



Publication of Directors' Residential Addresses on the Companies Register

Discussion Document

Submission | MBIE

3 August 2018

Introduction

Spark New Zealand is New Zealand's leading digital service company offering a range of products and services to residential and business customers. That makes Spark a household name, and means that there is considerable interest from public and media in our activities. This in turn means there is heightened public and media interest in our board of directors.

The residential addresses of our directors are published on the public record and are easily accessible. We want to protect the privacy, security and safety of our directors, and so Spark welcomes the opportunity to submit on the proposal to allow directors to have an address for service to be published in lieu of their residential address.

Directors' Residential Addresses On The Companies Register

Directors should be afforded the same privacy rights with respect to their residential address as all New Zealanders. This includes the right to choose not to have their place of residence publicly available and searchable online. Affording directors this right will not diminish corporate governance or hinder administrative matters. However, it may in some cases help protect the personal safety of directors or members of their household, as well as providing peace of mind. Further, requiring publication of the director's residential address could even be a deterrent to some people considering directorships, and limit the directorship pool.

Recently there has been a heightened sensitivity to certain types of personal information being publicly available online. In the past, name and address information was harder to find as it required access to paper documents, but today anyone can search the companies register online to get instant information. Search engines crawl through company information and searching for a particular name or street address can reveal a director's details. This makes high profile people, such as directors of listed companies, more susceptible to identity fraud.

The published name and address of a director was traditionally used as a proxy for a unique identifier to link a director's full portfolio of companies and trace the activities of a director. But the address (and name) can be subject to variation across the register and it does not therefore provide a 100% reliable way of matching an individual.

We therefore support the introduction of a Director Identification Number (DIN) which provides a more robust method of matching individual directors with higher integrity and efficiency than using the published address. Efficiency comes from the consistency and simplicity of the DIN.

All directors should have the ability to have an address for service published in lieu of their residential address. We therefore support Option 2.

Enabling only directors with safety or security concerns to use an address for service (Option 1) introduces additional administration, creates delays in registration and adds a degree of discretion to the process. The process will be simpler and quicker if the new rules apply to all directors.

Practical Considerations

There are some practical considerations which MBIE should consider when it implements its DIN system:

- Directors often have directorships in multiple companies and potentially may want a different address for service for each - eg they may wish to use the relevant corporate address for each of their directorships. The system should be designed so it is possible for a single DIN to have multiple service addresses (maximum of one per company), although behind the scenes the verified identity of the DIN is linked to a single residential address.
- Companies often manage the administrative aspects of their directors' registration on behalf of their directors. A director should be able to delegate this authority to each company they are a director of. The company should be able to enter the DIN and the director's address would then be prepopulated. The Company (acting on behalf of the director) can then override the prepopulated details with the preferred service address.
- Each individual director should have the right and ability to change their published service address on a company by company basis. Where a director has elected to delegate administrative control to a company to enter address for service details, they should have a corresponding right to rescind this authority. This safeguards the situation where a director is concerned that the company may be intercepting their communications as they can update their own details to receive their communications via other routes.

Design Choices – Access To Directors' Residential Addresses

Directors' residential addresses should be released for law enforcement only. This applies to both public and private 'interested parties'. If there is a legitimate reason for a public or private party to access this information then this should be requested via a court order.

Allowing access to information for other reasons adds additional complexity and discretion, and risks information being provided when it should not have been.

Historic Documents Attached To A Company's Record

If addresses are to be removed from the current register then it makes sense to remove them from historical documents too. This is a resource intensive administrative job and fees should be set at a level which recovers this cost. All directors should be able to ask for their address details to be suppressed without having to justify their decision. Spark therefore supports Option B.

MBIE has chosen 5 years as the standard backstop for historical documents as this reflects that half of the New Zealand adult population will have lived in their current residence for less than five years. This still leaves half of the population who will still be at the same residential address and who should be given the opportunity, if they wish, to amend documents beyond this time.

If the fees are set to reflect cost then there should be no administrative limit on the amount of historic documents that can be amended, provided the individual is willing to pay the appropriate fee.

