



BRIEFING

Director Identification Numbers and Residential Addresses

Date:	30 January 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	1328 17-18

Action sought

	Action sought	Deadline
Hon Kris Faafoi Minister of Commerce and Consumer Affairs	Note concerns have been raised regarding the effectiveness and privacy of the information published on the Companies Register. Agree for officials to begin work on a discussion document seeking the public's views on changing the approach to publishing residential addresses on the Companies Register.	7 February 2018

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Gus Charters	Manager, Business Law	04 474 2839	s 9(2)(a)
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The following departments/agencies have been consulted

Minister's office to complete:

☐ Approved

☐ Noted

☐ Seen

☐ See Minister's Notes

☐ Declined

☐ Needs change

☐ Overtaken by Events

☐ Withdrawn

Comments



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Purpose

This briefing seeks:

- to inform you of concerns raised regarding certain data on the Companies Register, and
- your approval to undertake further public consultation on a change in approach to listing directors' residential addresses on the Companies Register.

Executive summary

The Companies Office administers the Companies Register. The Companies Register is a public, electronic register containing a record of all the companies registered in New Zealand.

Users of the Companies Register include government regulators, who search the Companies Register in the course of their investigations and monitoring; and third parties who may search the Companies Register to research an individual or company they are considering doing business with. To do this, users typically search using the name of a particular individual and, at times, search using the residential address of a particular individual.

Users and directors have identified two main issues with the current data available on the Companies Register:

- **Effectiveness:** the way information is entered on the Companies Register may result in users' searches being incomplete or containing irrelevant information.
- **Privacy:** the publication of directors' residential addresses on the Companies Register raises privacy concerns.

It is important that any changes support the objectives of the Companies Register regime, namely:

- **Transparency:** It is important that information on the Companies Register helps businesses and consumers to identify who they are dealing with and supports the enforcement of law.
- **Privacy:** Only necessary information should be required to be publicly disclosed.
- **Efficiency:** It should be easy for users to access the information they require and for directors to supply the required information. Administering the Companies Register should be administratively efficient for the Companies Office.

We have identified two potential, complimentary responses to the issues identified above. They are:

- **Introduce a director identification number (DIN):** A DIN is a unique identifying number assigned to an individual director. A director would be required to verify their identity before they are issued a DIN. The DIN then acts as an enduring number which

each director would have through their life and would be recorded against their name on the Companies Register.

- **Allow directors to have a public address for service instead of their residential address:** Directors would be able to provide an address for service to appear publicly on the Companies Register.

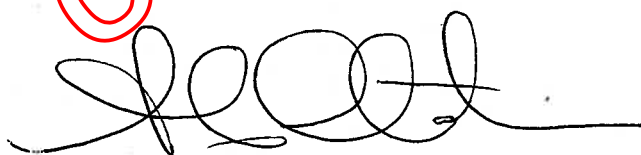
Either of these responses alone may negatively impact on one or more of the objectives of the Companies Register regime. However, we consider in combination (ie introduce a DIN and allow directors to have a public address for service) these responses would be effective in supporting the transparency, privacy and efficiency of the Companies Register.

We have previously consulted on introducing a DIN and the majority of submissions supported the proposal. However, we have not consulted on changing the approach to residential addresses. This briefing seeks your approval to begin working on a discussion document regarding possible changes to publishing directors' residential addresses on the Companies Register.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** concerns have been raised regarding the effectiveness and privacy of the information published on the Companies Register. *Noted*
- b **Note** officials consider that a combination of introducing a director identification number and allowing directors to provide an address for service is an option to address these issues. *Noted*
- c **Note** key features of a director identification number have already been consulted upon. *Noted*
- d **Agree** for officials to begin work on a discussion document which, subject to Cabinet's approval, would be released to seek the public's views on the possible changes to publishing directors' residential addresses on the Companies Register. *Agree / Disagree*
- e **Note** this draft discussion document will be provided to you in March 2018 for your approval *Noted*



