



BRIEFING

Beneficial ownership and director identification numbers

Date:	29 March 2019	Priority:	Medium
Security classification:	In Confidence	Tracking number:	1180 18-19

Action sought		
	Action sought	Deadline
Hon Kris Faafoi Minister of Commerce and Consumer Affairs	Agree in principle to the Out of Scope director identification number system. Direct officials to prepare a Cabinet paper to this effect by June 2019.	19 April 2019

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Susan Hall	Manager, Business Law	021 899 321		
Phoebe Chan	Senior Policy Advisor	04 897 5248		✓
Robert Clarke	Senior Policy Advisor	04 474 2908	s 9(2)(a)	

The following departments/agencies have been consulted (if required)
IRD, Customs, Police, MoJ, DIA, FMA, RBNZ, Office of the Privacy Commissioner

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments:



BRIEFING

Beneficial ownership and director identification numbers

Date:	29 March 2018	Priority:	Medium
Security classification:	In Confidence	Tracking number:	1180 18-19

Purpose

To seek your agreement in principle to the **Out of Scope** regime and a director identification number system.

Executive summary

Beneficial Ownership

Out of Scope

Out of Scope

Director Identification Numbers

A director identification number (DIN) is a publicly searchable unique identification number for existing and future directors of companies, allocated after a proof of identity process.

In 2017, MBIE released a first discussion document on whether to introduce a DIN for company directors. In 2018, MBIE released a second discussion document on whether, if the government were to introduce such a DIN, it would remain appropriate for directors of New Zealand companies to have their residential addresses published on the companies register. 13 submissions were received in response to the first discussion document and 41 in response to the second discussion document.

Should we introduce a DIN system?

To develop a picture of any given director's history, users of the companies register – such as potential creditors and enforcement authorities – have to rely on a director's published name and address. Variations in spelling, and changes of address, can make this time-consuming and unreliable.

Having considered the responses to the first discussion document, most of which were strongly in support of introducing a DIN, MBIE has concluded that a DIN system would effectively address this problem. MBIE also considers that a DIN system would create efficiencies for directors and companies, and improve the integrity and reliability of information on the companies register. Furthermore, the compliance costs for directors, and the administrative costs for the Companies Office, appear reasonable.

In this context, MBIE is in favour of introducing a DIN system for companies.

Should directors' residential addresses continue to be displayed?

Currently, the registrar of companies collects the residential address of company directors and enters it onto the companies register. This can cause privacy concerns for directors, in particular when their company is involved in sensitive activities. If a DIN system were introduced, then the issue becomes whether the residential addresses still need to be displayed.

Having considered the responses to the second discussion document, MBIE has concluded that, while directors should continue to provide a residential address to the registrar, this address should not be displayed on the register if the director provides an "address for service" instead. MBIE believes that this approach will effectively protect directors concerned about their privacy, without

undermining the ability of users of the companies register to accurately identify those directors – provided the following conditions are also implemented.

The first condition is that, besides the companies registrar, certain third parties should have access to the non-displayed residential address:

- government departments and agencies, where access will facilitate the enforcement of companies' legal obligations
- non-governmental 'interested parties' such as shareholders or creditors, where other attempts to contact the director have been unsuccessful.

The second condition is that directors with specific safety or security concerns may apply to the companies registrar to have their residential address redacted from historic documents, such as old director consent forms and the company's previous annual returns.

Recommended action

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

- a **Note** that a beneficial ownership register and a director identification number system both seek to improve third parties' ability to know "who they are dealing with" and that, for this reason, they are best considered together.

Noted

- b **Note** that Cabinet was expecting you to seek Cabinet agreement on policy decisions for beneficial ownership and a director identification number system by the end of 2018 [DEV-18-MIN-0110 refers].

Noted

- c **Note** that officials are seeking your agreement in principle to a number of recommendations, to enable us to prepare the necessary Cabinet paper.

Noted

In respect of beneficial ownership

Out of Scope

Out of Scope

g

In respect of director identification numbers

h **Agree** that a director identification number system (DIN) should be introduced.

Agree / Disagree

i **Agree** that the DIN system should have the following characteristics:

- a. While directors will continue to be required to provide their residential addresses, they should be able to request that the public only see an alternative “address for service”

Agree / Disagree

- b. All government departments and agencies should have the ability to access directors' residential addresses, for certain limited purposes

Agree / Disagree

- c. Strictly defined non-governmental interested parties should have the right to request access to directors' residential addresses, in certain limited circumstances and for certain limited purposes

Agree / Disagree

- d. Directors with specific safety or security concerns (and, after an initial period of at least two years, any director) may apply to the Companies Registrar to have their residential address redacted from *historic* documents

Agree / Disagree

General matters

- j **Direct** officials to prepare a draft Cabinet paper reflecting these recommendations, by June 2019.

Agree / Disagree



Susan Hall
Manager, Business Law

29 / 3 / 19

Hon Kris Faafoi
Minister of Commerce and Consumer
Affairs

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Background

1.

Out of Scope
2. In May 2017, MBIE consulted publicly on the potential introduction, for directors of companies, of a director identification number (DIN) system. Such a system would enable users of the companies register to quickly and accurately identify a director and all the companies he or she is a director of.² In May 2018, the Ministry undertook a supplementary consultation on whether, if the government were to introduce a DIN system, the Companies Office should continue to publish on the register the residential addresses they collect from directors, or if directors should be able to request that an 'address for service' be published instead.³
3. These two work streams both affect the transparency and integrity of the companies register, and you may wish to consider trade-offs between the two when making policy decisions. For this reason, we propose advancing the two work streams together.
4. This briefing sets out, for both the beneficial ownership and the DINs consultations:
 - a. a summary of the feedback from respondents
 - b. officials' recommended course of action.
5. Should you agree to our recommendations, we will prepare a Cabinet paper (and accompanying regulatory impact assessment) for you to take to DEV.
2. You originally informed Cabinet that you would seek Cabinet agreement on policy decisions for beneficial ownership, a director identification number and directors' residential addresses by the end of 2018 [DEV-18-MIN-0110 refers].

