent examples involving the misuse of New Zealand companies. This information would be held by the Registrar and would not be on the public register.
- 33 These measures would provide additional levers for enforcement agencies to identify directors and general partners in an investigation. It is not uncommon for more than one person with the same name (e.g. father and son) to reside at the same residential address. Where enforcement or compliance action is required against an individual director, clear and accurate identification is desirable.
- 34 In a case where there are concerns about a company, the Registrar could, after the Bill is in force, require these details to be confirmed or corrected. If false details have been provided, the entity could be “flagged”, then deregistered and the directors and other officers banned.
- 35 Requiring directors to provide their date and place of birth would bring New Zealand company law into line with the Australian Corporations Act. This will in turn facilitate the harmonisation of the registration process between New Zealand and Australia. The United Kingdom and Singapore also require birth information from directors.
- 36 These requirements have been consulted on with industry groups, are not controversial and are of no significant cost to business. A number of submissions on the Bill are supportive of this measure.

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### Identifying Ultimate Holding Companies

- 37 A number of submissions to the Select Committee on the Bill have also proposed requiring companies to advise the Registrar of its ultimate holding company, if it has one. The ultimate holding company is a company which controls the registered company, whether by equity ownership or otherwise. This holding company is currently not readily apparent, especially if the chain of holding companies includes offshore entities. This disclosure is a matter of public interest and record so that persons dealing with a company can know where “control” ultimately lies.
- 38 Australian companies are currently required to publicly disclose their ultimate holding company to the Australian Securities and Investment Commission (ASIC). This only applies if the ultimate controller is a company rather than an individual. The ultimate holding company is defined in the Australian Corporations Act as the holding company that is not itself a subsidiary. In effect it is the company that has control over the composition of the board of directors.
- 39 I consider this proposal to have merit and recommend the Companies Act should be amended to require companies to inform the Registrar of their ultimate holding company if they have one, in line with Australian requirements.
- 40 The management of a company will know who their ultimate holding company is and I therefore consider there to be minimal compliance costs associated with this change.

### Enforcement Measure

#### Enabling Information on Ultimate Ownership and Control to be Required

- 41 I recommend expanding the Registrar’s powers to allow him to require information identifying the ultimate ownership and control of a company. This change would go some way to addressing the concerns raised in the previous FATF assessment of New Zealand. New Zealand’s next progress report to the FATF is due to be considered at the FATF plenary in October 2013. Included in the latest FATF standards, issued in February this year, is a recommendation that:

*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.*

- 42 While the Registrar and other authorities already have investigation powers, these new powers would allow the Registrar to require companies and other relevant persons to provide information on who really owns the company if the shares are held in a trust, and to provide information on any person who is controlling the management of the company. Refusal to provide this information would be a serious and persistent breach of the Companies Act and could ultimately result in the removal of the company from the register.
- 43 This information would only be required by the Registrar on a risk assessed basis and the vast majority of New Zealand companies would be unaffected.



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### **Limited Partnerships**

- 44 The concerns relating the misuse of New Zealand companies also extend to the limited partnerships regime created under the Limited Partnerships Act 2008. From its inception there has been a high uptake of the New Zealand limited partnership vehicle by offshore interests which have no business presence in New Zealand and general and limited partners who are located wholly offshore. Many of registered limited partnerships are known to be carrying on business as offshore financial institutions.
- 45 The proposals in the paper would require limited partnerships to have a general partner who is: a natural person resident in New Zealand; or partnership with a partner who is a resident in New Zealand, or a New Zealand company with a resident director. This will apply to the approximately 440 limited partnerships out of the 1380 (32 per cent) currently registered who have no connection with New Zealand.
- 46 I propose that, to the extent that they are applicable, the proposed measures in this paper should also apply to limited partnerships, noting that some changes will be needed to reflect the differences between the companies and limited partnerships.
- 47 I propose that Cabinet delegate authority to the Minister of Commerce, the Minister of Economic Development and the Minister of Finance, to take decisions on minor policy issues relating to these changes, including the application of these proposals to limited partnerships.

### **International Obligations**

### **Consultation**

- 49 Consultation has been undertaken with the Registrar of Companies and the inter-departmental Organised Crime Policy Committee, comprising of: the Department of Prime Minister and Cabinet; the Police; the Inland Revenue Department; the Financial Markets Authority; the Reserve Bank; the Department of Internal Affairs; the Serious Fraud Office; Treasury; the Ministry of Foreign Affairs and Trade; and the Ministry of Justice. In addition, the views of submitters on the Companies and Limited Partnerships Amendment Bill have been taken into account when formulating these proposals.

### **Financial Implications**

- 50 While there will be costs associated with the establishment of any new registration requirement, the Companies Office considers that it would be able to absorb these within current baselines. The proposal to require a resident director will be less costly and complex to implement than the existing measure in the Bill allowing for resident agents.
- 51 The enhanced powers of the Registrar may give rise to enforcement action. Any costs to the Companies Office arising out of these proposals would be absorbed within the current baseline funding for its current enforcement functions.

