

2 August 2018

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

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

DISCUSSION PAPER - PUBLICATION OF DIRECTORS' RESIDENTIAL ADDRESSES ON THE COMPANIES REGISTER

This submission is made by the Guardians of New Zealand Superannuation (**Guardians, we, our**) as manager and administrator of the New Zealand Superannuation Fund (**Fund**) in response to the above discussion paper (the **Paper**). We welcome the opportunity to submit.

We have included our key submissions in this letter and our responses to your specific consultation questions in the schedule.

GUARDIANS AND THE FUND

The Fund was established by the New Zealand Government in 2001 to help pre-fund the future cost of universal superannuation. As at 31 May 2018 the Fund was worth \$38.9 billion.

A long-term, growth-oriented investor, the Fund has a diversified investment portfolio that is invested globally and locally across a wide range of asset classes.

The Guardians has operational independence from the Government and is required by legislation to manage the Fund on a prudent, commercial basis, in a manner consistent with:

- Best practice portfolio management;
- Maximising return without undue risk to the Fund as a whole; and
- Avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

The Fund has returned 10.4% p.a. (before NZ tax, after costs) since investing began in 2003.

For more information please refer to www.nzsuperfund.co.nz.

OUR SUBSIDIARY AND INVESTEE COMPANY DIRECTORS

The Guardians currently has 18 wholly-owned subsidiary companies¹ (16 of which are incorporated in New Zealand) for the purpose of holding, facilitating and/or managing certain Fund assets/investments. The board of each such company comprises two Guardians' employees, who differ based on the particular assets/investment held in the company.

The Guardians also appoints representative directors to certain of its investee companies. For example, in New Zealand, the Guardians has appointed representative directors to the boards of Fidelity Life, NZ Gourmet, the Hobsonville Point Development companies, Kiwibank, Datacom, Lanzatech and Timberlands. Our appointees on these investee company boards comprise a mixture of employees and professional directors as appropriate in the circumstances.

¹ These subsidiaries are also either "fund investment vehicles" under section 59A of the New Zealand Superannuation and Retirement Income Act 2001 or nominee companies (being Crown entity subsidiaries for the purposes of the Crown Entities Act 2004). For the purposes of this submission, however, there is no material difference between these entities and other companies.

KEY SUBMISSIONS

We strongly support the proposal to remove the requirement for directors to disclose their residential addresses. Instead, directors should have the option to provide an address for service and should be assigned a unique director identification number / DIN (as proposed by MBIE). Our key reasons are:

The requirement is unnecessary

As MBIE notes, the key reasons for requiring disclosure of director address details are to:

- provide a means to contact directors independent of the company²; and
- enable interested parties to connect companies with a common director or distinguish between different directors who may have similar names.

However, if the Companies Office records include a DIN and address for service, this would constitute a superior method of communication and identification and would mean that disclosure of director residential addresses becomes entirely unnecessary.

While the Companies Office could require a residential address for administrative reasons and to validate that a company satisfies director residency requirements, this address should not be made public.

The requirement impinges on legitimate privacy interests

The requirement to disclose a residential address impinges on privacy interests and can expose directors – and their families – to a risk of harassment.

As is common for large corporates, Guardians employee directors are appointed to boards as part of their employment, and they are not separately remunerated as directors. This makes the encroachment on privacy even more unreasonable.

The requirement exposes directors to a risk of identity fraud

The current settings expose directors to a risk of identity fraud, given that their full names, residential addresses and (in many cases) signatures can be available on the public register.

For these reasons, the UK Government has recently promulgated new regulations which make it easier for directors to redact residential addresses from historical documents. In the UK there has been no requirement to include residential addresses in the public register since the Companies Act 2006 came into force.

The requirement is inconsistent with other jurisdictions

The current settings are out of step with equivalent requirements in other jurisdictions, and also the global trend towards increased privacy protection (such as the GDPR regulations in Europe). Based on our investigations and experience, the requirements in other jurisdictions are as follows:

Jurisdiction	Requirement
Canada	Directors may provide either a residential address or an address for service. ³
Delaware	Director residential addresses do not need to be provided.
Hong Kong	Residential addresses and personal identification numbers of directors and company secretaries are not publicly available. Registrar has discretion to include the residential address where communication with a director at their correspondence address is not effective ⁴ .

² We consider this is likely to be a much narrower set of circumstances than the Paper assumes. It is only in very rare situations that any third party would have a legitimate reason to contact a director independent of the company using their home address. Most directors of high profile companies will be available through the company or by other direct means (e.g. via a public email or LinkedIn) and when it is necessary to use a physical address (e.g. to serve documents) independent of the company, then an address for service would be sufficient. While the Paper rightly highlights the role and responsibilities of directors, the duties referred to are owed to the company. So, while these duties are important, they are not necessarily matters that make it necessary for third parties to communicate directly with a director. The Financial Markets Authority can enforce director duties on behalf of a company under the Financial Markets Authority Act 2011, and would of course continue to have access to the director's residential address if necessary for that purpose.