Beneficial ownership

Out of Scope

Out of Scope

² MBIE, 'Consultation on Whether to Introduce a Director Identification Number', May 2017

³ MBIE, 'Publication of Directors' Residential Addresses on the Companies Register', May 2018

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Director identification numbers

Public consultation

38. In April 2017, in response to Report No. 1 of the Insolvency Working Group (IWG),⁶ Cabinet agreed to release a first discussion document on whether to introduce a DIN for company directors [EGI-17-MIN-0090 refers].
39. In the words of the IWG, a DIN would be “a publicly searchable unique identification number for existing and future directors, allocated after a proof of identity process and in addition to existing requirements”. The first discussion document added the following DIN characteristics:
 - a. All directors would need to have a DIN.
 - b. Existing directors would have 12 months to apply for a DIN, while new (including former) directors would apply for a DIN when they sent in their first consent form
 - c. When applying, all directors would need to verify their identity, for example by using a Real Me verified account or providing Passport details.
40. Subsequently, in June 2018, Cabinet agreed to release a second discussion document on whether, if the government were to introduce such a DIN, it would remain appropriate for directors of New Zealand companies to have their residential addresses published on the companies register (the Register) [DEV-18-MIN-0110 refers].
41. The second consultation also explored:
 - a. whether, and if so in what circumstances, third parties should be granted access to residential addresses that have been collected but not published
 - b. whether directors should have the right to replace their residential address not just from future documents but also from historic documents already on the register, such as past director consent forms and old annual returns
 - c. related matters such as whether company shareholders, and committee members of other entities such as incorporated societies, should have a right to request the replacement of their residential address with an address for service.

⁶ IWG Report no.1, July 2016

Nature of responses to consultations

First consultation

42. Submissions on the first DINs consultation closed in late June 2017. We received 13 submissions, mostly from law firms, insolvency practitioners and representative bodies. Most submitters (11) strongly supported introducing a DIN, including the Institute of Directors and New Zealand Shareholders Association. The benefits of a DIN were viewed as outweighing any costs (which were seen as minimal or manageable). The key benefits identified were:
 - a. creating efficiencies for directors and companies, and for key users of the companies register
 - b. enhancing directors' privacy, if introduced in conjunction with changes to residential address requirements
 - c. combatting the deliberate misuse of companies or attempts to disguise a director's identity or links with multiple companies
 - d. improving the integrity and reliability of information on the companies register.
43. Officials provided to the then Minister a full summary of submissions on the main DIN consultation in July 2017 [briefing 0129 17-18 refers].
44. A copy of that advice is attached as Annex 2.

Second consultation

45. Submissions on the second DINs consultation closed in early August 2018. MBIE received 41 submissions on the Discussion Document. Those submissions were from individuals, companies, industry bodies, AML-CFT reporting entities, and a credit reporting agency.
46. Broadly speaking, assuming the introduction of DINs and the continued collection by the Companies Office of directors' residential addresses, a majority of submitters were in favour of:
 - a. repealing the rule that those residential addresses be automatically published on the Register
 - b. instead allowing directors to provide an alternative 'address for service' for publication on the Register (and only publishing residential addresses where directors do not provide this 'address for service')
 - c. allowing government departments and agencies to access collected residential addresses, in certain circumstances
 - d. allowing directors to apply to the Companies Registrar to have their residential address redacted from historic documents such as the director consent form and the company's annual return.
47. By contrast, no clear consensus emerged amongst stakeholders over whether non-governmental 'interested parties', such as insolvency practitioners, creditors, shareholders and legal professionals, should have any right to access directors' residential addresses.
48. Finally, submitters supported allowing shareholders – who currently must also provide their residential addresses to the Companies Office – to provide, like directors, an alternative 'address for service' for publication on the Register.
49. A fuller summary of submissions is attached as Annex 3.

Issue 1: introduction of a DINs system

Description of issue

50. It is difficult for people using the companies register to develop a full picture of any given director's history. A user may search by director name, but the resulting list of companies that appears may contain false positives (e.g. where there are several "John David Smiths"), or omit relevant results (e.g. where John David Smith is named as "John D. Smith").
51. This creates two related problems:
 - a. It is difficult for potential creditors (including suppliers of goods and services) to get a full picture of a person to whose company they may be considering advancing credit
 - b. It is difficult for enforcement authorities to detect fraudulent conduct e.g. phoenix activity,⁷ nominee directors, etc.
52. The first discussion document outlined some of the benefits and costs associated with the introduction of such a DIN. However, it did not come to any preliminary conclusion on whether a DIN should be introduced.

MBIE's view

53. Having considered the responses to the first discussion document, MBIE's view is that it would be appropriate to introduce a DIN. This is because:
 - a. a DIN would effectively address the problems described above
 - b. the compliance costs for directors, and the administrative costs for the Companies Office, appear reasonable.
54. MBIE did consider a non-regulatory alternative to the introduction of a DIN, namely providing greater resources to the Companies Office to better verify and record the identity of directors, and to attempt to cross-reference that identity with existing directorships. However, it became apparent that the costs involved would be significant and the effectiveness limited.