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### **Human Rights**

- 52 The proposals in this paper appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1990. A final conclusion as to the consistency of the proposals with NZBORA will be possible once the legislation is drafted.

### **Legislative Implications**

### **Regulatory Impact Analysis**

- 54 The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached. The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Business, Innovation and Employment, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

### **Quality of the Impact Analysis**

- 55 The RIS provides adequate support for a decision on whether to remove the Resident Agent option. However, on the issues of transparency and enforcement the problem definition is not set out clearly enough to enable the reader to judge whether the proposed interventions will provide the best possible solutions. There has been only limited consultation on the proposals, but the RIS draws appropriately on the previous consultation and the input received during the Select Committee stage of the Bill.

### **Consistency with Government Statement on Regulation**

- 56 I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:
- Are required in the public interest;
  - Will deliver the highest net benefits of the practical options available; and
  - Are consistent with our commitments in the Government Statement on Regulation

### **Publicity**

- 57 It is likely that the Bill's progression through the select committee process will receive some media attention. Recently some reporters have criticised the Bill as not going far enough to prevent the misuse of corporate entities. Conversely any decision to implement further measures may be opposed by some commentators if they are thought to create an impediment to the starting or running of a business. I do not propose any media statement on these matters while the Bill is under consideration by the Select Committee.

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### Recommendations

It is recommended that the Committee.

- 1 **Note** that there have been a number of recent examples of New Zealand companies being used by criminals to mask the source of funds used to buy property, conceal true ownership of property, maintain control of criminal proceeds and assets and obscure the link between illegal activity and assets;
- 2 **Note** that the majority of these companies had no substantive link to New Zealand and were seeking to exploit New Zealand's reputation as a well regulated jurisdiction;
- 3 **Note** that while the Companies and Limited Partnerships Amendment Bill includes some measures to reduce this misuse, there are a number of further measures that could be implemented that would further improve the effectiveness of the Companies Act 1993 in this area, at minimal cost to legitimate businesses;
- 4 **Agree** that the Companies Act 1993 be amended to require New Zealand incorporated companies to have a director who is either a resident of New Zealand or a resident director in a prescribed enforcement country;
- 5 **Agree** that the Companies Act 1993 be amended to require directors to provide their date and place of birth to the Registrar when they are appointed;
- 6 **Agree** that the Companies Act 1993 be amended to require companies to publicly disclose their ultimate holding company, if they have one;
- 7 **Agree** that the Companies Act 1993 be amended to provide the Registrar with the power to require companies to provide information relating to their ultimate ownership and control;
- 8 **Agree in principle** that the same decisions made in respect of companies also apply to limited partnerships to the extent that they are applicable;
- 9 **Agree** that a committee consisting of the Minister of Commerce, the Minister of Economic Development and the Minister of Finance may take decisions on any necessary transitional provisions required to implement recommendations 4 – 8 above;
- 10 **Agree** that a committee consisting of the Minister of Commerce, the Minister of Economic Development and the Minister of Finance may take decisions on minor policy issues relating to these changes, including the application of these proposals to limited partnerships; and

Hon Craig Foss  
**Minister of Commerce**

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### Annex 1 – Proposed Measures

	<b>Proposed Measure</b>	<b>Benefits</b>	<b>Potential Costs</b>
<i>Accountability</i>	Requiring New Zealand companies to have a director who is resident in New Zealand or a resident director in an enforcement country (Australia initially).	Resident directors are legally accountable for the actions of the company; able to usefully aid enforcement agencies in their enquiries; and less complex to implement than resident agents. It is difficult to quantify these benefits.	Around 4,200 out of 550,000 companies (0.77%) do not already have a director resident in NZ or Australia. Less than 3,000 of these companies are likely to be legitimate companies. The cost of a resident director may range from a few thousand dollars to around \$50,000, and may be defrayed by replacing an existing director.
<i>Transparency</i>	Requiring the date and place of birth of directors.	Provides additional levers to assist in the identification of directors in the event of an investigation.	While this would apply to all companies the costs would be negligible.
	Requiring companies to disclose to the Registrar their ultimate holding company.	Improves public transparency regarding the control of New Zealand companies and bring New Zealand into line with Australian requirements.	There is no data on how many companies have an ultimate holding company. However, the cost on impacted companies is likely to be low.
<i>Enforcement</i>	Expanding the Registrar's powers to seek information on the ultimate ownership and control of a company.	Would align New Zealand with the latest FATF recommendations regarding corporate transparency and provide a disincentive to use New Zealand companies for financial crime. Note most jurisdictions have this ability.	Would be applied on a risk-assessed basis and should not impose costs except on those firms under investigation.

