



Office of Hon Paul Goldsmith

Minister of Commerce and Consumer Affairs

Associate Minister for ACC

19 AUG 2015

Grace Haden

grace@verisure.co.nz

Dear Ms Haden,

I refer to your e-mail dated 9 July 2015 to Hon Craig Foss regarding your concerns about the enforcement of the Companies Act 1993 ("the Act"). Your email has been referred to me as the matters you have raised fall within my portfolio responsibilities as Minister of Commerce and Consumer Affairs.

I have been advised by the Companies Office that you initially made a complaint to the Companies Office Registries Integrity and Enforcement Team (RIET) on 26 February 2015 alleging that Mr Jozsef Gabor Szekely had been removed as a director and shareholder of Muse On Allen Limited ("the Company") without his consent.

I am advised that the RIET made enquiries of the Company following your complaint. Those enquiries revealed that the matters relating to the complaint were the subject of a proceeding before the High Court. This proceeding was commenced by Mr Szekely and was scheduled to be heard on 20 July 2015. On receipt of this information the RIET informed you that no further action would be taken on your complaint until the conclusion or discontinuance of the civil proceeding involving Mr Szekely and current directors of the Company, Mr Malcolm North and Mr Samuel North. I understand that the Companies Office has not yet received any advice as to the outcome of this proceeding.

The Companies Office informs me that the investigation of Mr Szekely's complaint would require the Registrar of Companies ("the Registrar") to form a view on information that the Court will assess during the proceeding. It is also likely that the Court proceeding, if resolved in Mr Szekely's favour, will result in an order that the Registrar amend the details recorded on the register. I am advised that in the circumstances the Registrar considers that the Court is the appropriate forum for Mr Szekely's concerns to be heard and it is not appropriate for the Registrar to become involved in these matters while they are currently before the Court.

I am informed that you were sent a letter dated 16 April 2015 that informed you of the evidence that Mr Szekely would be required to provide for the Registrar to take further action in relation to his complaint in the event that the civil proceeding was discontinued. You were also informed that even if this information was provided and an investigation by the RIET disclosed offending, there was no guarantee that a prosecution would result.

This is because the RIET is unable to take action in relation to every complaint it receives. I am advised that resources are therefore focussed on those matters that have potential to pose:

- a material risk of financial or other loss or harm to users of the register; or
- a reputational threat to the New Zealand corporate registration system.

The Registrar will only prosecute offences where there are clear grounds to do so within the principles set out in the Companies Office Enforcement Policy Guidelines (<https://www.business.govt.nz/companies/about-us/enforcement/policy-guidelines>) and the Solicitor General's Prosecution Guidelines

(http://www.crownlaw.govt.nz/uploads/prosecution_guidelines_2013.pdf). In particular you should note that before considering enforcement action the Registrar would need to be satisfied that the offending was serious and:

- impacted on the ability of the register to perform its purpose;
- poses a serious risk of financial or other loss or harm;
- poses a reputational threat to the New Zealand corporate registration system;
- was premeditated or undertaken for the purposes of dishonest or improper gain;
- was likely to be repeated; and/or
- was undertaken by an offender with a previous history of serious offending or persistent non-compliance.

It is unlikely that enforcement action would be taken where non-compliance is technical, where (as in Mr Szekely's case) civil actions or other alternatives to prosecution are available to remedy harm or where prosecution would not be likely to attract a material penalty. Enforcement action would also be unlikely where compliance has already been achieved.

The Companies Office informs me that Mr Szekely has also made an application under section 360A of the Act to be reinstated as a registered shareholder of the Company. The process for such an amendment requires notice to be given to the Company and accordingly the Registrar considers that this request is better resolved by the Court through the current civil proceeding.

I am informed that on 8 July you provided a large amount of additional information to the Companies Office relating to your complaint. I am advised

that in accordance with the 16 April letter from the RIET this material will not be considered until the RIET is advised of the outcome of the civil proceeding.

While I sympathise with the position Mr Szekely finds himself in it is not appropriate for me to intervene in matters which are currently before the Court or within the statutory responsibility of the Registrar.

If you have any further queries I suggest you correspond with the RIET whose details you will have from previous letters.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul Goldsmith', with a long, sweeping underline that extends to the left and then curves back under the name.

Hon Paul Goldsmith
Minister of Commerce and Consumer Affairs