

Companies (Address Information) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

1 May 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Companies (Address Information) Amendment Bill (**Bill**).
- 1.2 The Companies Act 1993 (**Act**) currently provides for public inspection of certain company records, including the full names and residential addresses of its directors.¹ The Bill proposes to amend the Act by providing a mechanism for directors to request that their residential address is substituted with an address for service. The policy rationale for the Bill is that the current access to directors' residential addresses presents a threat to the safety of some people who may be exposed to stalking, harassment or other acts of violence.²
- 1.3 The Law Society acknowledges the importance of directors' public safety and commends the policy rationale of the Bill.
- 1.4 However, public access to company information (including information about directors) serves important public purposes relating to accountability and transparency, including: identification of those in control of a company; compliance with regulatory requirements; service of proceedings on directors; and providing information to investors, customers and creditors about the company they are dealing with. Those objectives are not adequately met by the substitution of an address for service in place of a residential address.
- 1.5 Accordingly, the Law Society:
 - (a) Does not support the Bill in its current form. Rather, it recommends that the policy goal of the Bill be pursued alongside the introduction of a system similar to the director identification number (**DIN**) system previously proposed by the Insolvency Working Group,³ and agreed to by Cabinet in 2021.⁴
 - (b) Notes that if the Bill were to proceed in its current form, it would likely be ineffective at meeting its policy objective given that residential information is currently available from other documents that are also publicly available.
- 1.6 This submission has been prepared with assistance from the Law Society's Commercial and Business Law Committee, and Civil Litigation and Tribunals Committee.⁵
- 1.7 The Law Society wishes to be heard.

¹ S 215(1)(d).

² Explanatory note of the Bill.

³ Insolvency Working Group *Report No. 1 of the Insolvency Working Group, on insolvency practitioner regulation and voluntary liquidations* (Ministry of Business Innovation and Employment, July 2016) at [199] – [200].

⁴ See: <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/supporting-the-integrity-of-the-corporate-governance-system/>.

⁵ More information on the Law Society's law reform committees can be found here: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>

2 The Bill does not strike the correct balance between the competing public policy objectives

2.1 Given the advantages afforded by incorporation and limited liability, there is a strong public interest in corporate transparency. The public availability of company records, including the full names and residential addresses of directors, supports such transparency. Indeed, public disclosure of those with control of a limited liability company can be seen as part of the trade-off for incorporation. In particular, such public disclosure serves a number of important purposes:

- (a) Disclosure of directors' residential addresses allows directors with the same or similar names to be distinguished. This is important in a range of contexts. For example, it allows the public and regulators to identify commonalities in directorships and shareholding across different companies. It also allows creditors and regulators to track down directors of failed companies.
- (b) At least one of a company's directors must live in New Zealand or an enforcement country.⁶ The requirement to disclose the director's residential address supports this requirement.
- (c) Disclosure of directors' residential addresses supports service of legal proceedings on directors. This is important in a range of contexts including liquidation, bankruptcy and other general civil proceedings. The withholding of directors' residential addresses will make it more difficult to serve proceedings (and increase directors' ability to evade responsibility) because personal service is the default mode of service in New Zealand.⁷ Personal service requires leaving the document with the person to be served.⁸ Personal service cannot be carried out by posting the document to an address for service. The reason for this is to ensure that the Court is satisfied that the person knew or had the means of knowing the contents of the documents.⁹ In practice, personal service is usually carried out on directors by approaching the directors at their residential address, as listed in Companies Office records.
- (d) More generally, those dealing with companies (including investors, creditors and customers) have a legitimate interest in knowing at least the general area (eg postcode, suburb, city, country) in which its directors reside. This provides them with relevant information about the nature of the company, including as to their connection with the area in which they operate and potential difficulties if disputes arise. Creditors, in particular, may wish to know if the company they are advancing money to has a director with multiple failed companies behind them.

2.2 Removal of directors' residential addresses would impede these purposes. The provision of an address for service is insufficient. It is likely that many directors, if they are

⁶ S 10(d) of the Act.

⁷ High Court Rules 2016, r 5.71. Also see s 387A of the Act, which provides how documents are to be served on directors involved in legal proceedings (and does not currently permit service by leaving documents at the director's address for service).

⁸ High Court Rules 2016, r 6.11.

⁹ *Campbell v Campbell* [1965] NZLR 653 (HC) at 655.

concerned with their privacy, will give the office of a lawyer or accountant as their address for service. This will reduce the transparency of the current system and make it more difficult to meet the above objectives.

- 2.3 The Law Society notes that the objectives of the Bill could be better achieved if reform along these lines was carried out at the same time as the introduction of a DIN. In this regard it notes that:
- (a) In 2016, the Insolvency Working Group recommended the introduction of a unique DIN for company directors.¹⁰ A DIN would be assigned to each New Zealand company director and recorded against their name on the Companies Register. This was proposed on the basis that it would support accountability and transparency in the Register by helping users identify directors and the companies with which they are connected.¹¹
 - (b) In 2017, the Ministry of Business Innovation and Employment (**MBIE**) undertook further consultation on whether to introduce a DIN. MBIE reports that submissions indicated general support for the proposal, with some submitters identifying an opportunity to address concerns about directors' residential addresses being publicly available on the Companies Register if a DIN was introduced.¹²
 - (c) MBIE reports that in 2021, Cabinet agreed that the Companies Office should establish a unique identifier for individuals who are directors of companies, general partners of limited partnerships, or beneficial owners of either of these entities.¹³
- 2.4 For these reasons, the Law Society recommends that the Bill not proceed and concerns about directors' safety be addressed in conjunction with the proposal for the introduction of a DIN.
- 2.5 If a DIN system is to be implemented, we recommend considering whether certain individuals should be allowed to access non-public records of directors' residential addresses for bona fide purposes (including, for example, for the service of legal proceedings on directors).¹⁴

3 The Bill as drafted is likely to be ineffective

- 3.1 If it does proceed, the Law Society submits that as drafted the Bill is likely to be ineffective. That is because the residential addresses of directors may be found elsewhere on the Companies Register. The same is true of the addresses of shareholders, many of whom are also directors. In particular, residential address information for directors may be included

¹⁰ Above n 3.

¹¹ Above n 3.

¹² Above n 4.

¹³ Above n 4.

¹⁴ If this recommendation is accepted, there would need to be clear criteria, and quick and efficient processes, for determining whether an individual has a legitimate interest in accessing records of directors' residential addresses.

in other documents that are publicly available on the Register. These include annual returns and forms for:

- (a) Registration (s 12(2)(b) of the Act);
- (b) Change of residential address (s 159(2)(b));
- (c) Amalgamation proposals (s 220(1)(c));
- (d) Registration of a foreign company (s 336(2)(b)); and
- (e) Change of residential address of directors of a foreign company (s 339(1)(b)).

3.2 The Law Society submits that this reinforces the need to address the policy problem behind the Bill in a co-ordinated way and commends the DIN proposal as an efficient means of doing so.



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