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# Regulatory Impact Statement

## Enhancements to the Companies and Limited Partnerships Acts to reduce misuse by organised crime

### Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
- 2 It provides an analysis of further measures to enhance the effectiveness of the Companies Act 1993 and the Limited Partnerships Act 2008 to better address issues relating to shell companies in order to ensure New Zealand remains a trusted place to do business. The status quo is considered to not sufficiently deter criminals from registering companies and limited partnerships in the first place, allow timely detection by the Registrar nor address the perception that New Zealand's company registration system is particularly vulnerable to misuse
- 3 The options fall out of further work the Ministry of Business, Innovation and Employment has done as requested by Cabinet to consider further measures for improving New Zealand 'legal person transparency' to assist the investigation and prosecution of serious crime [DES (11) 2/3 refers]. Options have been recommended in the context of a framework that:
  - a. An efficient company registration regime should remain a competitive advantage for New Zealand;
  - b. Any measures should be effective in reducing misuse of the company registration regime;
  - c. The costs of legitimate businesses should be minimal unless the benefits can be clearly demonstrated to outweigh those costs; and
  - d. That, where possible, there are benefits of aligning with the Australian regime.
- 4 Consultation has been undertaken with the Registrar of Companies and the inter-departmental Organised Crime Policy Committee, comprising of: the Department of Prime Minister and Cabinet; the Inland Revenue Department; the Financial Markets Authority; the Reserve Bank; the Department of Internal Affairs; the Serious Fraud Office; Treasury; the Ministry of Foreign Affairs and Trade; and the Ministry of Justice. In addition, the views of submitters on the Companies and Limited Partnerships Amendment Bill, currently before select committee have been taken into account when formulating these proposals.

Melanie Porter  
Manager, Corporate Law and Governance  
Competition, Trade & Investment  
Economic Development Group

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### Status Quo and Problem Definition

#### *New Zealand's Registration System*

- 1 The key feature of New Zealand's registration requirements is that anybody can register a company or limited partnership from anywhere, online, at low cost and with only basic information needing to be supplied. A company or limited partnership can be registered in New Zealand within a few hours of applying.
- 2 This reflects underlying principles of both the Companies Act 1993 and the Limited Partnerships Act 2008. Both Acts provide basic and adaptable requirements for the incorporation, organisation, and operation of those legal persons. A legal person can enter into contracts, undertake business transactions and take, or be subject to, legal action in its own right. This means the persons behind the company or limited partnership are able to take business risks with limited personal liability.
- 3 The Registrar of Companies ('the Registrar') is a statutory position that exercises the powers, duties and functions of the Registrar under the Companies Act and the Limited Partnerships Act. Details of the company or limited partnership are kept by the Registrar on specific registers.
- 4 The Registrar has powers of inspection to investigate compliance with the Companies Act, the Financial Reporting Act 1993 or the Limited Partnerships Act 2008. The Registrar also has powers to remove companies from the register for various grounds including where it is satisfied that the company has ceased to carry on business and there is no other reason for the company to continue in existence, or where the application or annual fee has not been paid.
- 5 The simplicity of the registration regime is deliberate and is a contributor to New Zealand's enviable reputation for ease of doing business. Coupled with its reputation as a well-regulated jurisdiction, this provides a comparative advantage that underpins New Zealand's ability to attract and retain internationally-mobile business investment.

#### *Companies and Limited Partnerships Amendment Bill*

- 6 A review in 2010 of the circumstances surrounding the SP Trading Ltd case<sup>1</sup> identified a number of areas where New Zealand's registration regime is out of step with comparable foreign counterparts. It further identified an inability for the Registrar to take administrative and investigative steps to ensure the integrity of the information on the companies register where he is aware that such information is inaccurate.

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<sup>1</sup> This New Zealand-registered company was implicated in a weapons smuggling operation in Thailand. It had no business presence in New Zealand and its sole nominee director had signed a comprehensive power of attorney regarding the control of the company to two offshore nationals.

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- 7 In October 2011 the Companies and Limited Partnerships Amendment Bill (the Bill) was introduced. The Bill is currently in the Select Committee process and a report back is due by 24 January 2013. It is expected to be enacted in the first half of 2013.
- 8 The Bill intends to address issues relating to shell companies in order to ensure New Zealand remains a trusted place to do business. As it was introduced will put in place the following measures:
- a. Companies and limited partnerships, if they have no director or general partner resident in New Zealand (or an enforcement country<sup>2</sup>), will need to appoint a New Zealand resident agent to respond to requests from regulatory, investigatory and law enforcement agencies;
  - b. The Registrar has enhanced investigative powers to have information on the register confirmed or corrected and verified if required;
  - c. The Registrar can publish notes of warning on the register if it has concerns about the bona fides of a company or limited partnership on any of the current grounds for removal plus three new additional grounds. This warning power extends to inserting a flag in relation to any other company or limited partnership that shares a director, a general partner or an officer with that entity under investigation;
  - d. A company or limited partnership may additionally be removed from the register if it fails to assist the Registrar, or there is substantial or persistent failure to comply with the Companies Act 1993 or the Financial Reporting Act 1993; and
  - e. The Registrar can prohibit persons from acting as directors, general partners or resident agents for up to five years where the companies or limited partnerships for which they are responsible have been removed from the register through the exercise of the new removal powers.

