

IN FOCUS

June 2020

Director
Identification
Numbers



DIRECTOR IDENTIFICATION NUMBERS

Another tool in the regulatory arsenal to combat phoenix activity has passed parliament and is awaiting royal assent.

The Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 (Cth) amends the Corporations Act to require all company directors including foreign and alternate directors to hold a unique identification number "(DIN)" issued and administered by ASIC.

A DIN is a unique numerical identifier attributed to each director in perpetuity.

Who Must Apply

An eligible officer (a director, alternate director or any other officer) of a prescribed registered body must apply to ASIC for a DIN.

Existing company directors must make an application within a timeframe to be specified by the registrar.

A new company director must have made an application before they consent to act (or as directed by the registrar).

Transitional requirements for the first 12 months following the acts introduction will permit a new company director to apply for a DIN within 28 days of their appointment to the board.

Directors of unincorporated entities i.e. JV's or partnerships will not be required to have a DIN.

Eligible officers will be required to submit prescribed personal information and undergo a 100 point identity verification with ASIC.

Key Takeouts

- » A director must not apply for additional DIN's;
- » The DIN is intended to provide traceability of director relationships across companies, enabling better tracing of directors of failed companies and to prevent the use of fictitious identities.

Presumably it will facilitate the use of data matching across regulatory authorities such as the ATO, ASIC FEG and the state revenue authorities, in their endeavours to curb the prevalence of phoenix behaviour.

- » Perhaps a less obvious consequence is it will assist companies themselves to identify potential breaches of fiduciary duties by existing directors such as conflicts of interest and misuse of company property.
- » The DIN regime is likely to have a possible effect on reducing the incidence of phoenix behaviour and accordingly is a welcome reform.

However it may not be quite the panacea that it is touted, as there is always likely to be a subset of company directors / advisors who are prepared to 'game' the system. It is these recalcitrants who reflect the greatest regulatory risk.

It could be anticipated that there will be an uptick in the use of trusts and other structures outside the DIN regime as sophisticated phoenix operators look to avoid the effect of the DIN regime.

HALL CHADWICK

For more information, please contact your local Hall Chadwick office:

NEW SOUTH WALES

Level 40, 2 Park Street

Sydney NSW 2000

Tel: +61 2 9263 2600

sydney@hallchadwick.com.au

SOUTH AUSTRALIA

Suite 201, Level 2, 147 Pirie Street

Adelaide SA 5000

Tel: +61 8 8545 8422

adelaide@hallchadwick.com.au

VICTORIA

Level 14, 440 Collins Street

Melbourne VIC 3000

Tel: +61 3 9820 6400

hcm@hallchadwickmelb.com.au

QUEENSLAND

Level 4, 240 Queen Street

Brisbane QLD 4000

Tel: +61 7 3211 1250

brisbane@hallchadwick.com.au

WESTERN AUSTRALIA

Level 11 Allendale Square,

77 St Georges Terrace Perth WA 6000

Tel: +61 8 6557 6200

perth@hallchadwick.com.au

NORTHERN TERRITORY

Paspalis Business Centre

Level 1, 48-50 Smith St Darwin NT 0800

Tel: +61 8 8943 0645

darwin@hallchadwick.com.au

Disclaimer

This is not advice. Clients should not act solely on the basis of the material contained in this Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Newsletter is issued as a helpful guide to clients and for their private information.