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# Discussion paper - Publication of Directors' Residential Addresses on the Companies Register

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

## Your name and organisation

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## 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?

The options proposed for approaching directors' residential addresses on the Companies Register mirror the systems currently in practice in other jurisdictions.

Option 1 of 'allowing directors with specific safety or security concerns to have an address for service published in lieu of their residential address' is essentially the current system in place under the Corporations Act (2001) in Australia (Corporations Act). Under section 205D(2)(a) of the Corporations Act, a director would be entitled to have an alternative address substituted for their usual residential address if the Australian Securities and Investments Commission (ASIC) determines, in writing, that including the residential address of a director in a notice or application (and hence the register) would put their personal safety, or the personal safety of members of their family, at risk.

Option 2 of 'allowing all directors to have an address for service to be published in lieu of their residential address' is similar to the provisions of the Hong Kong Companies Ordinance (Cap 622) as from 3 March 2014 (Hong Kong Ordinance).<sup>1</sup> Section 49 provides that directors may apply to the Registrar to have their relevant address (i.e. residential address) withheld from public inspection. Where a director's residential address is withheld, the Registrar must instead make available the director's correspondence address (i.e. address for service).

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<sup>1</sup> [https://www.cr.gov.hk/en/companies\\_ordinance/keychanges\\_protected-information.htm](https://www.cr.gov.hk/en/companies_ordinance/keychanges_protected-information.htm)

The present position in New Zealand is stricter than in either jurisdiction as the Registrar does not have the power to remove directors' residential addresses from public display on the register, unless if it is under court order through the Domestic Violence Act 1995 (domestic protection order) or the Sentencing Act 2002.<sup>2</sup> Therefore adopting either of Option 1 or 2 would be a step towards consistency with other, similar jurisdictions.

We agree with the analysis under the heading of 'Integrity' that both Options 1 and 2 will remove information from the public register which would be available under the status quo. However, the present proposal to remove directors' residential addresses is being made in conjunction with the introduction of unique Directors' Identification Numbers (DINs). Therefore, it is not a removal as such, but a substitution. We believe that a DIN would be as, if not more, reliable information for interested persons who search the register. For instance, determining the identity of a director and the related entities on the Companies Register can currently be conducted through either:

- a search of the name/number/New Zealand Business Number (NZBN) of a company that the person is known to be a director of, or
- a search of the director's name.

A search of the director's last name can turn up several results and even repeat results for directors with the same first and last names. We also know of cases where directors do not provide their full legal name, or where they go by a different name from their legal name, which further complicates the search. In this scenario, the director's residential address is often used as a way to triangulate the information available on the Companies Register in order to verify the identity of the director. However, a DIN unique to each individual director could resolve the current inefficiencies of the Companies Register and become a superior mechanism for searching for a particular director and related entities. We therefore do not see replacing the currently available information of directors' residential addresses with the proposed DIN as negatively impacting on the integrity of the Companies Register.

We believe that the costs identified for administering the Companies Office system should be offset against the current issues associated with providing an up-to-date residential address for directors. It is currently the responsibility of the director, and firms like ours which maintain clients' registers, to make changes to the register for each company that they are a director of each time their residential address changes. Inconsistencies on the Companies Office register can easily occur due to the hassle of this task. If directors were able to opt for an address for service, in lieu of their residential address, on the public register and had a unique DIN, these costs may be discounted.

The privacy issues associated with making directors' residential addresses publicly available is clearly a matter for concern for our clients. It is evident that this is an issue for directors in other jurisdictions as well. The 2009 amendment to the United Kingdom Companies Act 2006 (UK Companies Act), including the removal of directors' residential addresses, was predominately driven by a concern for directors' personal safety following incidents of extreme protest actions by animal rights and other activists.<sup>3</sup>

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<sup>2</sup> At [50] of the discussion document.

<sup>3</sup> <https://publications.parliament.uk/pa/cm200809/cmgeneral/deleg10/090121/90121s02.htm>;  
<https://publications.parliament.uk/pa/ld200809/ldhansrd/text/90115-0015.htm>

Of the two proposed options, we favour Option 2. We see two main issues with Option 1, namely:

1. it could become an outdated approach very soon; and
2. it could lead to significant administrative costs, for the Registrar, the client and servicing firms (like ourselves).

### 1. Outdated position

Option 1 is the current status quo in Australia, but this appears to be an outlier in the general trend of comparable jurisdictions. As noted above, Option 2 is most closely reminiscent of the Hong Kong corporate law. However, other jurisdictions have opted to completely remove directors' residential addresses from public companies registers, including:

- South Africa - Section 24(5) of the Companies Act (2008) requires all companies to maintain a public record of directors containing their full name, date of birth or ID, but not their residential address; and
- The United Kingdom – section 1085 of the UK Companies Act, prohibits the Registrar from making directors' residential addresses available for public inspection. Under sections 162 to 167, every company is required to keep an updated register of its directors, including their usual residential addresses, which the Registrar, members of the company, and any other person (on payment of a prescribed fee) may access.