### *Update since 2010*

- 9 The Bill goes some way towards addressing the vulnerabilities of the New Zealand registration system by putting in place additional registration and maintenance requirements. However, the measures in the Bill were recognised at the time as being limited in nature and that further work would be undertaken in order to address other issues around the misuse of New Zealand legal persons by offshore criminal interests.

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<sup>2</sup> This will be a country that has an agreement with New Zealand that allows for the recognition and enforcement there of New Zealand judgements imposing regulatory regime criminal fines.

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- 10 The wider package of work included:
  - a. Across government work being carried out in relation to key actions the *Response to Organised Crime* report (improving domestic and international information sharing, legal assistance and coordination; protecting against cybercrime; preventing bribery and corruption; enhancing anti-money laundering and crime proceeds recovery; disrupting identity crime and reducing misuse of legal persons);
  - b. The full implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) including imposing obligations on and supervision of trust and company service providers (TCSPs)<sup>3</sup>;
  - c. Responding to the Financial Action Task Force recommendations<sup>4</sup>; and
  - d. Establishment of the Registries Integrity and Enforcement Team within the Companies Office.
- 11 While by far the vast majority of the approximately 550,000 companies and limited partnerships registered are legitimate, low entry barriers and a high international standing also makes the New Zealand registration regime vulnerable to misuse.
- 12 Since 2010, there has been ample further evidence to show that New Zealand registered corporate structures are still being used by criminals, often with the assistance of TCSPs, to create a confusing web of legal persons to launder money, traffic arms and illegal substances, and commit tax and other fraud. Corporate structures can be used by criminals to mask the source of funds used to buy property, conceal true ownership of property, maintain control of criminal proceeds and assets and obscure the link between illegal activity and assets. These layers make it exceptionally difficult for law enforcement to identify individuals and hold them to account.
- 13 Concerns relating to the exploitation of the New Zealand companies registration regime by rogue offshore interests also extends to the limited partnerships regime established under the Limited Partnerships Act 2008. From its inception there has been a high uptake of the New Zealand limited partnership vehicle by offshore interests which have no business presence in New Zealand and general and limited partners who are located wholly offshore. Many of registered limited partnerships are known to be carrying on business as offshore financial institutions.

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<sup>3</sup> TCSPs act as formation agents for legal persons and legal arrangements, arrange for persons to act as nominee directors or trustee shareholders and/or provide registered offices or correspondence or administrative addresses for registered companies.

<sup>4</sup> New Zealand was last assessed in 2009 and is currently non-compliant with several FATF recommendations. Many of these will be addressed when the AML/CFT legislation comes fully into force in July 2013. The other main compliance gap is in the transparency of legal persons where authorities and regulators face difficulties obtaining information concerning the beneficial owners and ultimate controllers of companies and limited partnerships, as well as details of their activities.



## In Confidence

- 14 It appears that those who wish to conduct unlawful activities overseas are increasingly seeking to incorporate companies in New Zealand. They will do this:
- a. In order to benefit from New Zealand's positive reputation as a well-regulated jurisdiction which will provide a veneer of legitimacy and credibility to facilitate their unlawful conduct;
  - b. Because there is no need to have substantive links to New Zealand; and
  - c. Because it is easier and cheaper to register companies here than in other jurisdictions, meaning that New Zealand companies are essentially disposable, being easily and cheaply replaceable if offending is detected or the company is struck off.
- 15 The Police have provided statistics on how many requests it has received about New Zealand companies allegedly committing crime in foreign countries. Taskforce Bael<sup>5</sup> identified that between 2006 and 2010, 134 requests had been received from overseas law enforcement agencies by the FIU, Interpol and NZ Customs Service. These requests identified 143 NZ companies allegedly facilitating crime. This is less than three per month.
- 16 Since 2010, the FIU and Interpol have received a further 171 requests regarding 248 companies allegedly facilitating crimes. This averages at more than 8 companies a month being identified as being involved in crime.
- 17
- These are suspected of moving funds for overseas clients for the purposes of tax evasion and/or money laundering. Many of this person's companies have already been struck off the register.
- 18 Of the remaining 341 companies, 330 do not or did not have a resident director (97%). Many of these companies have also been struck off.
- 19 The two company formation agents that have registered the majority of the 391 companies have registered approximately 4,000 companies in total<sup>6</sup>. In total, since 2006, 305 requests have been received regarding 391 companies. These figures are only what is reported to the FIU. The true extent of companies being exploited for criminal purposes cannot be quantified.
- 20 Quantifying the extent of money laundering is complicated but is estimated by Police to be approximately NZ\$1.5 billion not including laundered funds relating to tax evasion. The Police and the FIU do not have enough information to accurately comment on the total scale of exploitation related to New Zealand offending but confirm that it is taking place.

