



BRIEFING

Draft Cabinet Paper: Beneficial Ownership and Director Residential Addresses: Release of Discussion Documents

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|--------------------------|---------------|------------------|------------|
| Date: | 2 May 2018 | Priority: | Medium |
| Security classification: | In Confidence | Tracking number: | 2773 17-18 |

Action sought

| | Action sought | Deadline |
|--|--|-------------|
| Hon Kris Faafoi Minister of Commerce and Consumer Affairs | Provide feedback on the attached draft Cabinet paper and discussion documents. | 15 May 2018 |
| | Agree to submit the Cabinet paper and discussion documents to the Cabinet Office, for consideration by Cabinet Economic Development Committee on Wednesday, 23 May 2018. | 17 May 2018 |

Contact for telephone discussion (if required)

| Name | Position | Telephone | | 1st contact |
|-------------------|------------------------------|-------------|-----|-------------|
| Tasha Petrie | Acting Manager, Business Law | 04 901 8624 | N/A | ✓ |
| John David Chaker | Graduate Policy Advisor | 04 978 3035 | N/A | |

The following departments/agencies have been consulted

The Treasury, Police (Financial Intelligence Unit), Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand, Inland Revenue Department, Ministry of Justice, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, Office of the Privacy Commissioner, Overseas Investment Office, Ministry of Health, Department of Prime Minister and Cabinet (PAG), and the Government Chief Privacy Officer.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



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Purpose

- To seek your feedback on a Cabinet paper and discussion documents on beneficial ownership and directors' residential addresses.
- To seek your agreement to submit the Cabinet paper for consideration by Cabinet Economic Development Committee (DEV) on 23 May 2018.

Executive summary

- You have agreed for us to carry out work on two policy proposals designed to support the integrity of the corporate governance regulatory system. We have drafted a Cabinet paper and two discussion documents and are seeking your feedback.
- The first discussion document is on *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*. Out of Scope
- The second discussion document is on the *Publication of Directors' Residential Addresses on the Companies Register*. This document seeks public feedback on whether to change the approach to the publishing of company directors' residential addresses if a director identification number is introduced. Our preliminary preferred option is to allow any director to use an address for service on the register instead of their residential address (**Option 2**).
- We have consulted with selected stakeholders. There was broad support for engaging in public consultation on beneficial ownership and directors' residential addresses. Out of Scope

Recommended action

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

Out of Scope

Noted

- b **Agree** that the preferred option (**Option 2**) be included in the discussion document *Publication of Directors' Residential Addresses on the Companies Register*.

Agree / Disagree

- c **Provide** feedback on the attached draft Cabinet paper and discussion documents by Tuesday, 15 May 2018.

Provided

- d **Agree** that a version of the attached draft Cabinet paper and discussion documents, amended to take account of feedback from you and from Ministerial consultation, be submitted to the Cabinet Office by Thursday, 17 May 2018, for consideration by DEV at its meeting on Wednesday, 23 May 2018.

Agree / Disagree



Tasha Petrie
Acting Manager, Business Law

Hon Kris Faafoi
Minister of Commerce and Consumer
Affairs

2 May 2018

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Background

5. New Zealand enjoys a positive reputation for being a good place to do business¹. To achieve this, the corporate governance regulatory system seeks to balance **efficiency** (the system is easy to access and use, and administration costs are proportionate) and **integrity** (ensuring that information is reliable and builds a sense of trust).
6. We have carried out work on the following two policy measures to increase the efficiency and integrity of the regulatory system:
 - a. improving the transparency of beneficial ownership information²
 - b. introducing a director identification number (DIN) and considering what changes could be made to the requirements for directors' residential addresses as a consequence of having a DIN.
7. In January 2018, we briefed you on concerns raised regarding the publishing of directors' residential addresses on the companies register and sought your agreement to undertake further public consultation [1328 17-18 refers]. You agreed for MBIE to draft a discussion document seeking the public's views on a change in approach.

