

30 April 2024

Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

By email: eds@parliament.govt.nz

Companies (Address Information) Amendment Bill

This submission is made by the Guardians of New Zealand Superannuation (**Guardians, we, our**) as manager and administrator of the New Zealand Superannuation Fund (**Fund**) in response to the above Bill (the **Bill**). We do not request to appear before the Committee.

GUARDIANS AND THE FUND

The Fund was established by the New Zealand Government in 2001 to help pre-fund the future cost of universal superannuation. The Fund size is currently approximately \$70 billion.

As a long-term, growth-oriented investor, the Fund has a diversified investment portfolio that is invested globally and locally across a wide range of asset classes.

The Guardians has operational independence from the Government and is required by legislation to manage the Fund on a prudent, commercial basis, in a manner consistent with:

- Best practice portfolio management;
- Maximising return without undue risk to the Fund as a whole; and
- Avoiding prejudice to New Zealand's reputation as a responsible member of the world community.

For more information please refer to www.nzsuperfund.nz.

OUR SUBSIDIARY AND INVESTEE COMPANY DIRECTORS

The Guardians has a range of wholly-owned subsidiary companies¹ (predominantly incorporated in New Zealand) for the purpose of holding, facilitating and/or managing certain Fund assets/investments. The boards of such companies generally comprises two Guardians' employees, who are selected based on the particular assets / investment held in each company.

The Guardians also appoints representative directors to the boards of some of its investee companies. For example, in New Zealand, the Guardians has appointed representative directors to the boards of Fidelity Life, NZ Gourmet, Datacom, Awanui, NZ Offshore Wind Development, Kaha Ake, Beachlands South, Hotel Holdings and Timberlands. Our appointees on these boards comprise a mixture of Guardians' employees and professional directors as appropriate in the circumstances.

¹ These subsidiaries are also either "fund investment vehicles" under section 59A of the New Zealand Superannuation and Retirement Income Act 2001 or nominee companies (being Crown entity subsidiaries for the purposes of the Crown Entities Act 2004). For the purposes of this submission, however, there is no material difference between these entities and other companies.

KEY SUBMISSIONS / RECOMMENDATIONS

We strongly support the proposal to remove the requirement for directors to disclose their residential addresses. However, we submit that the Bill should go further, on the basis that disclosure of residential addresses is neither necessary nor desirable for reasons we set out below.

We recommend that:

- the Bill is amended such that directors can, on a go forward basis, elect to disclose an address for service instead of a residential address “as of right” – i.e. without the need to demonstrate any safety risk;
- this election is made administratively easier, with directors indicating their preference by way of a simple Companies Office form. It should not be necessary to provide a statutory declaration;
- the Committee considers including an ability for directors to request that, upon payment of a fee, the Companies Office redacts residential address information that is contained in historical documents which are available through its online records. Pragmatically, in this situation the proposed gating threshold (i.e. a safety risk) may be appropriate, given the significant quantum of historical Companies Office records; and
- the Bill provides for certain narrow situations where director residential address can be accessed, which we comment on further below.

We note that MBIE has undertaken considerable market engagement and policy analysis in respect of the underlying issues (the Guardians has been contributing on the issue since MBIE first consulted in 2018). This body of work provides a greater level of background policy analysis than would be available for many Private Member’s Bills.

The requirement to disclose is unnecessary

The key reasons for requiring disclosure of director address details are to:

- provide a means for third parties to contact directors independent of the company; and
- enable interested parties to connect companies with a common director or distinguish between different directors who may have similar names.

We suggest below that disclosure of residential addresses is not required in either case.

Means to contact directors

While we agree that third parties may need to be able to contact directors otherwise than through the company in certain situations, we submit that it is only in very rare situations (if any) that any third party would have a legitimate reason to contact a director ***using their home address***.

In our experience, many directors will already be contactable through the company or by other direct means (e.g. via a public email or LinkedIn). On the occasions when it is necessary to use a physical address (e.g. to serve documents) independent of the company, then an address for service would be sufficient².

In earlier consultations on this topic, officials at MBIE suggested that even if directors provide an address for service, there may nevertheless be certain circumstances where it could still be necessary for third parties to obtain residential address information. We agree this could be appropriate in certain narrow circumstances, such as where an interested party demonstrates that they have attempted to serve proceedings against a director, but the address for service is no longer valid and service cannot

² We also note that under sections 387A and 388A of the Companies Act 1993, directors can be served validly at the company’s registered office or address for service and by various other means (i.e. even under the current rules service does not need to be effected at the director’s residential address).

reasonably be achieved by other means. We understand this broad concept is consistent with the approach in Hong Kong.

Identification of directors

In terms of the second point, we appreciate that removing residential addresses may make it more difficult to identify a series of companies with a common director or to distinguish between similarly or identically named directors.

However, we submit that:

- the benefit of more easily identifying/distinguishing directors through residential address information is relevant in certain relatively rare situations (e.g. “phoenix companies”), but doesn’t in our view override the legitimate concerns directors have in protecting their residential address information (see further below);
- from a policy perspective, this issue is better addressed through the use of a Director Identification Number (DIN) in line with practice in Australia;
- there has already been significant policy analysis undertaken by MBIE in respect of the introduction of DINs, following the 2016 recommendation of the Insolvency Working Group³;
- pending introduction of a DIN, directors would still be required to disclose an address for service, which may enable users to identify/distinguish directors – particularly if the address for service is not the company’s address.