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<sup>5</sup> An Organised Financial Crime Agency of New Zealand led multi-agency investigation as a result of the SP Trading incident.

<sup>6</sup> Noting that there are over 550,000 companies on the register and that over 3,000 of this 4,000 have already been removed by the Registrar.

## In Confidence

- 21 Similar statistics apply to limited partnerships where 32% of those currently registered have no connection with New Zealand. The evidence from Police is that the formation and sale of companies and limited partnerships in a 'ready-made' form is a common method for offshore interests to obtain a New Zealand corporate form.

### Conclusion

- 22 The status quo, including the passing of the Bill as it stands, will still not meet the current challenges and sufficiently deter criminals from registering companies and limited partnerships in the first place, allow timely detection by the Registrar nor address the perception that New Zealand's company registration system is particularly vulnerable to misuse.
- 23 In particular, the requirement for a New Zealand connection is weak, the information requirements for registration remain low and the Registrar is missing some simple but important tools for more effective enforcement.
- 24 If the status quo is maintained the risk of repeat examples like SP Trading Limited is still high. In cases where the illegal activity being conducted by the company involves breaches of international obligations such as United Nations sanctions, such episodes are especially undesirable. The repercussions of even a very small number of high profile cases have the potential to cause considerable reputational damage and reduction in confidence.

### Objectives

- 25 The framework for how the addition of further measures could usefully be considered is in the context that:
- a. An efficient company registration regime should remain a competitive advantage for New Zealand;
  - b. Any measures should be effective in reducing misuse of the company registration regime;
  - c. The costs of legitimate businesses should be minimal unless the benefits can be clearly demonstrated to outweigh those costs; and
  - d. That, where possible, there are benefits of aligning with the Australian regime.
- 26 It is intended that individuals and companies that do not pose a high risk will continue to use the company and limited partnership registration system on a 'good faith' basis. This will help ensure that New Zealand keeps its reputation as an easy place in which to do business while taking action against those who wish to undermine our good standing as a well-regulated jurisdiction.

### Analysis

- 27 In the context of the *All of Government Response to Organised Crime*, the Ministry of Business, Innovation and Employment was tasked by Cabinet to consider further measures for improving New Zealand 'legal person transparency' to assist the investigation and prosecution of serious crime [DES (11) 2/3 refers].

## In Confidence

- 28 We have considered the framework outlined above in relation to many options and have undertaken consultation with the Registrar and limited consultation with the inter-departmental Organised Crime Policy group.
- 29 In addition, submitters on the Companies and Limited Partnerships Amendment Bill have made suggestions on measures to further strengthen the objectives of the Bill.
- 30 We outline several measures below as to how the Companies Act 1993 and the Limited Partnerships Act 2008 can be strengthened to reduce the misuse of legal persons by increasing accountability, transparency and enforcement while at the same time imposing minimal costs on legitimate business.

### **Accountability – Removal of the Resident Agent Option**

- 31 Under the Bill, companies and limited partnerships will have a choice to either appoint a New Zealand resident director or a New Zealand resident agent.
- 32 The objective of the measure is to provide an entry point for enforcement agencies to gain information regarding the activities of the company. Under the status quo it is difficult and costly to effectively investigate a company if all individuals are located offshore. A choice of resident agent reduces costs for businesses that wish to register in New Zealand but otherwise do not wish to have a substantive connection with New Zealand.
- 33 We recommend removing the option of a resident agent so that a company must appoint a resident director<sup>7</sup>.

#### *Disadvantages of the Status Quo - Resident Agent Option*

- 34 The option of a resident agent was recognised at the time as being limited in nature. A resident agent will not be as effective at reducing misuse as the requirement to have a resident director and there are major disadvantages to retaining this option.
- 35 The most serious is that resident agents will not necessarily be of any help to enforcement agencies and will therefore defeat the primary objective of effectiveness. There is no obligation for a resident agent to know much at all about the company they represent and in fact, it will be in their interests to know less rather than more about any such company.
- 36 This is compounded by the less onerous duties of a resident agent who is an administrative officer only. Risk companies who are the target of this measures will undoubtedly choose a resident agent if the option is allowed. Risky company formation agents will only be too willing to perform this function. The resident agent requirement provides limited deterrence and may quickly become a loophole.
- 37 In addition, the resident agent is a new concept to New Zealand law there is no clear legislative precedent for such an officer. The legal requirements necessary to underpin their functions and duties are novel, uncertain and untested.

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<sup>7</sup> Or in the case of a limited partnership, a general partner who is a natural person resident in New Zealand or an enforcement country or where the general partner who is a partnership or company has at least one natural person who is resident in New Zealand or an enforcement country.

## In Confidence

- 38 Finally, the resident agent option will necessitate significant changes to the majority of the Companies Office online services, back office functions and search facilities to enable the new information to be collected, maintained and searched by the public. The extra costs may need to be passed on to all businesses.