Out of Scope

Draft Cabinet paper

9. We have attached a draft Cabinet paper (**Annex 1**) which seeks agreement from Cabinet to release two discussion documents:
 - a. *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships (Annex 2)*
 - b. *Publication of Directors' Residential Addresses on the Companies Register (Annex 3)*
10. We wish to draw your attention to various parts of the discussion documents as summarised in the sections below.
11. We have also included some talking points to support your discussion at the DEV meeting on Wednesday 23 May 2018 (**Annex 4**).

Discussion document on how to treat directors' residential addresses in the companies register

Background to director identification number

12. A DIN is a unique identification number for company directors. It is a number which would be assigned to each director and recorded against their name on the companies register.
13. In 2016, the Insolvency Working Group (IWG)³ released its first report. 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.

¹ New Zealand is ranked first in ease of doing business and in starting a business by the World Bank's 2018 *Doing Business* rankings, and is ranked second in Forbes' *Best Countries for Business* 2018 list.

² A beneficial owner is the natural person(s) who ultimately owns or exercises effective control over an entity.

14. The IWG's report was released for public consultation. In general there was strong support for the proposal. In May 2017, MBIE undertook wider consultation, 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.

Rationale for publishing directors' residential addresses

15. Currently, directors' names and residential addresses are publicly available on the companies register. The publication of these addresses helps to support the integrity and efficiency of the companies register. Residential addresses are an easily understood and provided piece of information which helps to connect directors across the companies register. Residential addresses also provide a contact point for third parties and a place where legal papers may be served.
16. Directors regularly raise concern with the Companies Office about having their residential address publicly accessible. These include:
- a. **Directors with safety concerns due to their business:** This includes directors whose companies are high profile or engage in activities which some people object to (eg they carry out oil or gas exploration).
 - b. **Directors with personal safety concerns:** These directors may have court orders against another person or may work in high-risk fields (such as police officers).
 - c. **Directors with other concerns:** These directors are concerned that accessibility of their personal information on the companies register increases the likelihood that their data will be used for fraudulent purposes.

Opportunity to address concerns about the publishing of residential addresses through the introduction of a DIN

17. A DIN would perform much of the functionality of a residential address. It would allow users to connect directors across the companies register and could be used by other government agencies to connect their datasets with the data on the companies register.
18. As part of the consideration of introducing a DIN, we consider there is an opportunity to consider whether directors' residential addresses need to be public.

Discussion document on the publication of directors' residential addresses

19. We have attached a draft discussion document on the *Publication of Directors' Residential Addresses on the Companies Register*. The purpose of this document is to seek the public's views on whether it remains appropriate to publish the residential addresses of company directors on the companies register if a DIN is introduced.
20. The discussion document includes two options:
- a. **Option 1 – Allow directors with safety concerns to use an address for service:** Allow directors with specific safety concerns to apply for their residential address to be replaced with an address for service on the register.
 - b. **Option 2 – Allow all directors to use an address for service:** Allow any director to use an address for service on the register instead of their residential address.
21. Our preliminary preferred option is Option 2. This is because a DIN could replace residential addresses to support the integrity of the register and allowing all directors to use an address for service could be more efficient for users and the Companies Office.

³ A Government-appointed panel of experts whose purpose was to examine aspects of corporate insolvency law and provide independent advice to Government.

Out of Scope

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Out of Scope

Consultation

Consultation with government departments

34. We have consulted with the Treasury, Police (Financial Intelligence Unit), Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand, Inland Revenue Department, Ministry of Justice, New Zealand Customs Service, Office of the Privacy Commissioner, Overseas Investment Office, Ministry of Health, Ministry of Foreign Affairs and Trade, Department of Prime Minister and Cabinet (PAG) and the Government Chief Privacy Officer.

Out of Scope

Out of Scope

38. We also consulted with the Institute of Directors on directors' residential addresses. They strongly support the removal of directors' residential addresses from the companies register.

