

7 August 2018

Business Law
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

By email: corporate.law@mbie.govt.nz

Submission on publishing directors' residential addresses on the Companies Register

The Institute of Directors (IoD) welcomes the Ministry of Business, Innovation & Employment's (MBIE) [discussion document](#) on the future of publishing directors' residential addresses on the Companies Register. This is a significant issue for directors and we have been advocating for change in this area.

Summary of submission

The IoD strongly advocates that company directors should be able to publish a service address rather than their residential address for the purposes of the Companies Act 1993. We consider that this will still maintain the integrity and efficiency of the Companies Register, while also addressing privacy and security concerns. In relation to other matters raised in the discussion document we:

- recognise that the Companies Office and some government agencies will still need access to directors' residential addresses for enforcement purposes
- acknowledge that there may be occasions where other interested parties may need to contact a director who cannot be reached by their service address. It would be appropriate for such parties to apply to the Companies Office for access, subject to clearly defined criteria
- support the option to allow all directors to apply to have their residential address suppressed from historic documents for a fee
- agree that any change in approach to the publication of directors' residential addresses should be applied to the publication of shareholders' residential addresses on the Companies Register
- believe officers of other organisations listed on registers that the Companies Office administers (eg incorporated societies) should also be able to provide a service address in lieu of a home address, in the absence of a strong policy reason otherwise.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,700 members drawn from listed issuers, large private organisations, small and medium enterprises, state sector organisations, not-for-profits and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Background

Currently, directors must disclose their residential address to the Companies Office and this is made available to the public on the Companies Register. In earlier submissions in [2016](#) and [2017](#) we highlighted concerns around this disclosure and suggested that directors should be able to publish a *service address* rather than their residential address. Disclosure causes problems including:

- directors and their families can be put at risk from customers, staff, and other stakeholders going to their residential addresses
- directors and their board communications can be targets for industrial espionage and cybercrime in their homes, which are usually less secure than a company's offices
- directors may be involved in sensitive work or projects and their residential details should be kept confidential
- inconsistency with other legislation which explicitly allows privacy of residential addresses in certain circumstances - for example, s 115 of the Electoral Act permits individuals who feel threatened to register on the unpublished electoral roll
- some directors do not provide their residential addresses for various reasons - possibly because they fear the consequences of public disclosure - undermining the integrity of the system.

MBIE has reflected some of these concerns in the discussion document particularly around directors' privacy and security concerns.

In our [2017 Director Sentiment Survey](#) we asked directors if they would prefer to publish a service address rather than a residential address on the Companies Register, and 79% responded yes. At the time a [Stuff poll](#) found that 67% of the public supported directors' home addresses being made private.

Earlier this year, a leaflet campaign was launched targeting the neighbourhoods of directors of Lyttelton Port. Leafleting of directors' residential addresses to the community could be perceived as threatening and demonstrates a need for urgent protections around directors' home addresses. We are also aware of other circumstances where individual directors have been targeted inappropriately at their residential addresses.

MBIE is seeking views on whether it remains appropriate for directors of New Zealand companies to have their residential addresses published on the Companies Register if the government were to introduce director identification numbers (DINs). We supported introducing DINs in our [2016](#) and [2017](#) submissions and believe that any potential changes in relation to directors' residential addresses could be enacted at the same time.

[Publication of directors' residential addresses on the Companies Register](#)

MBIE has proposed two options to address concerns with publishing directors' residential addresses, and have stated a preference for option 2:

1. Allow directors with specific safety or security concerns to have an address for service published in lieu of a residential address. Directors would need to submit evidence of the concern for the Registrar to assess.
2. Allow all directors to have an address for service to be published in lieu of a residential address.

In line with our previous submissions, we support option two of allowing all directors to have an address for service to be published in lieu of their residential address. This would still provide a location for legal papers to be served and a mechanism to contact directors. We think the introduction of DINs with this option will maintain the integrity and efficiency of the Companies Register, while also addressing privacy and security concerns. This approach has also been adopted by other jurisdictions overseas.

Against this, option one sets the threshold too high and would not adequately address directors' concerns. We can foresee issues with obtaining evidence (eg it may not be readily available) and time sensitivity in processing applications. It would also be costly and a burden for the Companies Office and directors.

Interested parties access to directors' residential addresses

The Registrar intends to continue to collect directors' residential addresses, even if that information is no longer made available to the public. This is appropriate given the Companies Office and other government agencies need this information for enforcement activities.

We also acknowledge that there may be occasions where other interested parties (ie insolvency practitioners, legal professionals, shareholders and creditors) may need to contact a director who cannot be reached by their service address. In these circumstances, it would be appropriate for such parties to apply to the Companies Office for access, subject to clearly defined criteria such as the interested party has been unable to contact the director through their service address and there is a *legitimate* reason for the application.

Historic documents attached to a company's record

In the event that directors are allowed to publish a service address, directors' residential addresses will still be publicly accessible in historic documents. MBIE has proposed two options for dealing with this issue and have stated a preference for option one:

1. Directors with specific safety concerns may apply to have their details suppressed for a fee.
2. All directors may apply to have their residential address suppressed from historic documents for a fee.

Under both options, directors would be expected to identify the documents to be redacted. Directors would be able to have their address redacted from documents which were filed up to five years before the date of request, with the potential to go back further.

We support option two as we believe it should not be restricted to directors with specific safety concerns. We recognise MBIE's concerns that the redacting may cause an administrative burden for the Companies Office, however we believe it is likely that most directors will not seek to have historical documents suppressed for the following reasons:

- the fee and the burden of responsibility for directors to identify documents and make an application will likely deter many directors
- people move reasonably often and this will mean addresses will no longer be current over time (Stats NZ have identified that approximately half of the New Zealand adult population will have lived in their current address for less than five years).

As above, we also foresee limitations around option one in terms of obtaining evidence and time sensitivity in some cases.

Documents held by the company

Companies are required under the Companies Act 1993 (s 215) to keep a list of directors' residential addresses (and other company records) and make this physically available for inspection by the public at the place where the records are held. MBIE's not clear if there is an issue with the current approach and is not proposing to make a change.

In the absence of a strong policy reason for requiring public disclosure of directors' residential addresses, we believe directors should be able to provide a service address for the purposes of the above requirement. Otherwise this would continue to leave directors exposed.

Shareholder records

MBIE envisions that any change in approach to the publication of directors' residential addresses will be applied to the publication of shareholders' residential addresses on the Companies Register. This makes sense given that many directors in New Zealand are also shareholders of the same company and we support this decision.

Other registers

The Companies Office manages a number of other registers (eg incorporated societies, credit unions, and friendly societies) and MBIE has asked whether changes need to be made to the residential address requirements for officers of entities on these registers.

Again in the absence of a strong policy reason requiring public disclosure of officers' residential addresses, we believe officers should be able to provide a service address in lieu of their home address. We can't see why they should be treated differently to company directors and we are aware of situations where they have been targeted because of their governance responsibilities.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely

A handwritten signature in black ink that reads "Felicity Caird". The signature is written in a cursive, flowing style.

Felicity Caird
General Manager, Governance Leadership Centre
Institute of Directors