Issue 2A: suppression of a director's residential address

Description of issue

55. Currently, the Register displays the residential address of every company director. Individual directors and their representatives have raised privacy concerns about this.
56. The second discussion document noted that, if a DIN system were introduced, then there might be less need for these addresses to be published. It suggested two alternatives for change:
 - a. Option 1 – publication of directors' residential addresses except where they can provide evidence of safety concerns: a director who could provide evidence to the Companies Registrar of safety concerns would be able to provide an "address for service" for publication on the Register, in place of a residential address.
 - b. Option 2 – publication of directors' residential addresses except where they choose to provide an "address for service" instead: directors themselves could choose whether they wanted to provide an address for service for publishing on the register. Directors would still need to provide a residential address, but this would not be published.

⁷ Where an indebted company uses the voluntary liquidation process to appoint an incompetent or dishonest liquidator who does not pursue creditor claims, allowing the directors to sell the indebted company's assets to a new (phoenix) company

MBIE's view

57. In the second discussion document, MBIE indicated that its preferred option was option 2: suppression of a director's private address whenever they provide an alternative "address for service".
58. Having considered submissions, MBIE's view remains that option 2 is the most appropriate course of action. In particular, MBIE is concerned that the delay involved in requiring a director to provide evidence of a threat to their safety could put directors at undue risk of harm.

s 9(2)(f)(iv)

Issue 2B: third-party access to suppressed addresses

Description of issue

60. It is intended that the Companies Registrar would continue to collect directors' residential addresses, regardless of whether or not the information of a given director is published on the Companies Register (or is replaced by an "address for service").
61. In this context, the Discussion Document addressed the issue of giving third parties (certain non-governmental 'interested parties', as well as government departments and agencies) access to the collected residential addresses, and the circumstances in which access may be provided.
62. For non-governmental 'interested parties', the second discussion document suggested this could include insolvency practitioners, creditors, shareholders and legal professionals. It proposed that interested parties have access a director's residential address where they have been unable to contact a director through their published address for service, or a director's address for service is their company and an interested party is concerned a company is intercepting the correspondence.
63. For government departments and agencies, the second discussion document asked whether such agencies – including Inland Revenue, the Police and the Department of Internal Affairs – should have an automatic right to access directors' residential addresses collected by the Companies Office. If so, it asked whether this right should be limited to law enforcement purposes.

MBIE's view

64. Having considered submissions, MBIE's view is that, for government departments and agencies, access to directors' residential addresses should be made available to all such entities. In MBIE's opinion, this approach appropriately balances individuals' privacy and concern for safety with the desirability of facilitating the enforcement by governmental departments and agencies of companies' legal obligations.
65. For non-governmental 'interested parties', the matter is less certain. As noted, unlike for most DINs issues, submitters were split. There is a delicate balance to strike here between directors' right to privacy against the legitimate expectation of appropriate non-governmental third parties that they should be able to contact directors in order to perform their roles

properly.

66. We note in this regard that the Office of the Privacy Commissioner agreed that the Companies Registrar should provide access to a director's residential address for purposes that are connected to a director's statutory role and duties, stating that "people who deal with or have interests in companies, for example shareholders or creditors, need to be able to contact directors reliably and independently of the company". This feedback has significantly reduced our concerns about privacy. We also note that 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 organisation and activities.
67. In this context, MBIE has concluded that non-governmental 'interested parties' should have the ability to *request* access to a director's residential address. The circumstances in which the registrar should pass on the address will need to ensure other attempts to contact the director have been unsuccessful, and that contact is appropriate.
68. For both governmental and non-governmental parties, officials will determine the precise list of who should be able to request access, in what circumstances, and for what purposes, through further inter-agency consultation.

Issue 2C: addresses in documents already on the register

Description of issue

69. Directors' residential addresses can be found in documents attached to a company's record on the register, such as old director consent forms and the company's previous annual returns. The Discussion Document noted that, even if directors were able to choose an 'address for service' in place of providing their residential address, the change would not be retrospective and would not affect the historic documents on record.
70. In this context, the second discussion document proposed two options:
 - a. Option 1: directors with specific safety or security concerns may apply to the Companies Registrar to have their residential address redacted from historic documents.
 - b. Option 2: any director may apply to the Companies Registrar to have their residential address redacted from historic documents.

MBIE's view

71. In the second discussion document, MBIE indicated that its preferred option was option 1. We considered this would allow directors with specific safety or security concerns to have their residential addresses redacted from the historic documents, without creating an unnecessary administrative burden for the Companies Office.
72. In light of submissions, MBIE has reconsidered its view on the administrative burden. It now considers that option 2 *may* ultimately be the most appropriate course of action, provided appropriate means can be found to limit the administrative burden.
73. In this context, officials note that several submitters suggested a staggered approach which has some appeal: for an initial period of, say, a few years, directors with specific safety or security concerns may request suppression; thereafter, any director may request suppression. This would have the advantage of spreading any administrative burden over time, and allowing directors with legitimate safety concerns "first serve". In light of this, MBIE recommends implementing option 1, but we will keep this issue under review.

Issue 2D: other matters

Description of issue

74. The second discussion document noted that a director's residential address is publicly accessible not just through the Register and in historic Companies Office documents, but also through:
- the list of the directors' names and residential addresses that companies must hold and make physically available for inspection by the public⁸
 - third-party websites.
75. The second discussion document also noted that the residential addresses of other individuals are publicly accessible through the Companies Office, namely:
- a. on the Companies Register, company shareholders
 - b. on other registers,⁹ committee/board members.
76. Submitters were asked what, if anything, should be done to address these matters.