³ <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06724.html>

⁴ https://www.cr.gov.hk/en/companies_ordinance/keychanges_protected-information.htm

Australia	Director residential addresses not generally available but need to be included on specified forms lodged with ASIC ⁵ . These documents are, however, less apparent / available than the director residential address details in New Zealand.
United Kingdom	Director residential addresses not publicly disclosed, but available to specified public authorities and credit reference agencies. Directors can apply to further suppress residential address information. ⁶
Ireland	Directors can apply for an exemption for their residential address not to be disclosed based on personal safety or security. Successful applicants have the address for service entered instead. ⁷

As a practical matter, we also note that the Companies Office website is well presented, easy to access and available without charge. While this is positive, it does mean that director residential address information is, in a practical sense, more accessible than in some other jurisdictions where there may be additional barriers (such as an access fee).

We would be happy to discuss any aspect of our submission with you.

Yours sincerely



Mark Fennell
Acting Chief Investment Officer

⁵ <https://asic.gov.au/for-business/changes-to-your-company/changing-company-addresses/application-for-suppression-of-residential-address/>

⁶ <https://www.gov.uk/government/publications/restricting-the-disclosure-of-your-psc-information/restricting-the-disclosure-of-your-information>

⁷ <https://www.cro.ie/Post-Registration/Company/Officer-Address-Disclosure>

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

Your name and organisation

Name	Mark Fennell, Acting Chief Investment Officer
Organisation	Guardians of New Zealand Superannuation

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? We agree that you have identified the main options.
2	What is your preferred option? We agree with MBIE that option 2 (allowing all directors to provide an address for service in lieu of residential address) is the best approach. It is the easiest to administer and best addresses privacy / identity fraud concerns.
3	Are there interested parties who may have a legitimate reason to need to access directors' residential addresses? If so, who? Generally not. We understand that in the UK certain credit reference agencies can access director address details, with directors having a right to apply to suppress information.
4	Is there a public interest in directors' residential addresses being provided to third parties such as journalists? We agree that there is a public interest in this, but do not consider that it overrides the significant privacy interests at stake for our staff and other appointed Board members. Journalists can still contact directors through the company or via other means including the address for service.
5	Under what circumstances should directors' residential addresses be released to an interested party?

We expect this would be very limited – e.g. where an interested party demonstrates they have attempted to serve proceedings against a director (in that capacity) but the address for service is no longer valid.

We note that under sections 387A and 388A of the Companies Act 1993, directors can be served validly at the company’s registered office or address for service and by various other means (i.e. even under the current rules service does not need to be effected at the director’s residential address).

6

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

Yes, where necessary for their activities.

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 expect that certain departments and agencies may need access more generally than simply enforcement of law in a narrow sense – e.g. monitoring tax status or data collection.

8

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

We agree you have covered the key factors.

9

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

We agree this is to some extent a matter of assessing the time and cost involved in redacting historical documents, but assuming it is logistically practicable then our preferred approach would be Option B (i.e. directors can have their address removed from historical information “as of right” on payment of a fee).

MBIE could survey a sample of directors to quantify the likely uptake at different fee levels and calculate the administrative requirements, and appropriate fee, accordingly.

If there was an unexpectedly large number of applications, there could still be a two-tier approach with priority given to such applications where there are directors with specific safety or security concerns.

Option B is consistent with the UK which has recently amended the Companies Act 2006 (UK)⁸ to allow the registrar of companies to remove an address which has been placed on the Companies House register from public inspection.⁹ There is no longer a requirement for directors to provide specific safety or security concerns.

However, to put the UK position in context, there has been no requirement to include director address details in the public register for some time, meaning that there are now presumably less records that continue to be relevant.

⁸ The Companies (Disclosure of Address) Regulations 2009 (as amended by The Companies (Disclosure of Address) (Amendment) Regulations 2018).

⁹ <https://www.gov.uk/government/news/new-laws-to-protect-your-home-address-at-companies-house>

We agree that from a practical perspective the maximum timeframe for redacting historical documents should be five years (absent evidence of safety/security concerns).

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

No, so far as we are aware our directors' residential addresses have not been accessed improperly through other records held by subsidiaries (e.g. the register of directors). That said, we note that this would be extremely unlikely to occur under the current settings. Because director residential address information is accessible via the general Companies Office website, there is currently no need for any third parties to use these other (more inconvenient) methods.

We agree with MBIE's initial view that these other methods are unlikely to be used improperly, so no immediate legislative change should be required. However, it would be important to monitor whether there are any changes in practice once the Companies Office records no longer include director residential address details.

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)?

While this is less relevant for Guardians, we agree that it makes sense for shareholders to have the option of providing an address for service in lieu of a residential address.

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

As with director addresses, regulatory agencies may need access to shareholder address information.

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

These other entities (incorporated societies, industrial & provident societies, building societies and friendly societies) are less prevalent and we suspect the registers are not so routinely searched as the Companies Register. However, the same policy considerations apply, so we submit that the disclosure requirements and records should also be updated (on a lower priority basis).

Other comments

Refer to our cover letter.