Ministerial consultation

39. You may wish to include the following Ministers in your ministerial consultation: Minister of Finance, Minister of Justice, Minister for Economic Development, Minister of Police, Revenue and Small Business, and the Minister of Internal Affairs.

Communications

40. If Cabinet agrees, we recommend that you release a media statement publicising the release of the discussion documents and encouraging the public to make submissions. We will provide a draft media statement and Q&As to your office.
41. We will publish the discussion documents on our website and advise stakeholders that submissions are open.

Risks

42. There are competing pressures to make information more accessible on one hand and to maintain privacy on the other. Stakeholders, such as journalists, may be critical of suppressing directors' residential addresses as they may see it as a loss of transparency. However, directors are likely to support having their residential address suppressed as it increases their privacy. This debate is likely to play out through the consultation process. We consider

that the preferred option maintains the integrity and transparency of the companies register, while appropriately balancing the privacy of directors.

Out of Scope

44. We plan to meet with a range of stakeholders during the consultation period so that they can discuss these issues with us, in addition to providing a written submission.

Next steps

45. We anticipate the following next steps:

| Timeframe | Step |
|-------------|---|
| 17 May 2018 | Cabinet paper lodged with Cabinet Office |
| 23 May 2018 | Cabinet DEV committee |
| 28 May 2018 | Cabinet |
| 30 May 2018 | Release of the two discussion documents for public consultation |
| August 2018 | Briefing to you summarising submissions and recommendations on next steps |

Annexes

- Annex 1: Cabinet paper: *Beneficial Ownership and Director Residential Addresses: Release of Discussion Documents*
- Annex 2: Discussion document: *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*
- Annex 3: Discussion document: *Publication of Directors' Residential Addresses on the Companies Register*
- Annex 4: Talking Points: Beneficial ownership and director residential addresses

**Annex 1: Cabinet paper: Beneficial Ownership and Director
Residential Addresses: Release of Discussion Documents**

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Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Beneficial Ownership and Director Residential Addresses: Release of Discussion Documents

Proposal

1 I seek Cabinet's agreement to release for public consultation the two attached discussion documents on:

1.1 *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships;*

1.2 *Publication of Directors' Residential Addresses on the Companies Register.*

Executive summary

2 New Zealand is a great place to do business. A significant factor in this success is the corporate governance regulatory system. At a high level, the system is designed to enable high-performing businesses, to hold entities accountable and to maintain market confidence by setting rules and incentives for how these entities are structured, managed and dissolved. However, we cannot rest on our good reputation. It is important that we continually identify ways to ensure the integrity and effectiveness of the system.

3 To this end, I am seeking Cabinet agreement to release two discussion documents for public consultation. The two documents explore policy options to support the corporate governance regulatory system in continuing to balance its objectives.

4 The first document seeks the public's opinion on what requirements there should be on New Zealand companies and limited partnerships to hold and disclose information about their beneficial owners.

Out of Scope

Out of Scope

5 The second document seeks feedback on whether, if a director identification number (DIN) is introduced, it remains appropriate for directors of New Zealand companies to have their residential address published on the companies register.

6 I am still considering whether to introduce a DIN. However, I am interested in the public's views on whether publishing directors' residential addresses on the companies register remains necessary if we were to introduce a DIN. Two potential options for how to treat directors' residential addresses in the register are included in this document. Once public submissions have closed, officials will undertake further work before finalising their advice to me, as part of their broader advice on whether to introduce a DIN.

7 These documents will be used to identify the public's preferences and concerns on these two subjects. Strong views may be expressed about how to balance the privacy of

company directors and beneficial owners, with the effectiveness and the transparency of the system. Stakeholders may also be concerned about compliance costs.