During the Bill’s First Reading the Minister responsible for the Companies Act (Minister of Commerce, Hon Andrew Bayly) explained his preference that the issue of director residential be addressed as part of the Government’s planned more comprehensive modernisation of the Companies Act, rather than in isolation. The Minister noted that the Bill would specifically deal with “unique identifiers”, which we understand to be a reference to a DIN.

We consider that a DIN would be a sensible and complementary item to include as part of any later substantive review of the Companies Act. It reflects modernisation of corporate administration practices in other markets. As these wider reforms may take some time to implement, we suggest the Bill should still be progressed as a stand-alone item to provide immediate relief, and then later augmented with a DIN should this be introduced as part of the Government’s more comprehensive reform programme.

The requirement impinges on legitimate privacy interests

The current requirement to disclose a residential address impinges on legitimate privacy interests and can expose directors and their families to a risk of harassment. We are aware, through our own director appointees, and interactions with the director community, that this is a genuine concern. The current threshold requirement in the Bill – that disclosure is likely to result in physical or mental harm – is not practicable, since the risk of harm is not necessarily predictable and known in advance.

As is common for large corporates, Guardians employee directors are appointed to boards as part of their employment, and they are not separately remunerated as directors. This makes the encroachment on privacy even more unreasonable.

The requirement exposes directors to a risk of identity fraud

The current settings expose directors to a risk of identity fraud, given that their full names, residential addresses and (in many cases) signatures can be available on the public register. For these reasons,

³ <https://www.mbie.govt.nz/assets/5a5ee108bb/review-of-corporate-insolvency-law-1.pdf>

the UK Government has enacted legislation making it easier for directors to redact residential addresses (and certain other information) from historical documents⁴.

The requirement is inconsistent with other jurisdictions

The current settings are out of step with equivalent requirements in many other jurisdictions, and also the global trend towards increased privacy protection. Based on our investigations and experience, the requirements in certain other jurisdictions are as follows:

Jurisdiction	Requirement
Canada	Directors may provide either a residential address or an address for service. ⁵
Delaware ⁶	Director residential addresses do not need to be provided.
Hong Kong	Residential addresses and personal identification numbers of directors and company secretaries are not publicly available. Registrar has discretion to include the residential address where communication with a director at their correspondence address is not effective ⁷ .
Australia	Director residential addresses not generally available but need to be included on specified forms lodged with ASIC, subject to certain exceptions ⁸ . These documents are, however, less apparent / available than the director residential address details in New Zealand.
United Kingdom	Director residential addresses not publicly disclosed, but available to specified public authorities and credit reference agencies. Directors can apply to further suppress residential address information that is included in other documents (e.g. correspondence). ⁹
Ireland	Directors can apply for an exemption for their residential address not to be disclosed based on personal safety or security. Successful applicants have the address for service entered instead. ¹⁰
Singapore	Directors have the option to register an alternate address at the point of incorporation or any other time. The alternate address must be an address where the director can be contacted and within the same jurisdiction as their residential address. Registering an alternate address costs \$40. ¹¹
Japan	We understand there are a range of different rules for different company types. For limited liability companies (Godo-Kaisha), a director's name and address is publicly disclosed only if they are a managing member. The details of non-managing members are not disclosed. ¹²

⁴ In the UK, we understand there has been no requirement to include residential addresses in the director details in the public register since the Companies Act 2006 came into force, but such information may be included in other materials (e.g. a correspondence address).

⁵ <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs06724.html>

⁶ In the US we have focused on the State of Delaware given its popularity as a state of incorporation in the US and as we have experience with US subsidiary companies domiciled there. We have not investigated the rules in other US states.

⁷ https://www.cr.gov.hk/en/companies_ordinance/keychanges_protected-information.htm

⁸ <https://asic.gov.au/for-business/changes-to-your-company/changing-company-addresses/application-for-suppression-of-residential-address/>

⁹ <https://www.gov.uk/government/publications/restricting-the-disclosure-of-your-psc-information/restricting-the-disclosure-of-your-information> and <https://www.gov.uk/guidance/your-personal-information-on-the-public-record-at-companies-house#protect-address>

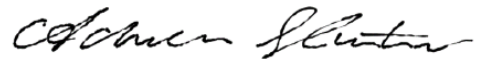
¹⁰ <https://www.cro.ie/Post-Registration/Company/Officer-Address-Disclosure>

¹¹ <https://www.acra.gov.sg/how-to-guides/setting-up-a-local-company/other-important-information>

¹² https://www.moj.go.jp/EN/MINJI/m_minji06_00003.html#4-3

As a practical matter, we also note that the Companies Office website is well presented, easy to access and available without charge. While this is positive, it does mean that director residential address information is, in a practical sense, more accessible than in some other jurisdictions where there may be additional barriers (such as an access fee).

Yours sincerely

A handwritten signature in black ink, appearing to read "Adrien Hunter". The signature is written in a cursive, flowing style.

Adrien Hunter

Associate General Counsel