

Submission on discussion document: *Publication of Directors' Residential Addresses on the Companies Register*

Your name and organisation

Name	Janice Thein
Organisation	British American Tobacco Holdings (New Zealand) Limited British American Tobacco (New Zealand) 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 have any comments of our assessment of the options for approaching directors' residential addresses on the Companies Register?

British American Tobacco Holdings (New Zealand) Limited and British American Tobacco (New Zealand) Limited (together, '**BAT**') welcome the MBIE review of the publication of directors' residential addresses on the Companies Register.

Our view is that the MBIE has carried out its assessment well, clearly setting out the key relevant considerations pertinent to the issues at hand.

In summary:

- BAT agrees that appropriate consideration must be given to the scope of directors' duties and responsibilities and the importance of directors being able to be contacted, including for the reasons stated in the Discussion Document;
- BAT also believes that directors can discharge their duties and responsibilities and be fully contactable without the need for a residential address to be published; and
- BAT sees no good policy reason for failing to implement a change in New Zealand.

It is also noted that in several other jurisdictions, which are well-developed from a corporate governance and responsibility perspective, only directors' service addresses are published. These countries include Australia, the UK, Canada, Singapore and Hong Kong.

2

What is your preferred option?

BAT prefers **Option Two**: allow all directors to have an address for service to be published in lieu of their residential address.

Individual directors are best-placed to assess the potential security and safety risks which they and their families may face in connection with their directorships and their level of

sensitivity to this risk. Risk levels can spike suddenly and unexpectedly - for example, in the context of the tobacco industry:

- in response to a particular event such as the publication of BAT spokesperson responses to media statements or an unexpected radio or television appearance;
- it is well established that the illicit tobacco trade is a high value illegal activity among organised criminal networks. BAT does not condone the sale of illegal tobacco and may, at times, be asked to contribute to dialogue on this topic; or
- a family member of a BAT director may become aware that a member of the public has discovered that family member's connection to a BAT director (e.g., the spouse of a director) and have reason to believe there may be adverse personal safety or security consequences for themselves or their children as a result.

For this reason, **Option Two** is far preferable as it gives directors control over the decision-making, process and timing on providing an address for service in preference to a residential address, whereas the assessment by the Companies Registrar proposed in Option One necessarily involves a time lag between evidence of safety or security concerns being produced and then assessed by the Companies Registrar.

Our directors hold reasonably-based concerns that objection to BAT's business activities could threaten their security and safety and/or that of their families where their residential addresses are available on the public record. As a company, we currently find ourselves in the challenging position of having to balance requirements for disclosure of director addresses with other legal obligations to these individuals. This includes an awareness of duty of care and the specific requirements under the Health and Safety at Work Act 2015 that our employees are given the highest level of protection from workplace health and safety risks, so far as is reasonably practicable. It extends to risks to both physical and mental health. Directors and even former directors of certain companies can find it concerning to know that their residential addresses are available for all to access.

BAT prefers **Option Two** which goes further to protecting the safety and security of individual directors and their families without compromising the integrity of the underlying standards of director transparency, accountability and responsibility.

3

Are there interested parties who may have a legitimate reason to need to access directors' residential addresses? If so, who?

Yes. Government agencies (including the Inland Revenue, NZ Police, Department of Internal Affairs, Ministry of Business Innovation and Employment and the Accident Compensation Corporation) may need to access directors' residential addresses if a director is not responding through their address for service or through their company.

Other interested parties could include insolvency practitioners, creditors or legal professionals/litigants.

4

Is there a public interest in directors' residential addresses being provided to third parties such as journalists?

No.

Anyone wishing to contact our company can easily find our contact details online. We'd expect that anyone wishing to speak to our directors in a professional capacity would do so via these business contact details and that contact via residential addresses is inappropriate.

If, unlike BAT, there is a tendency for other companies (especially smaller enterprises) not to have contact details online or the MBIE is motivated by policy considerations in favour of

third parties such as the media, the MBIE could consider a change to the law to add a Registered Office phone number and email address to the Registered Office address details for the company on the public register.

5

Under what circumstances should directors' residential addresses be released to an interested party?

Directors' residential addresses should only be released to a third party where that third party has a genuine requirement for the information in connection with the fulfilment of a statutory obligation or the enforcement of law. In these circumstances the third party should first be required to demonstrate that reasonable attempts have been made to contact the relevant director at the published address for service. For example, a third party might be required to show:

- personal service of legal process at the Companies Register published address for service for the director has been attempted at least twice and failed;
- the process server has provided a sworn affidavit as to this fact to the Companies Registrar; and
- the Companies Registrar issues a letter to the director at the director's suppressed residential address raising the issue and notifying the director that if service of process cannot be effected at the registered address for service a further time, the director's residential address will be released to the process server.

6

Do you agree that government departments and agencies should have automatic access to directors' residential addresses?

No, they should be subject to the procedure suggested above (or similar).

7

Should this access be limited to the enforcement of law or are there other situations where it may be appropriate for government departments and agencies to have access to directors' residential addresses?

We believe it should be restricted to the enforcement of law and the fulfilment of statutory obligations.

8

Are there other factors which you think should be included in considering approaches to directors' residential addresses in historic documents?

We believe the Discussion Document sets out the relevant factors for consideration.

9

Do you agree with our preferred approach to historic documents on the companies register?

We would be comfortable with either **Option A** or **Option B**.

10

Have you encountered situations where you consider that members of the public have abused this provision? If so, please provide details.

The British American Tobacco Group of companies have experienced threats and actual instances of violence against its employees (albeit not to our knowledge in New Zealand).

This includes, most relevantly, in 2016, a BAT Australia employee was violently attacked outside his family home in Sydney. Please see links below to relevant media reports.

<http://www.dailymail.co.uk/news/article-3735564/Tobacco-executive-bashed-stabbed-outside-home-angered-criminals-working-police-stop-illegal-cigarette-smuggling.html>

<https://www.smh.com.au/national/australian-tobacco-executive-bashed-and-stabbed-in-failed-kidnap-attempt-20160811-gqqds1.html>

11

Do you agree that shareholders' residential addresses should be treated the same way as directors' residential addresses (ie replaced with an address for service)?

Yes.

12

Are there circumstances where third parties might have a legitimate interest in the residential address of a shareholder?

Yes, as provided for above in our equivalent response to Question 3 above: Government agencies (including the Inland Revenue, NZ Police, Department of Internal Affairs, Ministry of Business Innovation and Employment and the Accident Compensation Corporation) may need to access shareholders' residential addresses if a shareholder is not responding through their address for service.

Other interested parties could include insolvency practitioners, creditors or legal professionals/litigants.

13

Do you think any changes need to be made to the residential address requirements for officers of other types of entities?

Not able to comment.