MBIE's view

77. Concerning company directors, responses to the second discussion document did not make a strong case for action to be taken in respect of companies' internal lists of addresses, nor in respect of third party websites. In this context, MBIE's view is that any action by government would be disproportionate to the risk.
78. Concerning company shareholders, and concerning individuals who run entities other than companies, MBIE is sympathetic to calls from submitters that their residential addresses also be suppressible, especially since limiting the ability to provide an address for service to directors of companies could distort people's choice of corporate entity (in favour of companies), when launching a business.
79. However, the second discussion document failed to stress, in this section of its text, that a pre-requisite for introducing a right to suppression for company directors is the introduction of DINs. There are, by contrast, no current plans to introduce DINs for company shareholders or for individuals running entities other than companies.
80. In this context, while a right to suppress residential addresses would help protect shareholders and those who run other entities, and would avoid the risk of distorting people's choice of corporate entity, it might also unduly restrict the ability of users of the relevant registers to accurately identify those shareholders and entity leaders. On a practical level, MBIE also notes that it does not have responsibility for some of the registers that may be affected (notably the charities register, which is administered by the Department of Internal Affairs).

Inter-agency consultation

Beneficial ownership

81. **Out of Scope**

⁸ Section 215 of the Companies Act 1993.

⁹ For example, the Incorporated Societies register, Industrial & Provident Societies register, Building Societies register, and Friendly Societies register. In most cases, the residential addresses contained in these registers are in imaged files attached to the record. They are not in a searchable format.

82.

Out of Scope

DINs

83. All agencies consulted were supportive of the approach to DINs set out in this briefing.
84. The Companies Office in particular is strongly in favour of DINs, which when implemented with identity verification (e.g. Real Me) will greatly improve the integrity of register data and its value.

Communications and risks

Communications

85. We do not propose that you issue any media statement concerning your decision on the recommendations in this briefing.
86. However, we do recommend that you authorise us to publish all submissions on both beneficial ownership and director identification numbers on the MBIE website.

Risks

87.

Out of Scope

88. For the introduction of a DINs system, the risk exists of divergence from the DIN system currently being developed in Australia. Given the reference, in the joint Prime Ministers' statement of February 2019, to the importance of "mutual recognition of verified digital identities", such divergence would be undesirable. We and the Companies Office will

manage this risk by seeking to work closely with our counterparts in the Australian Taxation Office and Treasury.

Next steps

89. If you agree to the recommendations in this briefing, officials will prepare a draft Cabinet paper and an accompanying regulatory impact statement, for you to take to Cabinet later this year. The Cabinet paper will seek authorisation for you to issue drafting instructions to the Parliamentary Counsel Office.
90. In this regard, the recommendations involve amendments to the Companies Act 1993 and to the Limited Partnerships Act 2008, and the vehicle for these amendments would be the Corporate Governance (Transparency and Integrity) Reform Bill. The purpose of this Bill, as described in your legislative bid for 2019, is to amend the Companies Act 1993 and Limited Partnerships Act 2008 to increase the transparency of the ownership and control of companies and limited partnerships and increase the overall integrity of the corporate governance regulatory system. The suggested priority for the Bill is Category 5: instructions to be provided to PCO in the year.
91. We anticipate the following timeframe:

Date	Milestone
April 2019	You sign off on briefing recommendations
May-June 2019	Preparation of Cabinet paper and regulatory impact statement, including inter-agency consultation
July 2019	DEV
August-October 2019	Drafting of legislative amendments
November 2019	LEG

Annexes

Annex 1: Summary of submissions on beneficial ownership

Annex 2: Summary of submissions on DINs (should it be introduced?)

Annex 3: Summary of submissions on DINs (should residential addresses remain?)

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Out of Scope

Annex 2: Summary of submissions on DINs (should it be introduced?)



BRIEFING

Summary of Submissions on Director Identification Numbers

Date:	20 July 2017	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0129 17-18

Action sought

	Action sought	Deadline
Hon Jacqui Dean Minister of Commerce and Consumer Affairs	Agree to progress work on director identification numbers. Agree to seek Cabinet agreement not to progress two amendments in RSB2. Forward a copy of this paper to the Minister of Finance, for his information.	27 July 2017

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Gus Charteris	Manager, Business Law	474 2839	s 9(2)(a)
Tasha Petrie	Senior Policy Advisor	901 8624	N/A ✓

The following departments/agencies have been consulted

<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> ComCom	<input type="checkbox"/> FMA	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MoT	<input type="checkbox"/> DPMC	<input type="checkbox"/> MPP	<input type="checkbox"/> RBNZ
<input type="checkbox"/> Other:					

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:



BRIEFING

Summary of Submissions on Director Identification Numbers

Date:	20 July 2017	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0129 17-18

Purpose

The purpose of this paper is to:

- brief you on submissions on whether to introduce a unique identification number for company directors
- seek your approval to progress work on director identification numbers
- seek your approval to ask Cabinet to agree not to progress two amendments that were proposed to be a part of Regulatory Systems Amendment Bill No 2.

Executive summary

1. In April 2017, Cabinet agreed to release a discussion document on whether to introduce a unique identification number for directors of companies [EGI-17-MIN-0090]. A director identification number (DIN) was recommended by the Insolvency Working Group in its first report.
2. We received 13 submissions on DINs. Most submitters (11) strongly supported introducing a DIN, including the Institute of Directors and New Zealand Shareholders Association. The benefits of a DIN were viewed as outweighing any costs (which were seen as minimal or manageable). The key benefits identified were:
 - a. creating efficiencies for directors and companies, and for key users of the companies register
 - b. enhancing directors' privacy, if introduced in conjunction with changes to residential address requirements
 - c. combatting the deliberate misuse of companies or attempts to disguise a director's identity or links with multiple companies
 - d. improving the integrity and reliability of information on the companies register.
3. Other government departments we have spoken to see value in having a DIN. It would enhance the way they enforce obligations placed on directors under their legislation and provide another tool to help identify some types of crime, such as money laundering.
4. We consider that there is a strong case for introducing a DIN. We seek your approval to progress work on a DIN, including developing how it would work in more detail.
5. There are two amendments in Regulatory Systems Amendment Bill No 2 (RSB2) that we now recommend not progressing in this Bill. The first change was to allow directors' (and shareholders') residential addresses to be removed from public display on the companies

register. We consider that any changes to residential addresses should be progressed with work on a DIN as the two matters are closely related.

