

Australia to Introduce Director Identification Numbers

Following the passage of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Cth) in June 2020, new Part 9.1A of the *Corporations Act 2001* (Cth) will require persons appointed as directors to apply for a Director Identification Number prior to being appointed as a director.

The new law will require each person who consents to being a director to confirm their identity and obtain a unique Director Identification Number. The person will keep that Director Identification Number permanently, even if they cease to be a director.

Persons appointed as directors within 12 months of the new regime's operation will have 28 days to apply for a Director Identification Number.

Those persons that are currently directors will also be required to apply for a Director Identification Number; however, they will not be required to do so until the Minister so specifies (by legislative instrument). Current directors should therefore remain on alert for announcements from the Minister's office in this respect.

The introduction of the concept of a Director Identification Number (**DIN**) into Australia's corporations laws was first recommended by the Productivity Commission in September 2015 in its final report into Business Set-up, Transfer and Closure.

Following lengthy consideration by Parliament throughout 2019 and 2020, the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Cth) (**Act**) received Royal Assent on 22 June 2020.

Among other things, Schedule 2 of the Act introduces a DIN regime into the *Corporations Act 2001* (Cth) (**Corporations Act**).

New Part 9.1A of the Corporations Act, which houses the DIN requirement, will apply on and after the day the Minister appoints a 'Registrar' in accordance with section 1270 of the Corporations Act (**Application Day**). As at 23 November 2020, the Application Day is presently unspecified; however, unless an earlier date is fixed by Proclamation, the new DIN regime will commence on 22 June 2022.

In summary, on and from the Application Day, new Part 9.1A of the Corporations Act will require:

- > existing directors to apply for a DIN within a prescribed period of time (which is presently yet to be specified, but will be specified by the Minister pursuant to section 1653(3) of the Corporations Act);
- > persons appointed as directors within 12 months of the Application Day to apply for a DIN within 28 days of their appointment; and
- > persons appointed as directors after 12 months of the Application Day to apply for a DIN prior to being appointed as a director.

There are civil and criminal penalties for persons that fail to apply for a DIN within the applicable timeframe.

Further, the Act prohibits persons from:

1. knowingly applying for multiple DINs; and
2. misrepresenting a DIN to a government body or registered body.

There are criminal penalties attached to each of these acts, and the registrar will have the power to issue infringement notices.

BENEFITS OF THE DIN REQUIREMENT

Parliament expects that the new DIN requirement will:

- > assist regulators to better detect, deter and disrupt illegal “phoenixing” activities; and
- > generally improve the integrity of corporate data.

Phoenixing occurs when the controllers of a company deliberately avoid paying liabilities by shutting down an indebted company and transferring its assets to another company.

As the DIN regime will prevent the use of fictitious identities and provide traceability of a director’s relationships across companies, it will assist regulators and external administrators when investigating illegal phoenixing activities.

Further, the new law will improve data integrity and security and provide for simpler more effective tracking of directors and their corporate history (i.e. by using their DIN, rather than other personal information). This will reduce time and cost for administrators and liquidators, thereby improving the efficiency of corporate and insolvency processes.

TRANSITIONAL PROVISIONS: EXISTING DIRECTORS

The Act provides that a person who is a director immediately before the Application Day must apply for a DIN within a period specified by a legislative instrument made by the Minister. As at 23 November 2020, this period is unspecified. Until this period is specified, there is no requirement on such directors to apply for a DIN — new section 1653(2)(b) of the Corporations Act makes this clear.

It is less clear as to whether a person who is currently a director, who is re-appointed as a director (i.e. rather than appointed) during the transition period, will be subjected to this transitional provision, or the transitional provision applicable to new directors discussed immediately below. Clarificatory guidance from the Registrar’s office would be welcomed in this respect.

TRANSITIONAL PROVISIONS: NEW DIRECTORS

The Act provides a person who is appointed a director within the first 12 months of the new regime’s operation (i.e. within 12 months of the Application Day) with 28 days to apply for a DIN, following their appointment. This transitional period is designed to provide time for new directors to become familiar with the new requirement and for any information or awareness campaigns in relation to it to take effect

After this transitional period ends and unless an exception applies, the standard rule will apply. That is, a director must apply for a DIN prior to being appointed as a director.

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