Gus Charteris
Manager, Business Law

Hon Kris Faafoi
Minister of Commerce and Consumer
Affairs

30 January 2018

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Information on the Companies Register is used to identify and connect directors

Background

1. The Companies Office (CO) administers the Companies Register, a public, electronic register containing a record of all companies registered in New Zealand, as well as details of companies that have been removed from the register. The Companies Act 1993 (the **Act**) requires that each company's record includes:
 - details of the company, including its registered office, address for service and incorporation date
 - the full name and residential address of each director
 - the share allocation, full legal name and residential address of the company's shareholders¹ and
 - the ultimate holding company² (if any).
2. Attached to each record are documents filed with the CO, including annual returns and director consent forms³. The Act requires that the register, including all documents on it, must be publicly accessible. The CO does not have the power to suppress any of this information, except where ordered to do so by the courts.
3. Users of the Companies Register include government regulators, who search the Companies Register in the course of their investigations and monitoring; and third parties who may search the Companies Register to research an individual or company they are considering doing business with. To do this, users often search for the name of a particular individual and, at times, search using the residential address of a particular individual.

Stakeholders have raised concerns with the data available on the Companies Register

4. The main concerns that stakeholders have raised regarding the data available on the Companies Register relate to:
 - effectiveness and
 - privacy
5. These concerns are discussed in more detail below.

Effectiveness

6. Users are concerned with the effectiveness of using names and residential addresses to connect individuals from their own data sets or across the Companies Register.
7. Searching by a name, alone, is not always sufficient, as multiple individuals may legitimately share the same name. For this reason users will sometimes search for a residential address in conjunction with a name. In either case, difficulty arises when directors are listed with a variation in their name eg a director of one company may be registered as Joe Bloggs and in another company as Joe Alan Bloggs. Further difficulty arises when there are variations in

¹For unlisted companies, only the largest 20 shareholders are on the record, the remainder are uploaded in a document attached to the record. For listed companies, only the largest 10 shareholders are listed on the Companies Register. The full share register of every company must be held by the company and made available upon request.

²An entity which has ultimate or overall control of the company. This control may be direct or via a number of intervening subsidiaries.

³This form is physically signed by each director upon appointment. It confirms the director consents to their appointment and is not disqualified from being a director.

the listed residential addresses. The variations in names and addresses may be due to legitimate reasons (eg data entry errors, or if the director has moved and not yet updated their address in each place it appears) or less legitimate reasons (eg the director deliberately uses variations across their portfolio to hamper being connected to their other companies).

8. In these situations, the user's search may not provide them with the full picture or an accurate data set.

Privacy

9. On a regular basis, the CO and the Institute of Directors (**IoD**) receive complaints from directors and their representatives, regarding the publication of directors' residential addresses. We have also been approached directly by ANZ, as some of their clients have similar concerns.
10. The concerns of directors are largely centred around:
 - a. **Directors with security or safety concerns due to their business.** This group includes directors whose companies are high profile or whose companies are engaged in activities which some people morally object to (eg companies involved in fracking, oil drilling, or tobacco). These directors fear that the objection to their companies' activities could be personally directed at them or their families, as a result of the publication of their residential address.
 - b. **Directors with personal security or safety concerns.** These directors may have court orders against another individual, such as domestic protection orders or restraining orders or they may be working in occupations which may give rise to personal safety concerns (eg doctors or psychologists working with violent offenders). For current directors, the publication of their residential address may be a personal security concern. For potential directors in this position, knowing their residential addresses will be made public may be a barrier for them becoming a director.
 - c. **Directors who are concerned their data may be used for fraudulent purposes.** The Companies Register is freely available online. This means that directors' full names, addresses and signatures⁴ are accessible to any person, and software codes designed to strip data, at any time. Many directors are concerned that this information may be used for fraudulent purposes.
11. We are not aware of any specific incidents arising from the publication of information on the Companies Register. However, there have been instances overseas where a director was targeted at their home by individuals objecting to the practices of the business they were involved with. One such instance was in Washington D.C., USA. The animal rights organisation People for the Ethical Treatment of Animals (**PETA**) objected to animal testing undertaken by the National Institutes of Health. PETA organised protests outside a director's home and sent letters to neighbours sharing his personal information.