### *Benefits of a Resident Director Only*

- 39 Police's and other agencies strong preference was, and still is, to require a resident director. Under this measure all companies which register in New Zealand would require at least one director to be ordinarily resident in New Zealand. The already agreed exemption for directors resident in enforcement countries will remain.
- 40 The exemption for companies with resident directors from prescribed enforcement countries is a compromise designed to ensure that this change does not impact Australia-based New Zealand companies, which currently make up the majority of companies without a New Zealand resident director. Additional countries will also be able to be prescribed if the Government is confident that they would impose both New Zealand civil and criminal penalties.
- 41 Requiring a resident director is only part of a response to reduce the misuse of companies and limited partnerships for organised criminal activities. However, the benefits that are that it will:
- a. Ensure that there is a person in New Zealand to hold criminally liable for the company's actions. A director owes duties to the company and therefore needs to have knowledge about the company;
  - b. Bring New Zealand company law into line with comparable jurisdictions including Australia;
  - c. Act as a better deterrent to offshore interests who do not intend to carry out lawful business. Anecdotal evidence from the Australian Securities and Investment Commission indicates that they do not experience a high incidence of the misuse of the Australian company structure by offshore interests. They attribute this to the deterrent effect of the requirement under the Australian Corporations Act for at least one company director to be ordinarily resident in Australia; and
  - d. Create a significant barrier for overseas based TCSPs that register companies in New Zealand. Offshore based TCSPs will need to seek the agreement of a New Zealand resident to act as a director for these companies, which may be difficult considering the legal liability associated with acting as a director.

### *Costs of a Resident Director*

- 42 The requirement to have a New Zealand resident director or agent will impose no costs on New Zealand based companies and limited partnerships which will already have resident directors or general partners as a matter of course. Similarly, there are many overseas companies with a genuine connection with New Zealand that also have resident directors or general partners.

## In Confidence

- 43 We estimate that the requirement to appoint a resident director will fall on approximately 0.77 per cent of companies (approximately 4,200) currently registered in New Zealand that do not already have either a resident director in New Zealand or in a likely enforcement country<sup>8</sup>.
- 44 The requirement will also apply to approximately 439 limited partnerships out of the 1380 currently registered.
- 45 Around 1,200 of the companies affected have been categorised as “high risk” by the Companies Office since risk assessment began 2010. These companies are still on the register as they meet the current registration requirements. Many of these companies have been created by the 77 TCSPs that the Companies Office monitors. A number of companies that have previously been placed in this category have subsequently been tied to criminal activity. Deterring these entities from continuing to trade on New Zealand’s reputation is a benefit rather than a cost to the New Zealand economy.
- 46 Therefore less than 3,000 of the companies affected are likely to be legitimately carrying on business in New Zealand. It should be noted that a significant number of these companies are likely to be shell companies that have not already been identified by the Companies Office. Examples of the types of legitimate companies that will be impacted by this change are:
- a. A New Zealand subsidiary with directors that are all directors or senior managers of its overseas parent company. In most of the situations that we are aware of, the immediate parent company is based in Australia and is required under the Corporations Act to have an Australian resident director. These companies would not therefore be affected.
  - b. New Zealand companies with a parent company elsewhere, such as the United States or Singapore, will be required to hire a resident director in New Zealand. These companies will either need to replace an existing director with a New Zealand resident or add a New Zealand resident as an additional director. This category is likely to consist of a relatively low number of large multinational companies.
  - c. Some companies that are based overseas but do carry out some business in New Zealand may have incorporated in New Zealand instead of in their home country for reputational or tax reasons. These companies will need to determine whether these benefits warrant hiring a director in New Zealand, or whether they would be better to incorporate in their home jurisdiction.
  - d. We are aware of some companies that incorporate in New Zealand in order to hold intellectual property, which may consist of New Zealand patents or may be purely a way of preventing a New Zealand entity from using their name. While these companies will need to hire a resident director, we expect that the fees would be low to reflect the fact that the company is inactive.

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<sup>8</sup> At this early stage, Australia only.