Background

8 New Zealand is one of the easiest places in the world to do business¹ and enjoys a strong international reputation for low corruption and high integrity. To continue achieving this, we need to maintain a high-performing corporate governance regulatory system, by balancing efficiency and integrity:

8.1 Efficiency: the system is easy to access and use for entities and the public, and the costs of administering the system are proportionate;

8.2 Integrity: businesses, investors, regulators and the public trust the information available about entities and they can rely on it for making decisions. The key aspects contributing to integrity are transparency, accountability and accuracy. Transparency is important for effective corporate governance and the efficient operation of markets. Transparency promotes accountability and informed decision making by businesses, investors and customers.

9 I have instructed officials to undertake work on two policy measures which could contribute to the efficiency and transparency of the corporate governance regulatory system:

9.1 improving the transparency of beneficial ownership information;

9.2 introducing a director identification number (DIN) and considering what changes could be made to the requirements for directors' residential addresses as a consequence of having a DIN.

Beneficial ownership information

Out of Scope

A director identification number and directors' residential addresses

13 In 2016, a report by the Insolvency Working Group recommended introducing a unique identification number for company directors (a DIN)³. Most submitters supported

¹ New Zealand is ranked first in ease of doing business and in starting a business by the World Bank's 2018 *Doing Business* rankings, and is ranked second in Forbes' *Best Countries for Business* 2018 list.

² This definition is based on the Financial Action Task Force's (FATF) definition of a 'beneficial owner'.

³ This is outlined in recommendation 12 of the report.

introducing a DIN. However, submissions indicated that further work was needed to develop the recommendation.

- 14 To that end, MBIE released a discussion document on whether to introduce a DIN in May 2017 [EGI-17-MIN-0090 refers]. 11 of the 13 public submissions supported a DIN, while two submitters felt that a DIN should only be introduced if directors' residential addresses were no longer publicly available.
- 15 There may be an opportunity to address directors' concerns about their privacy and safety if a DIN is introduced. Therefore, I consider that it is useful to undertake public consultation on how to treat residential addresses in the register before making a decision on whether to introduce a DIN.

Public consultation on the transparency of beneficial ownership information

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Public consultation on how to treat directors' residential addresses on the companies register

29 I also seek Cabinet's agreement to release for public consultation a discussion document on the treatment of company directors' residential addresses on the companies register, if a DIN is introduced.

30 A DIN may present an opportunity to address company directors' concerns about having their residential addresses published on the register.

Out of Scope

Problems with publishing directors' residential addresses on the companies register

- 31 Directors are concerned about their residential address being publicly displayed on the companies register. Some directors are concerned for their safety due to the nature of their business. Others have personal security concerns, for example they may have restraining orders against someone. Other directors have expressed concerns that their data may be used for fraudulent purposes.
- 32 The Companies Office receives complaints and requests to suppress or remove residential information from the register from directors and their representatives on a regular basis.

Rationale for publishing directors' residential addresses

- 33 Directors are responsible for the performance of a company and ensuring that it meets its legal obligations. People need to be able to contact directors in order to hold them accountable.
- 34 Directors' residential addresses are published on the companies register to enable third parties to contact directors directly, including serving legal documents. Furthermore, residential addresses provide a data point to enable users to distinguish between or connect directors with the same or similar names.
- 35 However, there are alternative solutions which may achieve the same outcome as publishing residential addresses. An address for service could provide third parties with an avenue to contact directors and serve legal documents. Additionally, a DIN could provide a more accurate data point to enable users to distinguish between directors, and to connect directors and companies.
- 36 Given the above and the concerns raised by directors, I consider that a decision is needed on whether it remains appropriate to publish directors' residential addresses on the companies register.