6. The second change was to use annual returns to identify which companies are a code company under the *Takeovers Act 1993*. Cabinet recently agreed to amend the definition of a code company [EGI-17-SUB-0071]. The new definition would require some companies to provide more information than was originally intended when the RSB2 proposal was put to Cabinet. We need more time to identify the best way to collect this information without imposing unnecessary compliance costs on companies.
7. If you agree to progress work on DINs, we will provide you with further advice on how these could work by the end of the year. We will also provide you with a draft consultation document on residential addresses at this time. You may wish to forward a copy of this paper to the Minister of Finance, for his information.

Recommended action

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

- a **Note** that most submitters supported introducing a director identification number and MBIE considers there is a strong case for progressing this recommendation.
Noted
- b **Agree** to MBIE progressing work on a director identification number, including more detailed design work.
Agree / Disagree
- c **Agree** to seek Cabinet approval to remove changes to directors' and shareholders' residential addresses from Regulatory Systems Bill No 2, so we can progress this work in conjunction with a director identification number.
Agree / Disagree
- d **Agree** to seek Cabinet approval to remove changes to annual returns, so we can identify whether there are other ways (including non-legislative options) to collect information on Takeover code companies.
Agree / Disagree
- e **Forward** a copy of this briefing to the Minister of Finance, for his information.
Forwarded



Gus Charteris
Manager, Business Law



Hon Jacqui Dean
Minister of Commerce and Consumer
Affairs

20 July 2017

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Background

1. The Insolvency Working Group (IWG) was set up to recommend possible changes to corporate insolvency law. It produced two reports. The first looked at the regulation of insolvency practitioners and voluntary liquidations. In this report, it recommended the government “introduce a publicly searchable unique identification number for existing and future directors, allocated after a proof of identity process and in addition to existing requirements”.
2. IWG Report No. 1 was released for public consultation in July 2016. 20 submissions commented on the recommendation to introduce a director identification number (DIN). Most submitters (16) supported a DIN, with 3 submitters unsure and 1 submitter opposed. Submissions indicated that more analysis was required, primarily to address concerns about privacy and compliance costs, before Cabinet could make a decision on the recommendation.
3. In April 2017, Cabinet agreed to release a discussion document on whether to introduce a unique identification number for company directors [EGI-17-MIN-0090]. At this time, Cabinet also agreed to release the IWG’s Report No. 2 for public consultation. We have provided you with a separate overview of submissions on this report [0189 17-18].
4. Submissions on DINs closed in late June 2017. We received 13 submissions, mostly from law firms, insolvency practitioners and representative bodies.

Submissions on director identification numbers

Most submitters supported introducing an identification number for directors

5. Eleven submitters supported the introduction of DINs. These included the Institute of Directors, New Zealand Shareholders Association, Chartered Accountants Australia & New Zealand, two major banks, two insolvency practitioners and the Council of Trade Unions.
6. These submitters considered that the benefits of a DIN largely outweighed the costs (which were seen as minimal or manageable). Benefits identified by submitters were:
 - a. **A DIN would create efficiencies for directors and companies, and for key users of the companies register.** It would be easier and quicker for directors and companies as a director’s details would only have to be updated once on the register, instead of against each company record. A DIN would save users time as they could quickly identify if someone is a director of multiple companies and distinguish between directors with similar names. One submitter considered that, in aggregate, the time savings would be significant.
 - b. **A DIN would enhance directors’ privacy if changes were also made to the requirement for directors’ residential addresses to be on the public register.** Currently, a director’s residential address is the only way to distinguish between directors with the same name. As you are aware, some directors are concerned that having their residential address on the public register creates privacy and safety risks for directors and their families. Submitters felt that a DIN would help to address these risks as directors could then have an address for service on the public register and still be distinguishable from other directors.
 - c. **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 companies. Some submitters considered

that a DIN would help other regulators (such as Inland Revenue and the labour inspectorate) to carry out their work.

- d. **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.

- 7. Submitters in support of a DIN thought that it would not deter people from becoming directors, particularly if it reduced administrative costs. Submitters felt that the administrative efficiencies would offset any compliance costs from having to apply for a DIN.

However, two submitters did not think a DIN was necessary

- 8. Two law firms opposed the introduction of a DIN. One law firm thought that a DIN was unnecessary and the register should have tighter controls on data entry. The other 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.

Other agencies support having a DIN

- 9. Directors often have obligations under other legislation. Government departments, including Inland Revenue, Customs, Police and WorkSafe New Zealand, as well as other parts of MBIE (Immigration New Zealand and the labour inspectorate) consider that a DIN could help them with their work. Being able to use the same unique identifier across government could help with cross-government enforcement activities and information sharing.
- 10. The Police's Financial Intelligence Unit saw a DIN as providing another tool to help identify companies being used to launder money. It would be quicker to identify if someone was a director for a large number of companies. This could indicate that they were a "nominee director"¹ which is a common feature of shell companies². Immigration New Zealand noted it would help with visa case management and risk management. In order not to issue visas to people with a record of labour exploitation, immigration fraud or other convictions, they need access to accurate and reliable information on directors (amongst other information).

Proposed amendments in Regulatory Systems Bill No 2

- 11. In December 2016, Cabinet agreed to a number of amendments to be included in Regulatory Systems Amendment Bill No 2 (RSB2) [EGI-16-MIN-0357]. RSB2 is currently being drafted. The Minister for Economic Development is to seek Cabinet agreement to release an exposure draft in August 2017. MBIE propose that RSB2 is introduced to the House by the end of 2017 with a view to completing the parliamentary process around the middle of 2018.
- 12. Because of changing circumstances, there are two amendments that we recommend not progressing in RSB2.