Therefore, if we were to put these approaches on a scale, Option 1 is at the most modest end of the scale. Even in Australia, there appears to be ongoing debate on whether directors' residential addresses should be made public. This was an issue raised by the Governance Institute of Australia's (Institute) submission in response to the Australian Government's Productivity Commission's Inquiry Report on 'Business Set-Up, Transfer and Disclosure' (Inquiry Report). The Institute strongly recommended that directors' residential addresses be removed from the ASIC public register. The Productivity Commission ultimately decided to recommend that "there should be no lessening of the existing recording of, and means of accessing, director information." However this recommendation must be contextualised in the Inquiry Report as the response to the Institute's submission was that "the focus of the DIN on the role of liquidators and the potential reduction in phoenix activity are matters that have been considered within the scope of this inquiry. The broader issues of corporate governance, largely affecting ongoing companies (not just those setting up or closing), *are beyond the scope of this inquiry and require separate consideration.*" It is therefore likely that the issue of publication of directors' residential addresses will come up again soon, in a process similar to this present one, as the Australian Government has seemingly accepted the recommendation of the Inquiry Report to introduce DINs.<sup>4</sup>

In this international context, Option 2 arguably strikes a good balance in addressing the issues with publishing directors' residential addresses without frustrating the public interest in fostering a sense of openness and trust of the register.

### 2. Administrative Costs

Option 1 would significantly increase administrative costs, both for the Companies Office and

<sup>4</sup> <http://kmo.ministers.treasury.gov.au/media-release/090-2017/>

for the client, as there are many factors to be yet determined such as what 'specific safety or security concerns' would qualify and what would be the threshold for satisfying that there are 'specific safety or security concerns'. It could be possible to refer to section 205D(2)(a) of the Corporations Act (as discussed in response to 1 above) for guidance as it appears to be the model for Option 1.

3

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

No comments provided.

4

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

No comments provided.

5

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

We understand that there may be circumstances where interested parties need to contact a director and may legitimately need to know their residential address. The examples provided of "insolvency practitioners, creditors, shareholders or legal professionals" indicate that people who are simply curious will not satisfy the requisite threshold for the Companies Office to be able to divulge the director's residential address.

However, an access provision as envisaged in the discussion document<sup>5</sup> would be unprecedented as in other jurisdictions where directors' residential addresses have been withheld, such as Hong Kong and the United Kingdom, there has been no explicit provision made for disclosure to 'interested parties'. Rather, under section 51(3) of the Hong Kong Ordinance, the Registrar may disclose the withheld address on application by a person who the Registrar has specified in regulations, made under section 51(5)(e), as someone to whom withheld information may be disclosed. Under the UK's Companies Act, the Registrar may use or disclose a director's residential address:

- Section 243(2) – to a specified public authority or credit reference agency; and
- Section 245(1) – on the public record if communications sent by the Registrar to the director remain unanswered, or there is evidence that use of the service address is not effective to bring documents to the director's notice.

If an access provision was included, the parameters and circumstances in which a director's residential address may be released will need to be very clear so as not to detract from the benefits of the current proposal.

6

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

We agree that government departments and agencies should have access to directors' residential addresses as the proposed change to the Companies Act should not negatively impact on the other functions of the Government. However, it may be worth considering a provision like that in the UK's Companies Act, whereby the Registrar has a degree of control

<sup>5</sup> At [74] of the discussion document.

	over the disclosure of this information (as discussed above at 5, section 243(2)). Further, there would need to be mechanisms in place for ensuring that these agencies and department do not inadvertently publicise this information and thereby frustrate the whole purpose of this proposal.
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?
	There is not enough information available from the discussion document for us to comment.
8	Are there other factors which you think should be included in considering approaches to directors' residential addresses in historic documents?
	There is not enough information available from the discussion document for us to comment.
9	Do you agree with our preferred approach to historic documents on the companies register?
	<p>It is understandable that there is hesitation to having a broad mandate to redact directors' residential addresses in historic documents. Further, directors with 'specific safety or security concerns' (which would require defining) should naturally have preference in this process. We agree with the preferred approach of Option A of 'allowing directors with specific safety or security concerns to apply to have their details suppressed from historic records for a fee.' However, we would suggest to revisit Option B at a later date after the proposed amendment to the Companies Act has been in place for a while. This is the process that occurred in the United Kingdom. When section 1085, and its related provisions, was introduced in the UK's Companies Act in 2009, it was very explicit that this did not have retroactive effect and that directors' residential addresses published through historic documents on the Companies Register prior to 01 October 2009 would remain published.<sup>6</sup> The Act already contained provisions like the proposed Option A whereby directors could apply for a confidentiality order to suppress their residential addresses if the Registrar accepted that they were at "serious risk of violence or intimidation". Regulations came into force on 26 April 2018 that amended the 2009 Regulations whereby a director can apply:</p> <ul style="list-style-type: none"> <li>• for usual residential address information at Companies House to be made unavailable for public inspection without having to make the application on any specified grounds; and</li> <li>• to remove residential address information that was filed before 01 January 2003.</li> </ul>
10	Have you encountered situations where you consider that members of the public have abused this provision? If so, please provide details.
	No comments provided.
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)?
	We do not see why, if directors' residential addresses are to be removed from the public register, shareholders should not have the option to opt for an address for service, in lieu of their residential address. We agree with the observation at [109]-[110] of the discussion document that third parties do not have the same need or potential interest in accessing

<sup>6</sup> <http://www.elexica.com/en/legal-topics/corporate-governance-and-compliance/300418-protection-of-directors-residential-addresses>

shareholders' residential addresses as they would of directors'.

Further, it is possible for a director of a company to also be a shareholder. In the event that DINs are introduced, and directors' residential addresses are removed from the public register, the publication of a company's shareholder's residential address, of which they are also a director, would frustrate the intent and purpose of this proposal.

12

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

No comments provided.

13

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

No comments provided.

#### **Other comments**

In terms of the implementation of the proposed DIN and corresponding removal of directors' residential addresses, we note that DINs should somehow be distinct from other assigned numbers, namely the company number or the NZBN. As one of the anticipated benefits of adopting a DIN is that it will be easier to use and be a more efficient search function on the companies' register, it would be unfortunate if this were frustrated through confusion with other, existing identification numbers.