To: MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

On: Discussion Document – Publication of Directors' Residential Addresses on the Companies Register

3 August 2018

INTRODUCTION

1 The Ministry of Business, Innovation and Employment (*MBIE*) has sought written submissions on the Discussion Paper "Publication of Directors' Residential Addresses on the Companies Register" (the *Discussion Document*).

This submission is from Chapman Tripp.

2 We have no objection to our submission being published.

3 We would be happy to discuss with MBIE any of the comments we have made.

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ABOUT CHAPMAN TRIPP

4 Chapman Tripp is a leading law firm with a strong practice in commercial and corporate law and with offices in Auckland, Wellington and Christchurch.

5 The matters covered by the Discussion Document are of direct interest to us as legal practitioners and to our clients.

OUR RESPONSE

6 We set out below our answers to the specific questions asked in the Discussion Document.

7 The numbering used in the balance of this submission reflects the numbering used in the Discussion Document.

Responses to discussion document questions

1 **Do you have any comments on our assessment of the options for approaching directors' residential addresses on the Companies Register?**

We strongly support Option 2, giving all directors the right to provide an address for service rather than their residential address. This achieves an appropriate balance between protecting the integrity and transparency of the Companies Register and the privacy objectives identified by MBIE.

The DIN provides a robust form of identity verification, reducing the need for other verifiers – particularly those subject to change, such as residential addresses. And the protection offered by non-disclosure of a director's home address, especially where personal safety may be at risk, outweighs any real detriment from suppressing that information.

2 **What is your preferred option?**

Our preference is for Option 2.

- *Integrity of the Companies Register is maintained*

  The verification process involved in issuing a DIN will at least maintain and probably improve the integrity of the Companies Register, such that to require directors to publish their residential addresses will be an unnecessary intrusion on their privacy and may – in some cases – endanger their safety.

- *Safety outweighs registration*

  The Companies Office can only remove directors' residential addresses from public display on the Companies Register when ordered to do so by the Courts, which is available only in a limited number circumstances. We consider that the verification provided by the DIN removes any ongoing justification for publication of residential details.

- *Provides a platform for efficient administration*

  We also note that the implementation of a DIN will create an opportunity to update all director information, including links to all companies in which that person is a director. The removal of residential addresses will remove a factor which is liable to change.

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

We agree that insolvency practitioners, creditors, shareholders, legal professionals and certain government agencies may have legitimate reasons for accessing a director's home address – but no-one else.

Access should be provided only where specified requirements are met, as discussed further in response to Question 5.

Where the Companies Office considers that contact at home is warranted, such as where there is a matter of urgency, the communication should be relayed through the Companies Office rather than direct. Given the administration costs attached to this process, any such option would need to be subject to specific criteria.

4	**Is there a public interest in directors' residential addresses being provided to third parties such as journalists?**	No. Contact can be made through a director's address for service or via the Company itself. The legislation should specify that residential address information is "director information" for the purposes of section 367A of the Companies Act 1993. This would ensure that the Official Information Act will not apply to the information.
5	**Under what circumstances should directors' residential addresses be released to an interested party?**	Release should be granted only where an interested party can demonstrate a legitimate interest in obtaining that information. This would include providing reasons for the communication and evidence of repeated unsuccessful efforts to contact the director at his or her address for service and via the Company. The Companies Office should evaluate requests against a list of criteria, giving consideration to the number of attempts to make contact, the duration of time involved and the necessity/urgency of the contact. The criteria for assessment should be included in the Companies Act and/or regulations.
6	**Do you agree that government departments and agencies should have automatic access to directors' residential addresses?**	Yes. Where automatic access is available for the purposes of law enforcement, those agencies subject to this information sharing arrangement should be made public. We agree that Inland Revenue, the Police and Department of Internal Affairs would be on this list.
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 do not consider there are any situations outside of law enforcement where allowing government agencies' automatic access to directors' residential addresses would be necessary.
8	**Are there other factors which you think should be included in considering approaches to directors' residential addresses in historic documents?**	We consider that all directors should be able to apply (generally with payment of a fee) to have their residential addresses suppressed from historic documents. We acknowledge this would create an administrative burden but consider that the costs can or could be contained for the following reasons: • the requirement to pay administration fees will act as a disincentive where there is no safety risk involved • the process should stipulate that directors must identify all instances where redaction is required and redactions should be completed only in respect of identified documents • given census data showing approximately half the adult population have lived in their current residence fewer than five years, a lot of the historic residential information will be outdated.

		Alternatively, a procedure could be created to allow directors and/or authorised persons to redact the information from documents themselves – either by uploading redacted consent forms and annual returns or electronically through a blackout feature.
9	**Do you agree with our preferred approach to historic documents on the companies register?**	For the reasons outlined above, our preference would be for Option 2. If Option 2 is not possible, the criteria for applications under Option 1 should be extended to more explicitly allow directors to have their address information redacted where they or their families are at risk from vexatious or business related protests. This ability could then be opened up to all directors (where the historic documents are more than five years old and the addresses are still current). There would be no need for a time limit as directors with specific safety or security concerns will have already completed their redactions under the initial implementation of Option 1.
10	**Have you encountered situations where you consider that members of the public have abused this provision? If so, please provide details.**	Yes. Although not common, some of our client directors have received abusive communications at their home address. Anecdotally, the home address information has been used to target higher net worth directors with unsolicited offers of goods and services. We are also aware of client situations where regulatory notices have been sent to directors' residential addresses, causing inconvenience for those directors. The ability for those communications to be managed through the company or an address for service would provide a much more convenient and reliable option for directors.
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. As with directors, shareholders should be able to provide an address for service. We do not see any public interest in shareholders' residential addresses being made publicly available. Further, many directors may also be shareholders so it would be counterproductive to the privacy objectives of Option 2. Each company's own records (and the rights of the public to access those records in limited circumstances) are sufficient to ensure shareholders are contactable. Removing shareholder addresses may also assist in limiting the vexatious use of share registers by third parties (for example, where Companies Office records are used to make unsolicited offers).
12	**Are there circumstances where third parties might have a legitimate interest in the residential address of a shareholder?**	No. We do not consider there are any situations where third parties might have a legitimate interest in shareholders' residential addresses. The ability to contact shareholders through an address for service (or via the Company) should be sufficient.

13	**Do you think any changes need to be made to the residential address requirements for officers of other types of entities?**	Yes. For consistency and in the interests of privacy, participants in all corporate entities should have the option to replace their residential addresses with an address for service on all public registers controlled by the Companies Office. Failure to make these changes more broadly would undermine the changes being introduced for directors. In particular, it would be counter-productive to offer directors the option to withhold their residential addresses when they might still be available through another capacity. As the various corporate registers will maintain a copy of the residential addresses, we believe the integrity of the system can be maintained while increasing the privacy of individuals. We note that excluding residential addresses is also consistent with the approach taken by the Department of Internal Affairs in respect of the Charities Register. Officers of each charity are named, but no address information is publicly available.
	Other comments	Parties which have a genuine interest in the residential addresses of directors will already have access to this information in the majority of situations (i.e. the Companies Office, the company of the director, etc.). We do not believe there is a need for directors' residential addresses to continue to be publicly available. In our view, the implementation of DIN will be sufficient to meet the objectives regarding the integrity and efficiency of the Companies Office. We are aware that a DIN regime is also being considered in Australia, although at a less advanced stage. We would not wish the New Zealand initiative to be delayed given the relative maturity of our policy process.

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