It is important to progress the residential addresses work with DINs

- 13. One of the changes agreed to was to allow directors' and shareholders' residential addresses to be removed from public display on the companies register. Work is still needed on the best way to give effect to this decision. The December Cabinet paper noted your

¹ In this context, nominee directors refers to third parties who are presented as the director of a company but are used to conceal the true identity of persons controlling proceeds of crime. The term "nominee director" is not used in the Companies Act.

² 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.

predecessor was also considering the introduction of a DIN and, as the two matters are closely related, it would make sense to consult on the two matters at the same time.

14. As advised in April, we consider that more analysis is needed to fully understand the impacts of making changes to directors' residential addresses to ensure the right balance of transparency and privacy [2784 16-17]. How concerns about residential addresses could be addressed will be influenced by whether there is a DIN. We propose to undertake further work on residential addresses and provide you with a draft consultation paper setting out our preferred option for residential addresses in December. Any legislative changes to residential addresses should be done in conjunction with the introduction of a DIN (assuming this goes ahead).
15. If a DIN is not introduced, the timing of the consultation and subsequent decisions on residential addresses mean that legislative changes would not be ready for inclusion in RSB2. Therefore, we recommend seeking Cabinet agreement not to include residential addresses in RSB2 as part of the Minister for Economic Development's August Cabinet paper.
16. There is a risk that some stakeholders, particularly the Institute of Directors, will be critical of the decision not to include changes to residential addresses in RSB2. However, we consider that it is important that any change is well thought out and widely consulted on. The changes will need to ensure a sufficient level of transparency and accountability as well as reducing risks to directors' safety and privacy. This decision will not impact on the timing of the implementation of changes to residential addresses, as they would need to be implemented at the same time as a DIN was introduced.

There may be non-legislative ways to obtain information about Takeover companies

17. The other amendment we recommend not progressing is to change the annual returns to obtain information on how many shareholders a company has. We intended to use this information to help the Takeovers Panel identify how many companies met the definition of a code company. We still consider that this is important information to have. However, in April 2017 Cabinet agreed to alter the definition of a code company [EGI-17-SUB-0071]. While the new definition is more closely aligned with the objectives of the *Takeovers Act 1993*, it would also make the information needed in an annual return more complicated (ie we would need to collect information on some companies' revenue and assets as well as shareholders).
18. We would like to investigate whether there are non-legislative ways to collect this information, for example through information sharing with Inland Revenue, so we do not unnecessarily increase compliance for companies. We consider that a legislative change through RSB2 is not appropriate at this stage, therefore, we recommend seeking Cabinet agreement in August not to progress this amendment.

Next steps

19. You may wish to forward a copy of this paper to the Minister of Finance, for his information as he expressed interest in submitters' views about the possible introduction of a director identification number.
20. We consider that there is a strong case for introducing a DIN, and seek your approval to progress this work. This will involve working with the Companies Office to develop in more detail how a DIN would work in practice, including:
 - a. determining the appropriate level of identity verification and certainty that someone providing information for the register is who they claim to be
 - b. considering the potential privacy implications and data protection measures

- c. considering appropriate sanctions and ensuring that we can use electronic signatures and declarations to enforce directors' obligations
 - d. identifying any consequential legislative and systems changes needed, including possible changes to the treatment of directors' residential addresses.
21. We would also like to test our thinking with key stakeholders, including the Institute of Directors, and interested government departments.
 22. If you agree, we will aim to provide you with further advice on a DIN by the end of this year. We will also provide you with a draft consultation document on residential addresses at this time. This should give us sufficient time to work through the above considerations (paragraph 20) as we will have key staff away for two months during this time.
 23. We propose to keep the DIN and residential address work within the wider corporate insolvency reforms work programme. This will provide a legislative vehicle to make any changes, as a DIN would not be suitable for inclusion in a regulatory systems amendment bill.
 24. We will prepare a paper seeking Cabinet agreement on your decisions on the Insolvency Working Group's second report and DINs, and to release the consultation document on residential addresses, with a view to Cabinet consideration in February 2018.
 25. The Minister for Economic Development is seeking Cabinet agreement to release an exposure draft of RSB2 in August 2017. If you agree not to proceed with the residential address and annual return work in RSB2, we will include this decision in that Cabinet paper. We expect the Minister will forward you a copy of the draft Cabinet paper in early August.

Annex 3: Summary of submissions on DINs (should residential addresses remain?)

1. The Discussion Document entitled 'Publication of Directors' Residential Addresses on the Companies Register', of May 2018, raised four main issues:
 - a. In what circumstances a company director should be able to request suppression of their residential address from the Register.
 - b. In what circumstances third parties should be granted access to residential addresses that have been suppressed.
 - c. Whether directors should have the right to request suppression of their residential address from historic documents already on the Register.
 - d. Other matters.
2. This Annex summarises submissions on each of these issues, in turn.

Issue A: suppression of a director's residential address¹⁰

Description of issue

3. Currently, the Register displays the residential address of every company director.
4. The Discussion Document highlighted the safety and security concerns that might militate against the publication of directors' residential addresses, and suggested two options for addressing these concerns:
 - c. **OPTION 1 – PUBLICATION OF DIRECTORS' RESIDENTIAL ADDRESSES EXCEPT WHERE THEY CAN PROVIDE EVIDENCE OF SAFETY CONCERNS:** a director who could provide evidence to the Companies Registrar of safety concerns would be able to provide an "address for service" for publication on the Register, in place of a residential address.
 - e. **OPTION 2 – PUBLICATION OF DIRECTORS' RESIDENTIAL ADDRESSES EXCEPT WHERE THEY CHOOSE TO PROVIDE AN "ADDRESS FOR SERVICE" INSTEAD:** directors themselves could choose whether they wanted to provide an address for service for publishing on the register. Directors would still need to provide a residential address, but this would not be published.