## In Confidence

- 47 The incremental cost for legitimate companies appointing a resident director will arise when they choose to increase the size of the board rather than replacing an offshore director. The costs will be in recruitment and remuneration of a resident director. There may also be additional costs associated with the complication and inconvenience of having a director who is based in a different country to the rest of the board e.g. communications (including time delays) and travel costs.
- 48 The Institute of Directors reports that there is no shortage of willing directors but it is the quality that will vary. This will need to be taken into account by legitimate businesses as will the following costs: The Institute of Directors 2011 Director Remuneration survey shows average directors' fees are in the order of \$33,000. The larger companies will pay an average of \$50,000. At the very small end of the scale the fees would be around a few thousand dollars. The cost of appointing a director for a legitimate company will be incrementally more than for the resident agent that otherwise may have been appointed. This cost was estimated in 2010 to be between \$500 and \$2000 p.a.
- 49 Some resident directors may choose to act as a "proxy" for another person by signing away their day-to-day powers over to another person, as allowed by the Companies Act. These directors may have a lower level of legal liability for the actions of the company and would be less effective in assisting enforcement agencies. However, this would also provide a lower cost compliance option for overseas-based New Zealand companies that do not wish to have an actual director based in New Zealand.
- 50 Proxy directors are likely to charge a broad range of fees, depending on how concerned they are about their level of legal liability. We are aware of some cases where New Zealand residents have been willing to act as directors for a very low charge.
- 51 While proxy directors will allow determined shell companies to incorporate in New Zealand, we do not consider that this will undermine the resident director requirement. These persons would still have a higher degree of legal liability than resident agents and would therefore act as a more effective and internationally recognised deterrent to the misuse of New Zealand companies. The Bill also provides the Registrar with the ability to ban directors for a period up to ten years for breaches of the Companies Act. Over time we expect that the banning and prosecution of New Zealand proxy directors will discourage New Zealanders from acting as a proxy director if they suspect the company is involved in criminal matters.
- 52 Companies could also choose to deregister as a company in New Zealand and instead register a company in their home jurisdiction. This company would be able to be registered on the New Zealand overseas company register and could continue to operate in New Zealand.

## In Confidence

- 53 We believe that the benefits of requiring a resident director will outweigh the marginal increased cost on a limited number of companies compared to a resident agent. Many of these companies will have no substantive link to New Zealand and are the intended target of this measure. The limited exemption proposal will remove these costs from those businesses that have a director residing in approved low-risk jurisdictions (specifically Australia at this stage). The option of other business governance options will reduce costs for those who wish to remain registered but otherwise have no desire to have a genuine New Zealand director.

### *Consultation*

- 55 The majority of submissions to the Select Committee on the Bill have identified the limitations of the resident agent option:
- a. The Institute of Directors in New Zealand and the New Zealand Shareholders Association have submitted that requiring that the resident agent should be removed in favour of simply requiring a resident director;
  - b. Bell Gully, the New Zealand Law Society, the New Zealand Private Equity and Venture Capital Association, and Simpson Grierson are critical of the effectiveness and cost of the resident agent proposal but do not specifically address resident directors; and
  - c. Joint submissions from Bell Gully, Chapman Tripp, Russell McVeagh and Simpson Grierson, along with an individual submission from Chapman Tripp specifically oppose requiring either a resident agent or a resident director based on costs to legitimate business.
- 56 Business New Zealand and the New Zealand Institute of Chartered Accountants continue to support the resident agent option as currently included in the Bill.
- 57 The Inland Revenue Department considers that the resident director requirement may also aid in their auditing of New Zealand companies, by providing a New Zealand based director to provide the required information and who is liable in certain circumstances for the tax obligations of the company.
- 58 This proposal is supported by all of the government agencies consulted with, aside from Treasury who have reservations about the cost to legitimate business. In particular, the NZ Police, Reserve Bank, Financial Markets Authority and Ministry of Justice consider that this measure would improve the effectiveness of enforcement agencies.

### **Transparency – More disclosure at registration**

- 59 The current registration requirements are considered to be set at a level suitable and appropriate for companies and limited partnerships that carry on legitimate business. The Registrar takes a light-handed approach in the expectation companies and limited partnerships and their promoters have legitimate purposes and an interest in facilitating social and economic benefits within New Zealand.

## In Confidence

- 60 Details of the company or limited partnership are kept by the Registrar on specific registers. Some details on the register are publicly available and some are not. This provides transparency so the public can know, to a certain extent, who they are dealing with.
- 61 The companies and limited partnership registration regime however fails to meet the objective of effectiveness in reducing misuse when dealing with criminal elements by not promoting transparency. Strengthening the registration regime in this regard should have a twofold benefit; firstly, increased transparency will deter criminals from registering companies and limited partnerships in New Zealand in the first place. Secondly, the availability of more accurate and up to date information about companies and limited partnerships will improve the integrity of the register and improve investigation and enforcement.
- 62 We recommend that further information is required that may help identify beneficial owners or ultimate controllers of risk companies or limited partnerships.

### **A. Director Birth Information**

- 63 This measure would require all directors to provide their date and place of birth to the Registrar and all general partners who are natural persons to provide their place of birth<sup>9</sup>. This information would form part of the register, but would not be available for public searching. It would be able to be used by the Registrar and other enforcement agencies in order to carry out their functions.

#### *Benefits*

- a. Better identification and verification of individuals (for example, in situations where two people such as a father and son with the same name, reside at the same address);
- b. Alignment with the Australian regime; and
- c. Provides a further piece of information for the Registrar to require confirmation or correction of under the enhanced powers under the Bill.

#### *Costs*

- 64 While this requirement will apply to all companies, no material costs to business have been identified as these details should be known to the director in any case.