Options for treating director residential addresses

- 37 The paper seeks to balance the corporate governance system's efficiency and integrity objectives, while also taking into account the privacy implications of having personal information publicly available.
- 38 As part of this consideration, the following options for treating director residential addresses are included in the discussion document:
- 38.1 **Option 1 – Allow directors with safety concerns to use an address for service:** Allow directors with specific safety concerns to apply for their residential address to be replaced with an address for service on the public register;
- 38.2 **Option 2 – Allow all directors to use an address for service:** Allow any director to use an address for service on the register instead of their residential address.
- 39 Directors would still have to provide their residential address to the Registrar for either option, even if it is not made publicly available.

- 40 MBIE's preliminary preferred option is **option 2**. A DIN could replace residential addresses to support the integrity of the register, and the use of an address for service would ensure that only the necessary personal information is publicly available. Officials consider that **option 2** is likely to be efficient for the Companies Office to implement and for the public to use.
- 41 The discussion document tests these assumptions with the public. The document also seeks input on possible approaches to historic data and future access to directors' residential addresses.

Timing

- 42 Subject to Cabinet agreement, the discussion documents will be released at the same time, for a period of six weeks.
- 43 I intend to seek Cabinet agreement on any changes to the requirements for beneficial ownership and directors' residential addresses and on whether to introduce a DIN by the end of 2018.

Stakeholder views

- 44 Officials anticipate that stakeholders will have the following views on beneficial ownership:

Out of Scope

- 45 On directors' residential addresses:

- 45.1 Directors are likely to strongly support making their residential addresses private as quickly as possible.
- 45.2 NGOs and journalists may be concerned that there would be a reduction in transparency. I consider that this concern would be mitigated by the introduction of a DIN.

Consultation

Government Agencies

- 46 Agencies consulted on this paper: the Treasury, Police (Financial Intelligence Unit), Department of Internal Affairs, Financial Markets Authority, Reserve Bank of New Zealand, Inland Revenue Department, Ministry of Justice, New Zealand Customs Service, Office of the Privacy Commissioner, Overseas Investment Office, Ministry of Health, Department of Prime Minister and Cabinet (PAG) and the Government Chief Privacy Officer.

Private Sector

- 47 Officials informally met with the following organisations to discuss beneficial ownership:

Out of Scope

- 48 There was broad support for MBIE carrying out public consultation. Where appropriate, officials have incorporated private sector stakeholders' views into the discussion documents.

Financial implications

- 49 No financial implications arise from the release of the attached discussion documents.

Human rights, gender and disability implications

- 50 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

- 51 No gender or disability implications arise from this paper.

Legislative implications

- 52 No legislative implications arise from the release of the attached discussion documents.

Quality of the impact analysis

- 53 The Regulatory Impact Analysis Review Panel (RIARP) chair has reviewed the attached discussion documents prepared by the Ministry of Business, Innovation and Employment. As the discussion documents contain the necessary elements of an Impact Analysis, this paper is exempt from requiring a separate Impact Statement at this stage. RIARP consider that the information and analysis summarised in the discussion documents meet the criteria necessary for consulted parties to fairly consider the options available.

Publicity

- 54 I will release a media statement publicising the release of the discussion documents and encouraging the public to make submissions. MBIE will publish the discussion documents on its website and advise stakeholders when they are released.
- 55 I intend to proactively release this Cabinet paper and to publish it on MBIE's website, with any necessary redactions.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Committee:

- 1 **agree** to release a discussion document on *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*;
- 2 **agree** to release a discussion document on the *Publication of Directors' Residential Addresses on the Companies Register*;
- 3 **authorise** the Minister of Commerce and Consumer Affairs to make editorial or minor content changes to these discussion documents prior to their public release;
- 4 **note** that the discussion documents will be released for public consultation for a period of six weeks;
- 5 **agree** to this Cabinet paper being published on the Ministry of Business, Innovation and Employment's website;
- 6 **note** that the Minister of Commerce and Consumer Affairs intends to seek Cabinet agreement on policy decisions for beneficial ownership, a director identification number and directors' residential addresses by the end of 2018.

Authorised for lodgement

Hon Kris Faafoi
Minister for Commerce and Consumer Affairs