Submitters' views

5. The **vast majority of submitters considered that option 2 was the best approach**. These submitters cited the following arguments, amongst others:
 - a. It is necessary to ensure the safety of directors: "Only Option 2 provides a sufficient guarantee that director security and safety can be maintained" [IAG] and "[under option 1] a threat would need to have occurred before an application for removal could be made. Often the reason for seeking to withhold that information is to prevent any security incidents occurring" [Simmonds Stewart].
 - f. Simplicity: "Option 2 is the easiest option to implement" [T&J Rapley] and "the process will be simpler and quicker if the new rules apply to all directors" [Spark].
 - g. International best practice: "Option 1 ... appears to be an outlier in the general trend of comparable jurisdictions" [Russell McVeigh].

¹⁰ This issue was discussed in Chapter 3, questions 1-2, of the Discussion Document

6. Just two submitters argued that option 1 should be preferred. One provided no reasoning, while the other relied on the following arguments:
 - a. Integrity of the register: “option 1 fully meets the integrity objective” while “option 2 ... provides a mechanism by which directors can avoid scrutiny or avoid being asked to account for their actions, so significantly undermining the integrity principle” [Chalice Consulting Ltd].
 - h. Manageable costs: “the efficiency benefits of option 2 are over-rated. “the cost of administering an-opt out system would not be significantly greater than administering a mechanism that would allow access under certain circumstances” [Chalice Consulting Ltd].

MBIE's preliminary view

7. In the Discussion Document, MBIE indicated that its preferred option was option 2.
8. Having considered submissions, MBIE's view remains that option 2 is the most appropriate course of action. In particular, MBIE is concerned that the delay involved in requiring a director to provide evidence of a threat to their safety could put directors at risk. MBIE also believes that the Companies Office does not necessarily have the expertise, nor should it have the responsibility, of assessing the credibility and seriousness of threats to directors' safety.
9. Officials will provide you with a final recommendation in Q1 2019.

Issue B: third-party access to suppressed addresses¹¹

Description of issue

10. It is intended that the Companies Registrar would continue to collect directors' residential addresses, regardless of whether or not the information is published on the Register. In this context, the Discussion Document addressed the issue of giving third parties (certain non-governmental 'interested parties', as well as government departments and agencies) access to the collected residential addresses, and the circumstances in which access may be provided.
11. For non-governmental 'interested parties', the Discussion Document suggested this could include insolvency practitioners, creditors, shareholders and legal professionals. It proposed that interested parties have access a director's residential address where they have been unable to contact a director through their published address for service, or a director's address for service is their company and an interested party is concerned a company is intercepting the correspondence.
12. For government departments and agencies, the Discussion Document asked whether such entities – including Inland Revenue, the Police and the Department of Internal Affairs – should have an automatic right to access directors' residential addresses collected by the Companies Office. If so, it asked whether this right should be limited to law enforcement purposes.

Submitters' views

13. On **non-governmental** 'interested parties', **submitters were evenly divided** between those who considered no such parties should have a right to access directors' residential addresses (in any circumstances), and those who considered some such parties should have that right (in certain circumstances).

¹¹ This issue was discussed in Chapter 4, questions 3-7, of the Discussion Document

14. Those opposed to a right of access for such parties cited the following arguments, amongst others:
- a. Access is unnecessary: "The DIN process would ensure the director's details were legitimate" [NZSA];
 - b. Privacy is more important: "the significant right of individuals to protection of their personal data overrides a one-size-fits-all openness with very little tangible benefit to the public" [Gerd Dieglmann];
 - c. Alternatives exist: "there are legal channels to pursue directors if necessary" [Michelle Bevan] and "there is enough contact data in the public domain for the business to be visible and available to the public" [AquaGold].
15. Those in favour of a right of access cited the following arguments, amongst others:
- a. It is necessary to the good functioning of the companies eco-system: "People who deal with or have interests in companies, for example shareholders or creditors, need to be able to contact directors reliably and independently of the company" [Privacy Commissioner];
 - b. It would help some parties comply with their obligations: "reporting entities may be required to verify customer addresses as part of the customer due diligence requirements of the AML/CFT Act... This process would be affected if reporting entities were unable to easily access directors' residential address information" [ASB];
16. Amongst submitters who supported allowing access, the circumstances they considered might justify such access ranged from very rare ("an extreme event") to rare ("where the [published] address for service is no longer valid") to more common ("debt collection, investigation of fraud or other crime, credit assessments, legitimate urgent property-related contact"). A large majority considered that the types of interested parties should be limited and, in particular, that journalists should not be amongst them.
17. On **government** departments and agencies, the majority of **submitters agreed that these entities should have access** to residential addresses, but many suggested that this right should be somewhat constrained.
18. For example, many submitters argued that the access should be limited to law-enforcement purposes. Other submitters were prepared to see the access available in other circumstances too: for example, the Privacy Commissioner proposed that departments and agencies have access when it was necessary for law- or regulatory-enforcement purposes.

MBIE's preliminary view

19. In the Discussion Document, MBIE did not express any formal preferences.
20. Having considered submissions, MBIE's preliminary view is that:
- a. for non-governmental interested parties, provided the types of parties are strictly defined, access to directors' residential addresses should be made available in certain limited circumstances;
 - b. for government departments and agencies, access to directors' residential addresses should be made available to all such entities, for certain limited purposes.

21. Officials will provide you with a final recommendation in Q1 2019.

Issue C: addresses in documents already on the register¹²

Description of issue

22. Directors' residential addresses can be found in documents attached to a company's record on the register, such as old director consent forms and the company's previous annual returns. The Discussion Document noted that, even if directors were able to choose an 'address for service' in place of providing their residential address, the change would not be retrospective and would not affect the historic documents on record.

