Compliance costs

A law firm may decide that on average the administrative cost of complying with AML/CFT obligations is $35 per client matter (which may be conservative) and the firm has 1,000 new matters every year. The firm will therefore charge $35,000 to clients and should receive this sum to meet compliance costs. If all firms decide to pass on the compliance costs to clients, there is a good chance that firms will have the resources to properly fulfil their obligations. If law firms overall determine not to pass on the administrative costs involved in compliance to clients, then I anticipate that there will be a greatly increased chance that firms will not fully comply with their obligations.

I urge firms to carefully think through and appropriately price the full cost of compliance. It is quite possible that in a mid-sized firm the responsible partner may spend up to 5% to 10% of their time overseeing compliance at a cost of say $50,000 per annum and the internal direct cost of staff compliance may easily be another $20,000 to $30,000 per annum when considering the training required, ongoing risk assessments, day to day compliance work and fulfilling audit requirements.

It is quite possible that a mid-sized firm may incur costs in excess of $80,000 per annum on AML/CFT compliance. Given the serious consequences for noncompliance I anticipate that many firms may decide that overall they will be able to save money and better ensure compliance if they out-source aspects of the compliance process and recoup this cost from clients through the appropriate charges. ■

Disclaimer: These figures are estimates and projections only, based on certain assumptions and conditions, and they should not be relied on as a basis for revising your legal fees or cost of any services you may wish to outsource.

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UPDATE
COMPANY LAW

Proposals for a register of beneficial ownership in New Zealand

BY **HENRY BRANDTS-GIESEN** AND **NICK BERESFORD**

On 19 June 2018, the Ministry of Business, Innovation and Employment (MBIE) published a Discussion Document proposing the introduction of beneficial ownership registers for New Zealand companies and limited partnerships (termed "corporate entities").

The proposals are driven by recent high-profile cases of alleged criminal wrongdoing involving the use of New Zealand-registered corporate entities (whether the proposals would have stopped such wrongdoing is another matter). They also implement FATF Recommendation 24 into New Zealand law and are part of wider recent reforms to align New Zealand's anti-money laundering framework with international standards.

The proposals

The Discussion Document sets out three potential options for reform:

- **Option 1:** The introduction of a specific requirement for corporate entities to hold up-to-date beneficial ownership information;
- **Option 2:** The introduction of a central beneficial ownership register, accessible to law enforcement agencies only; and
- **Option 3:** Option 2, but with the register being freely accessible by the public. MBIE state in the Discussion Document that this is their preferred option.

It is proposed that the definition of "beneficial owner" for the purposes of the register will align with the definition in New Zealand's anti-money laundering legislation (which follows the internationally accepted meaning).

One key area requiring further thought is the common situation where a corporate entity (perhaps a company which operates the family business) is ultimately owned by the trustees of a discretionary family trust.

Family trusts are ubiquitous in New Zealand and are often used by families with only modest wealth. Successive governments have resisted calls for a register of trusts. However, under option 2 or 3 (and depending on the finer details of the proposals) a register

of trusts would, in effect, be introduced for all trusts which hold an interest in a New Zealand corporate entity. This would increase compliance costs for many family trusts which may prove politically contentious.

International comparisons

The Discussion Document cites the European Union's 4th Anti-Money Laundering Directive (4AMLD) as an international example of beneficial ownership registration. Earlier this year the EU amended 4AMLD, requiring the existing registers of beneficial ownership to be made freely available to the public by the end of 2019. This has been met with significant opposition on the grounds that public access to what is (in many cases) private information infringes basic rights to privacy and data protection contained in the European Convention on Human Rights (ECHR). The EU's own data protection regulator issued an opinion on 2 February 2017 which was highly critical of these aspects of the amendments to 4AMLD.

In a recent development, British law firm Mishcon de Reya has commenced legal proceedings in London claiming that the proposed public registers breach the fundamental rights to privacy and data protection enshrined in the ECHR and the EU's recently enacted General Data Protection Regulation. Notably, France pre-empted 4AMLD by introducing a public register of trusts and trust-like entities in 2016, only for this to be struck down in its entirety on privacy grounds.

Given the above developments, there is a real possibility that the amendments to 4AMLD allowing public access to the beneficial ownership registers in the EU will be abandoned before the commencement date.

There is no specific statutory right to privacy in New Zealand. However, the Privacy Act 1993 and the Privacy Bill (which is currently before Parliament) set out 12 "Privacy Principles". It is doubtful whether publicly accessible beneficial ownership registers would be compliant with the Privacy Principles.

Arguments that public registers infringe rights to privacy and data protection are particularly persuasive in New Zealand, which is a nation of small and often family-owned businesses. A sizeable majority of businesses with fewer than 20 employees are incorporated. Many of the driving factors for public beneficial ownership registers internationally (the vast amount of prime UK real estate owned by opaque corporate or trust structures being one example) are simply not present in New Zealand.

The proposals are driven by recent high-profile cases of alleged criminal wrongdoing involving the use of New Zealand-registered corporate entities (whether the proposals would have stopped such wrongdoing is another matter)

Conclusion

Given international developments it seems inevitable that some form of requirement for New Zealand corporate entities to collect beneficial ownership information will be introduced. However, the proposal by MBIE to introduce beneficial ownership registers that are freely accessible by the public are likely to meet with resistance, if the reaction to 4AMLD in Europe is any guide. ■

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