Objectives of the regime

12. It is important that any changes support the objectives of the Companies Register regime, namely:
 - **Transparency:** It is important that information on the Companies Register helps businesses and consumers to identify who they are dealing with and supports the enforcement of law.
 - **Privacy:** Only necessary information should be required to be publicly disclosed.

⁴ Contained in the Director Consent Form.

- **Efficiency:** It should be easy for users to access the information they require and for directors to supply the required information. Administering the Companies Register should be administratively efficient for the Companies Office.
13. Part of the trade-off of having the privilege of limited liability through a company, is the expectation that a company will be transparent in its activities and ownership. An environment of trust, transparency and accountability is necessary to foster long-term investment, financial stability and business integrity. However, this must be balanced against an individual's right to privacy and their desire to separate their professional life from their personal one.

Potential actions in response

14. There are two potential actions we could undertake to address the privacy and effectiveness concerns:
- **Introduce a director identification number (DIN):** A DIN is a unique identifying number assigned to an individual director. A director would be required to verify their identity before they were issued a DIN. The DIN would then act as an enduring number which each director would have through their life and would be recorded against their name on the Companies Register. A possible process for obtaining a DIN is attached at **Annex 1**.
 - **Allow directors to have a public address for service instead of their residential address:** Directors would be able to provide an address for service to appear publicly on the Companies Register.

Introduce an identification number for a directors

Background to DINs

15. The Insolvency Working Group (IWG) was a Government-appointed panel of experts. The purpose of the IWG was to examine aspects of corporate insolvency law and provide independent advice to Government. In 2016, the IWG released its first report covering the regulation of insolvency practitioners and voluntary liquidations. In this report, it recommended introducing a unique identification number for existing and future directors, to make it easier for creditors and regulators to identify and trace the activities of a director (Brief 1484 17-18 refers).
16. The IWGs report was released for public consultation. In general there was strong support for the proposal⁵. However, there were concerns about the compliance costs of introducing a DIN and potential privacy implications.
17. Wider consultation on these two issues was undertaken in May 2017, with the release of a discussion document. 13 submissions were received in response to the discussion document. 11 submitters supported the introduction of a DIN. Submitters included the IoD, New Zealand Shareholders Association, Chartered Accountants Australia & New Zealand, two major banks, two insolvency practitioners and the Council of Trade Unions. The views of the two submitters who disagreed with introducing a DIN are discussed further in paragraphs 24 and 25.
18. Following the feedback from submitters more work was undertaken on the potential design of a possible DIN system.

⁵ 16 submitters supported the proposal, 3 were unsure and 1 submitter opposed the introduction of a DIN.

Benefits of a DIN

19. A DIN is likely to support transparency:

- a. **A DIN would help to combat the deliberate misuse of companies or attempts to disguise a director's identity or links with multiple companies.** Submitters noted that it is currently possible for someone to deliberately misspell their name to try to hide their association with a number of different companies⁶. As a DIN would involve identity verification, it would be more difficult for users to disguise their identity through different spellings to avoid being linked with numerous entities.
- b. **A DIN would improve the integrity and reliability of information on the Companies Register.** Submitters thought increased verification of directors' identity would provide greater certainty to users about the accuracy of the register. It was seen as bringing New Zealand into line with international moves to increase transparency and accountability.
- c. **A DIN may help to reduce compliance for Anti-Money Laundering (AML) reporting entities⁷.** In their submissions, AML reporting entities such as BNZ and ANZ supported the introduction of a DIN where it could help them with their AML reporting requirements. If a director uses a RealMe:Verification login to acquire their DIN, it may be possible for AML reporting entities to rely on that information as part of their identify verification requirements under AML. However, from our conversations with relevant government agencies⁸ a DIN may only be helpful in limited circumstances. We will continue to work with the AML community to investigate where the system could be improved to support AML compliance and reduce the associated burden.