23. In this context, the Discussion Document proposed two options:

- c. OPTION 1: directors with specific safety or security concerns may apply to the Companies Registrar to have their residential address redacted from historic documents.
- d. OPTION 2: any director may apply to the Companies Registrar to have their residential address redacted from historic documents.

Submitters' views

24. While submitters agreed that there should be a mechanism for suppressing a director's residential address from historic Companies Office documents, they were **evenly divided** over whether such a mechanism should be open only to directors with specific safety/security concerns, or to all directors.

25. Those in favour of limiting the right to directors with safety concerns relied on the following arguments, amongst others:

- a. Limiting who can require suppression will help minimise the administrative burden: "the alternative would impose a significant burden on the Registrar of Companies" [Simmonds Stewart].
- b. Limiting who can require suppression will ensure that only addresses that need to be suppressed are redacted: "the alternative ... would apply to situations where changes to an address may not be required" [Simmonds Stewart];

26. Those in favour of granting the right to all directors relied on the following arguments, amongst others:

- a. It is necessary to achieve the purpose of the reforms: "the benefits afforded by allowing directors to publish an address for service on the Companies Register will be undermined if their residential address is still easily accessible in historic documents" [ASB];
- b. There is international precedent: "Option B is consistent with the UK which has recently amended the Companies Act 2006 (UK) ... There is no longer a requirement for directors to provide specific safety or security concerns" [NZ Super];
- c. Any administrative burden can be managed:
 - i. "It is likely that most directors will not seek to have historical documents suppressed for the following reasons: the fee and the burden of responsibility for directors to identify documents and make an application...; people move reasonably often and this will mean addresses will no longer be current over time" [Institute of Directors];

¹² This issue was discussed in Chapter 5, questions 8-9, of the Discussion Document

- ii. Even if there are a large volume of request, "this can be addressed by ramping up administrative resource and charging fees which recover costs" [Spark];

MBIE's preliminary view

27. In the Discussion Document, MBIE indicated that its preferred option was option 1. We considered this would allow directors with specific safety or security concerns to have their residential addresses redacted from the historic documents, without creating an unnecessary administrative burden for the Companies Office.
28. In light of submissions, MBIE has reconsidered its view on the administrative burden. It now considers that option 2 may ultimately be the most appropriate course of action, provided appropriate means can be found to limit the administrative burden e.g. the Registrar should have the ability to decline requests he or she deems vexatious or frivolous.
29. In this context, officials note that several submitters suggested a staggered approach which has some appeal: for an initial period of, say, two years, directors with specific safety or security concerns may request suppression; thereafter, any director may request suppression. This would have the advantage of spreading any administrative burden over time, and allowing directors with legitimate safety concerns "first serve".

Issue D: other matters¹³

Description of issue

30. The Discussion Document noted that a director's residential address is publicly accessible not just through the Register and in historic Companies Office documents, but also through:
 - the list of the directors' names and residential addresses that companies must hold and make physically available for inspection by the public;¹⁴ and
 - third party websites.
31. The Discussion Document also noted that the residential addresses of other individuals are publicly accessible through the Companies Office, namely:
 - c. on the Companies Register, company shareholders;
 - d. on other registers,¹⁵ committee/board members.
32. Submitters were asked what, if anything, should be done to address these matters.

Submitters' views

33. In respect of company directors, a large number of submitters indicated that individuals had occasionally been targeted at their homes either by angry shareholders and customers or, in the case of high-worth individuals, by businesses hoping to sell goods or services. However, they were **unable to say** that the residential address information was sourced from company-held lists, third-party websites, or from the Register itself.
34. In respect of company shareholders, the vast majority of submitters believed that **shareholder addresses should be subject to the same suppression rules** proposed for directors. Some noted, for example, that for SMEs, the directors and shareholders are often the same people, meaning failure to suppress shareholder information would render the director suppression futile.

¹³ These matters were discussed in chapter 6, questions 10-13, of the Discussion Document

¹⁴ Section 215 of the Companies Act 1993.

¹⁵ For example, the Incorporated Societies register, Industrial & Provident Societies register, Building Societies register, and Friendly Societies register. In most cases, the residential addresses contained in these registers are in imaged files attached to the record. They are not in a searchable format.

4. In respect of individuals whose residential addresses are listed on other registers, most submitters who expressed a view were in favour of **allowing the individuals concerned to provide an 'address for service'** in place of a residential address. They stressed that the same privacy concerns applied to people running entities other than companies, as applied to company directors.

MBIE's preliminary view

5. Concerning company directors, responses to the Discussion Document did not make a strong case for action to be taken in respect of companies' internal lists of addresses, nor in respect of third party websites. In this context, MBIE's preliminary view is that any action by government would be disproportionate to the risk.
6. Concerning company shareholders, and concerning individuals who run entities other than companies, MBIE is sensitive to the calls from submitters for residential addresses to be suppressible. MBIE would add that limiting the ability to provide an address for service to directors of companies could distort people's choice of corporate entity (in favour of companies), when launching a business.
7. However, the Discussion Document failed to stress, in this section of its text, that a pre-requisite for introducing a right to suppression for company directors is the introduction of DINs. There are, by contrast, no current plans to introduce DINs for company shareholders or for individuals running entities other than companies.
8. In this context, while a right to suppress residential addresses would help protect shareholders and those who run other entities, and would avoid the risk of distorting people's choice of corporate entity, it might also unduly restrict the ability of users of the relevant registers to accurately identify those shareholders and entity leaders. On a practical level, MBIE also notes that it does not have responsibility for some of the registers that may be affected (notably the charities register, which is administered by the Department of Internal Affairs).