

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

## Your name and organisation

<b>Name</b>	Andrew Body
<b>Organisation</b>	Andrew Body Limited

## Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

## Responses to discussion document questions

1

Do you agree with the nature of the problem? Do you have any views on the size of the problem? Do you have any evidence to support these views?

The discussion document is unclear about the nature or extent of the problem.

Instead it makes a number of assumptions and suppositions about the problem. Without the problem being defined by what illegal activity is being targeted, the size and cost of that activity and who is undertaking that activity the problem is not able to be clearly articulated. For example is the problem related to offshore activities by foreigners using New Zealand as an intermediate point or is it related to onshore activities by New Zealanders?

Without an insightful and quantitative evidence-based analysis of the nature and extent of the problem the discussion document does not make a case for change and does not provide a basis for any preferred options for change.

2

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

This question presupposes that transparency of beneficial ownership is even possible. The discussion document offers a proposition that most of the targeted activity is offshore related, in which case it is unlikely that any New Zealand law will result in increased transparency of beneficial ownership of entities undertaking the targeted illegal activity. Moreover in the unlikely event that New Zealand law did increase transparency of beneficial ownership by foreigners undertaking the targeted illegal activity, what is that likely to achieve?

The discussion document is unconvincing in its proposition that increased transparency from those entities undertaking the targeted illegal activity is possible or if it is possible will have any positive net benefit.

3

Do you have any information on your organisation's current compliance costs to supply or collect beneficial ownership information?

	Do you think your compliance costs would increase, decrease or stay the same under the different options? Would the change be significant?
	Current compliance takes time and the costs of compliance are probably almost exclusively borne by parties who are not in any way undertaking the targeted illegal activity.
4	What impact do you think the options would have on businesses deciding whether to register as a company or limited partnership?
	Jurisdictional trends to greater compliance costs with little apparent likelihood of those compliance costs creating benefits are noted by all investors. These trends harm investors' perceptions of the relative attractiveness of the destination. Jurisdictional comparisons of particular regulatory measures offered as justification for their adoption are often spurious given they don't take account of overwhelming other reasons for investment in jurisdictions that have already adopted poorly conceived regulatory measures.
5	Do you have any comments on our preliminary assessment of the options?
	For the reasons stated above none of the suggested options are likely to produce any significant net benefit and possibly no gross benefit at all.
6	What is your preferred option?
	Our suggestion is that instead of the proposed options MBIE consider taking an activities-based approach that targets foreigner as the group that MBIE appears to be most concerned about.  The thresholds in the Companies Act 1993 (s207E) and the Financial Reporting Act 2013 (s45) for provision by overseas companies and their subsidiaries operating in New Zealand of financial accounts to the Registrar of Companies for registration and publication should be substantially reduced and that the provisions be widened to any form of entity.  This approach enables and encourages the market to participate in monitoring the activities of foreign entities. Large foreign entities will not be affected by this requirement as they are already subject to it. Small foreign entities, which may be more likely to be involved in risky activity, would become subject to this requirement.  The status quo in regard to beneficial ownership should remain.
7	What are your views on who should be captured as a beneficial owner of a corporate entity?
	Status quo to remain.
8	What information do you think should be collected about beneficial owners?
	Status quo to remain.
9	What information about beneficial owners do you think should not be publicly available, and in what circumstances?
	Status quo to remain.
10	What are your thoughts on the obligations that should be placed on beneficial owners? Do you have any views on how these obligations should be enforced?

	Status quo to remain.
11	When do you think corporate entities should update the beneficial ownership information that they hold?
	Status quo to remain.
12	What are your views on the enforcement mechanisms that should be available to the Registrar?
	Status quo to remain.
13	Do you think there are any types of corporate entities that should be excluded from the options?
	Status quo to remain.
14	What are your thoughts on how frequently, and in what circumstances, the registers should be updated?
	Status quo to remain.
15	What are your views on what verification should be undertaken?
	Status quo to remain.
16	What are your views on having a unique identification number for beneficial owners?
	Status quo to remain.
17	Do you have any views on whether any changes are needed to the requirements for company share registers?
	Status quo to remain.
18	Are there any other factors that MBIE should consider?
	See above
19	Do you have any thoughts on any additional measures that could be taken to combat the misuse of corporate entities?
	See above
20	Are there legitimate purposes for using a nominee director? What would the implications be if nominee directors were expressly prohibited?
	No comment provided
21	Do you have any information about problems with companies or limited partnerships on the overseas registers?
	No

22	Do you think there should be obligations on companies and limited partnerships on the overseas registers to provide information about their beneficial owners?
	See above
23	Do you have any information about problems related to TCSPs?
	No
24	Are there any other areas of concern?
	See above

## Other comments