20. A DIN is likely to support efficiency:

- a. **A DIN would create efficiencies for directors and companies, and for key users of the Companies Register.** It could be easier and quicker for directors and companies if a director's details could be updated once on the register, instead of against each company record. A DIN could save users time as they could quickly identify if someone is a director of multiple companies and distinguish between directors with similar names. The Police's Financial Intelligence Unit saw a DIN as providing another tool to help identify companies being used to launder money. It would also be quicker to identify if someone was a director for a large number of companies. This could indicate that they were a "nominee director"⁹ which is a common feature of shell companies¹⁰. Shell companies themselves are not illegal, however, they are common features in certain illegal activities.
- b. **A DIN would help regulators to better link their data to records on the Companies Register.** We spoke to several regulators, including regulators within MBIE (eg. Labour Inspectorate), Inland Revenue (IR) and Worksafe. If they were able to collect a DIN as part of their data collection process, it might be easier for them to match their records to those on the Companies Register.

⁶ This is an offence under the Companies Act, however, it is difficult to enforce.

⁷ AML reporting entities are entities, such as banks or casinos, which have reporting obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

⁸ Inland Revenue, Ministry of Justice, Financial Markets Authority, Department of Internal Affairs and Reserve Bank of New Zealand)

⁹ In this context, nominee directors refers to third parties who are presented as the director of a company but are acting on behalf of someone else or the control of the company is vested elsewhere. Nominee directors are often used by companies engaged in illegal activity. The term "nominee director" is not used in the Companies Act.

¹⁰ Shell companies are registered companies that are used to conduct transactions (eg open bank accounts and transfer funds or purchase assets) but undertake no business activities.

21. A DIN may also enable other actions which would support both privacy and efficiency:
- Electronic identity verification may be extended to other functions such as allowing directors to provide their consent electronically.** When someone is appointed to be a director they must complete and physically sign a form confirming that they consent to be a director of that company and that they are not disqualified from being a director. This form is manually processed by the CO. The identity verification/login process of the DIN may allow director consents (and other functions) to be completed online.

Costs of a DIN

22. However, a DIN alone may add to privacy concerns:
- Connecting directors across different registers or data sources would be easier.** While this may help regulators and consumers, the concerns discussed in paragraph 10 would likely increase as it would be easier to connect individuals across the Companies Register.
 - One of the principles of the Privacy Act 1993 (the Privacy Act) prohibits the use of unique identifiers, unless it is necessary to enable the agency to carry out its functions.** We have had initial conversations with an advisor from the Office of the Privacy Commissioner (OPC). They did not identify major concerns with the DIN proposal if it was implemented in conjunction with other measures, such as the address for service option discussed below. The combination may reduce the privacy implications of a DIN. We intend to engage more fully with the OPC through the consultation process.
23. The OPC has previously raised concerns about third parties being able to connect individuals who were engaged in legitimate but conflicting business (eg a kindergarten and a strip club). However, we consider the risk identified by the OPC is not substantially different to the status quo. Third parties can already search for directors through their names and residential addresses; a DIN is unlikely to substantially increase this risk.
24. During the public consultation process, one law firm was concerned with the efficiency of a DIN:
- The administrative burden of a DIN is not in proportion to the number of directors that are a problem.** The law firm was not convinced that there would be a net benefit from introducing a DIN because only a small number of directors are a problem. However, we consider this concern may be addressed through the design of the DIN process. Attached at Annex 1 is an outline of how a DIN may work in practice. Beyond a minor, initial administrative requirement, we consider the process is unlikely to add a substantial administrative burden. Given the benefits described above, we consider the benefits of a DIN outweigh any disadvantages.

Other consideration

25. During the submission process, one law firm thought that a DIN was unnecessary and the register should have tighter controls on data entry. Tighter controls on data entry may help to increase the reliability of the data on the Companies Register. Currently, a company's representative enters the data onto the Companies Register. Tightening control over data entry would require greater oversight or involvement by the CO. While there would be some gains to the integrity of the data, there would be significant costs to the efficiency and speed of the company registration and maintenance system as a whole. We do not consider the benefits of this approach would outweigh the costs.