The question then is one of administrative resource and prioritising workload. When the change is implemented there may be a rush of directors seeking to have their residential address information suppressed from historical documents.

We think the resource can be managed as, although the activity is highly resource intensive, it is not an overly complex task. Requiring directors to provide evidence of why they would need their details suppressed (Option A) introduces additional administration, creates delays in registration and adds a degree of discretion to the process.

However, if MBIE feels it needs to manage administrative resource by introducing the requirement to provide evidence for why suppression is necessary (Option A), then this could be introduced for a set period of time (eg 2 years) before the facility is made available for all (Option B).

Under either scenario we agree that some cases should be treated as a priority and be exempted from fees. This would include those with Court Orders.

Shareholder Record

The arguments for giving directors the option to use an address for service may also be applied to shareholder records for those who do not want their address made publicly available. For example, it would seem inconsistent to allow a director to use an address for service but to then publish their address alongside their shareholding. We encourage government to consult on this issue separately to ensure the issues are properly considered.

On Site Paper Records

Companies are required to keep a set of paper records at their premises which can be inspected in person by members of the public or requested to be sent out. For consistency, we invite discussion on whether directors should have the option of using an address for service in these records too. We recognise this may require legislative change.

INDIVIDUAL QUESTIONS

1

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

We support the proposal to allow directors the flexibility to publish an address for service in lieu of a residential address when DINs are introduced.

2

What is your preferred option?

We support option 2 which is to provide the flexibility to all directors. This is a simpler and more efficient approach.

3

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

	<p>Unpublished residential addresses should only be provided for the purpose of enforcement of law. There are other ways to reach directors if the address to serve is not effective, including waiting in a public space outside the company's AGM, or requesting access via a court order.</p>
4	<p>Is there a public interest in directors' residential addresses being provided to third parties such as journalists?</p>
	<p>As above, unpublished residential addresses should only be provided for the purpose of enforcement of law.</p>
5	<p>Under what circumstances should directors' residential addresses be released to an interested party?</p>
	<p>As above, unpublished residential addresses should only be provided for the purpose of enforcement of law.</p>
6	<p>Do you agree that government departments and agencies should have automatic access to directors' residential addresses?</p>
	<p>No. Unpublished residential addresses should only be provided for the purpose of enforcement of law.</p>
7	<p>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?</p>
	<p>Yes.</p>
8	<p>Are there other factors which you think should be included in considering approaches to directors' residential addresses in historic documents?</p>
	<p>Fees should be set to recover costs.</p> <p>Five years appears an arbitrary threshold given that half of adult New Zealanders will still be at the same address after five years.</p> <p>If fees are set to recover costs then it should be up to the director if they wish to suppress their residential address from documents older than five years.</p>
9	<p>Do you agree with our preferred approach to historic documents on the companies register?</p>
	<p>No. The option to suppress a residential address should be available to all directors. If the concern is the volume of requests which may be request at day 1 then this can be addressed</p>

	<p>by ramping up administrative resource and charging fees which recover costs. This also removes the administrative overhead and subjectivity of requiring directors to justify their request to suppress their address.</p> <p>Another approach would be to implement Option A for the first two years then move to Option B to make it available to everyone.</p> <p>Under either scenario we agree that some cases should be treated as a priority and be exempted from fees. This would include those with Court Orders.</p>
10	<p>Have you encountered situations where you consider that members of the public have abused this provision? If so, please provide details.</p>
	<p>No, but this remains a threat for directors and publishing residential addresses increases the risk with no public policy benefit once the DIN regime is in place.</p>
11	<p>Do you agree that shareholders' residential addresses should be treated the same way as directors' residential addresses (ie replaced with an address for service)?</p>
	<p>Yes. The same arguments apply and consistency increases efficiency.</p>
12	<p>Are there circumstances where third parties might have a legitimate interest in the residential address of a shareholder?</p>
	<p>We cannot think of any legitimate reason.</p>
13	<p>Do you think any changes need to be made to the residential address requirements for officers of other types of entities?</p>
	<p>We do not have a comment on this section, though as a general matter of principle we support consistency.</p>