#### *Consultation*

- 65 These requirements were consulted on in 2010 with business groups, are not controversial and are of no cost to business. Consulted parties reported that international directors expect to provide this information in any event, as it is a common requirement for overseas jurisdictions.
- 66 A joint submission to the Select Committee from Bell Gully, Chapman Tripp, Russell McVeagh and Simpson Grierson, and an individual submission from Chapman Tripp also raised this measure as information that could be captured to improve the status quo.

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<sup>9</sup> Date of birth is already a requirement for partners who are natural persons under the Limited Partnerships Act.



## In Confidence

### **B. Disclosure of Ultimate Holding Company**

- 67 A requirement that a company must advise the Registrar of its ultimate holding company, if it has one, would provide transparency regarding the control of the company. The ultimate holding company is a company which controls the registered company, whether by equity ownership or otherwise. This holding company is currently not readily apparent, especially if the chain of holding companies includes offshore entities. This is a matter of public interest and record so that persons dealing with a company can further know where 'control' ultimately lies.
- 68 This only applies if the ultimate controller is a company rather than an individual. Note that this may or may not be the same as the company's beneficial ownership, as control can be exercised by means other than ownership.

#### *Benefits*

- a. Alert the Registrar (and the public via register searches) who the true controller of the company is;
- b. Provide alignment with the Australian regime;
- c. Provide a further piece of information for the Registrar to require confirmation or correction of under the enhanced powers under the Bill; and
- d. Provide better compliance with the Financial Action Task Force recommendations.

#### *Costs*

- 69 While there is no data on how many companies would be impacted by this requirement, no material costs to business have been identified. This information will already be known.

#### *Consultation*

- 70 A joint submission to the Select Committee from Bell Gully, Chapman Tripp, Russell McVeagh and Simpson Grierson, and an individual submission from Chapman Tripp also raised this measure as information that could be captured to improve the status quo.

### **Enforcement – Further powers of the Registrar**

- 71 The enforcement regime of the Registrar will be given added strength under the Bill to deal with at risk companies and limited partnerships. There is value in continuing to enhance this regime to detect and prevent misuse of legal persons.
- 72 Specifically, we recommend that a further tool be added to increase transparency and uncover beneficial owners and/or ultimate controllers if it is necessary to do so. Improved enforcement will also provide a deterrent effect on criminals considering registering a legal person in New Zealand.
- 73 All submitters were comfortable with the increased powers of the Registrar under the Companies and Limited Partnerships Amendment Bill.

## In Confidence

### ***Seeking information on ultimate ownership and control***

- 74 The Financial Action Task Force recommends that 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. This ensures an international standard that aids enforcement and inter-country assistance.
- 75 The Registrar's powers could be expanded to allow it to require information on the ultimate ownership and control of an entity to be provided as a result of a risk based assessment. This new power would allow this information to be obtained without the need to link the request other specific potential wrongdoing. Refusal to provide this information would be an offence under the Companies Act and could ultimately result in the removal of the company from the register.

### *Costs*

- 76 The vast majority of New Zealand companies would be unaffected. This power would also only be applied on a risk assessed basis, as with other inspection powers in the Companies Act. The benefits of increased transparency of the ultimate owners and controllers of companies would appear to outweigh any costs.

### **Conclusions and Recommendations**

- 77 It is recommended that:
- a. The option of resident agent be removed
  - b. Date and place of birth of company directors is collected at registration; and
  - c. That companies and limited partnerships must advise the Registrar of its ultimate holding company if it has one.
- 78 That the powers of the Registrar be clarified so that:
- a. The Registrar can require information on the ultimate ownership and control of an entity.

### **Implementation**

- 79 The proposals will require legislative amendments to the Companies Act 1993 and the Limited Partnerships Act 2008.
- 80 Enforcement will be undertaken through the enhanced powers of the Registrar, and by modifying the application process to ensure that all new incorporation applicants are subjected to the new regime.
- 81 Publicity would be given to legislative changes by way of a communications programme which would be delivered through the usual Companies Office systems. This would include website content, communication through the Ministry of Economic Development Monthly Business Update publication, media releases, and short articles in professional publications such as the New Zealand Law Society magazine Law Talk.

## **In Confidence**

### **Monitoring, Evaluation and Review**

- 82 Quarterly statistics on the number of requests from offshore enforcement agencies to the New Zealand police for assistance in investigations into New Zealand registered companies will be compared pre- and post- intervention in order to ascertain whether there has been a drop in the number of such companies involved in suspected criminal activity.
- 83 Monitoring of the effect of compliance costs will take place via the regular Companies Office surveys of its clients (which will include a specific question regarding the new processes), and via feedback through its website and contact centre. In addition, feedback from the business.govt.nz website (which is a cross-governmental business information website) will be monitored.
- 84 Monthly, quarterly, and annual registrations will be compared pre- and post-intervention to ascertain whether the intervention has had a material impact on the overall number of business registrations. These data will be collected by the Companies Office as a matter of course, and are able to be analysed in this manner at minimal marginal cost to the Ministry.