International approaches

26. Most countries do not have a DIN. Shifting to a DIN may put us out of step with countries with a similar company registration process (eg. Canada, United Kingdom, United States, Ireland). However, we consider that as long as the DIN process is efficient, the differences to other countries would not be a significant issue. Some countries which have introduced, or are in the process of introducing a DIN include:

- a. **Australia:** In September 2017, Australia announced its plans to introduce a unique identifying number for directors. We intend to work through the implications of having the two numbers mutually recognised across both systems.
- b. **India:** India introduced a director identification number in 2006. All existing directors had to obtain an identification number. Applications for a number require proof of identity, proof of residency and a current photograph.
- c. **Countries with national identity numbers:** Some countries, such as Hong Kong, Singapore, Sweden and Norway, have national identity numbers which they also use as identity numbers for directors.

Allow directors to have an address for service made public instead of their residential address

27. Under this option a director would have the opportunity to provide an address for service to be published on the Companies Register.

Benefits of an address for service

28. Allowing a director to use an address for service instead of a residential address, would address some privacy concerns:

- a. **A director may choose to have their address for service address displayed on the public register.** This would be a New Zealand or Australian address where legal notices may be served. The residential address would still be collected as it is used for other registers and enforcement agencies. Consideration would need to be given as to the grounds for releasing a residential address, such as a lack of response through the address for service or only released to regulators (such as the police) under certain circumstances.

Costs of an address for service

29. Suppressing residential addresses may have transparency implications:

- a. **No public scrutiny on the addresses provided.** The publication of residential addresses adds another layer of scrutiny to the accuracy of the addresses. The CO and the Criminal Proceeds Integrity and Enforcement (CPIE) teams within MBIE regularly receives and investigates complaints from the public regarding potentially inaccurate residential addresses.
- b. **In the absence of a DIN, it would be more difficult to identify related directors or confidently link directors with the same/similar names.** As discussed above, some regulatory agencies use residential addresses as a second point of data (in conjunction with the name) to identify and connect directors. Without this secondary point it would not be possible to accurately determine whether directors with the same name were in fact the same person or separate individuals with the same name. As part of the discussion document process, we would like to seek public views on the situations where a residential address may be released to third parties (eg through information sharing arrangements or under the Official Information Act 1982). This may help us to make design changes to the system which will help to address some transparency concerns.

30. If we allowed directors to provide an address for service, future documents published on the Companies Register would not contain directors' residential addresses. However, historic documents with directors' residential addresses would still be publicly accessible. We do not recommend blanket suppression of the historic documents as this would lead to significant inefficiencies:

- a. **Suppression of data on documents is administratively burdensome.** There are an enormous number of documents on the Companies Register which would need to be redacted in order to suppress residential address information. Each of these would need to be downloaded, the relevant information identified, the relevant information redacted, and then uploaded to the Register creating a significant administrative burden for the CO. As most of the documents are scanned and uploaded, it would not be possible to automate this process.

31. However, there may be scope to allow suppression in certain circumstances, eg where the individual has had their data on the electoral roll suppressed and/or charging for suppression.

Our preferred option is proceeding with both a DIN and allowing directors to provide an address for service

32. Our preferred option is to introduce a DIN and allow directors to provide an address for service. The combination of the two changes would result in an overall increase to the transparency, privacy and efficiency of the Companies Register

33. Comparisons of options:

	Transparency	Privacy	Efficiency
Status Quo	✓	✓	✓
Introduce a DIN + allow directors to provide an address for service (preferred)	✓	✓✓	✓✓
Introduce a DIN	✓✓	x	✓✓
Allow directors to provide an address for service	xx	✓✓	✓ - depending on approach to historic documentation

Extending DIN to shareholders and other office holders

34. Some enforcement agencies and AML reporting entities have questioned whether we intend to extend the identification number regime to include shareholders and office holders of other incorporated and unincorporated entities (eg incorporated societies or limited partnerships).

35. At this stage, we would propose to introduce an identification number only for company directors. We would assess the effectiveness of the DIN for directors, before deciding whether to introduce it for other types of entities. We intend for the DIN process to be sufficiently generic that it could be easily extended.

36. There is a parallel work programme, looking at creating a beneficial ownership register (**BOR**) (brief 1164 17-18 refers). This work programme may consider whether an identification number is needed for shareholders and beneficial owners (eg to link beneficial/legal owners across companies). Our preliminary view is that it would be administratively complex given the probable scale of numbers involved but we could test this as part of the public consultation on a BOR.

Further consultation on residential addresses required

37. As discussed above, we have previously sought public views on introducing a DIN. However, beyond the informal conversations with the IoD and ANZ, we have not sought the wider public's view on suppressing residential addresses.
38. We consider that it is important that the wider public has the opportunity to feed into any decision. Accordingly, we seek your approval to draft a discussion document to be released in the coming months. It is intended that this discussion document will test our underlying assumptions around residential addresses and their relationship with DINs. In particular, we wish to test:
- the circumstances where a residential address may be released to a third party;
 - the situations where the residential addresses in the documents on the Companies Register may be suppressed;
 - the status of a residential address under the Official Information Act 1982 if it is not required to be publicly accessible on the Companies Register; and
 - any additional uses for residential addresses that we are not aware of.

Next steps

39. Subject to your approval, we anticipate the following next steps would be:

Date	Activity
Early-March	Provide you with a draft discussion document on residential addresses.
Late-March	Seek Cabinet approval to release the discussion document for public consultation
Mid-2018	Seek final Cabinet decisions on residential addresses and DINs

Annexes

Annex One: Potential design of a DIN

Annex One: Possible design of a DIN

1. We are currently in the process of working with the CO on designing a process for acquiring a DIN. Below is an indication of how it might work:

Application process to be allocated a DIN

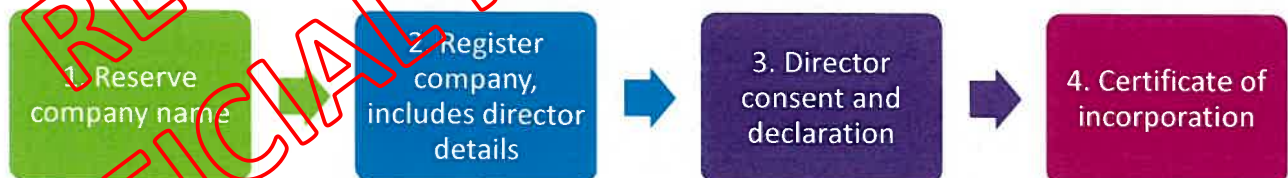
2. It is intended this would be a process which would operate outside of the company registration process.



3. Identity verification could be completed in three ways, for users:
 - a. **With a RealMe:Verified account:** An individual with a RealMe:Verified account has already had their identity documents verified. As such, Steps B and C (above), could be automatically completed.
 - b. **With a RealMe account:** The RealMe user name/password could be used to login to the system. There may be some parts of Steps B or C which could be automatically completed, however, the director would still need to verify their identity.
 - c. **Without a RealMe account:** Provisions would need to be made for alternative verification processes as RealMe may only be used by domestic directors or New Zealand directors who are overseas. Additionally, some directors may not want to connect their personal identity login (RealMe) with their business identity as a director. The CO already has a verification process for overseas directors, which could be extended to the provision of a DIN.

Application process for registering a company

4. The company registration process is likely to remain the same:



5. As part of Step 2 (above), the person registering the company would need to provide the DINs for each of the directors. If a director does not have a DIN, the process would be put on hold until they have been allocated one.
6. As a director's identity would be verified electronically, it would be possible to also make Step 3 electronic.
7. It would be important to make the DINs process as smooth as possible to ensure that the company registration process does not become unnecessarily administratively burdensome.