



Association of Independent Insolvency Practitioners
By the practitioner, For the practitioner

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Director Identity Number - Modernising Business Registers Program Discussion Paper, July 2018

We are pleased to make this submission on the director identity number (DIN), which is part of your discussion paper on the Modernising Business Registers Program.

The Association of Independent Insolvency Practitioners (AIIP). AIIP is a non-profit organisation established by insolvency practitioners to assist fellow practitioners meet the challenges prevailing in the profession. AIIP was formed in 2016 and it now has over 100 members. It is the only professional insolvency practitioner association which requires its members to be either registered liquidators or registered trustees in bankruptcy. Its members primarily practise in the small to medium enterprise market.

AIIP supports the introduction of a director identity number (DIN). In particular, it would be a reform of particular benefit to our members given that most insolvencies are handled in the SME market where problems with the identity of directors more frequently occur.

We note that the DIN is part of a wider digital focus under the government's Modernising Business Registers program.

Principles

We agree with the principles, that would require all directors to confirm their identity with the DIN allocated as a unique identifier for each person who consents to act as a company director. The person would keep that unique identifier for life, even if their directorship with a particular company changes.

Design considerations

As to these questions, we comment as follows.

What level of identity verification should be required to obtain a DIN? What level of identity verification should be required to obtain a DIN?

We refer you to the digital identity principles of the Digital Transformation Authority, in particular concerning its Trusted Digital Identity Framework (TDIF) which will lay foundations for a consistent, secure and reliable digital identity process for individuals.¹

The TDIF proposes an accreditation process, credential requirements, fraud control, identity proofing, privacy protection, security and risk assessments, and usability and accessibility features. We consider that the DIN should be consistent with other identity requirements being proposed by the government. Directors and other individuals as citizens should be able to rely upon an all-of-government consistent process. That would assist the acceptance and use of the DIN and ensure confidence that the verification process works as intended.

Is it appropriate to use a digital identity to verify the identity of the company director?

Yes, the process should be forward looking rather than relying on existing or past practice, while at the same time being usable and accessible to directors and others. That may retain the existing 100-point checklist for new bank accounts but add some more advanced verification of identity. The identification processes upon which it could rely are themselves becoming digitised and transformed, for example passports based on facial recognition.

2. *Ensuring that all directors consent to their role as a company director will be an important part of forming a company and maintaining its registration. What is the most appropriate and efficient manner of gaining a director's consent before issuing a DIN?*

Consent should be able to be given digitally by a director. Once the director is verified he or she should be able to log in to the ASIC portal and confirm their consent by way of an electronic acceptance of their appointment.

Directors of companies currently listed on the ASIC database should be required to identify themselves by the anniversary date of each company's registration.

3. *Should the law allow authorised agents to apply for a DIN on behalf of their client? If so, how does this fit in the consent framework?*

Yes, this is current practice and it may be unworkable if it were to require directors themselves to apply. The director must delegate authority on his or her account to their agent.

4. *What DIN related data should be made publicly and privately available (that is, only available to regulators)?*

Granular data should be public, such as the date when the director was appointed, when registered, which internet address they have, and their authorised agent.

¹ <https://www.dta.gov.au/what-we-do/policies-and-programs/identity/>

Does the provision of a DIN remove the need to make director and other company officer address data publicly available?

No, there is still a need for a physical address in order to be able to serve documents on a director. However, that can be a business address rather than a residential address. You should note that New Zealand has recently closed a consultation on whether the residential addresses of New Zealand company directors should continue to be published on the companies register if a DIN is introduced. That consultation closed on 3 August 2018.²

AIIP's Unique Company Email Address

However, AIIP has proposed a Unique Company Email Address (UCEA) for ASIC's database for every registered company, and one for each of the company's public officers. We see this as ensuring the more efficient delivery of information, notices, demands etc rather than relying on Australia's traditional postal service. The UCEA would not be location specific like the company's registered office, except that it should have an Australian '.au' address; it would supplement the purpose of the registered office.

We consider that the same principles should apply to a director's email address.

What privacy and security concerns are there around the public availability of the DIN?

There is the potential for the system to be hacked and personal information compromised. In worst case scenarios, directors could be removed from companies and new directors appointed by a hacker. Nevertheless, these security concerns and their associated risk management are part of a wider issue which are addressed in the DTIF document.

New Zealand

We also draw your attention to the fact that New Zealand is considering the same issues.³ As paraphrased from its consultation paper, we think the following points are worthwhile (adapted for an Australian perspective), with much of it consistent with what is proposed in Australia:

- New directors would be assigned an identification number when ASIC provides them with their first consent form to be a director.
- DINs would be phased in over a twelve-month period for existing directors.
- Companies would need to provide a director's identification number in their first annual return following the introduction of DINs.
- Existing directors could apply for a DIN at any time before the annual return was due.

² Discussion Document Publication of Directors' Residential Addresses on the Companies Register June 2018, NZ Ministry of Business, Innovation and Employment.

³ Consultation on Whether to Introduce a Director Identification Number Discussion paper May 2017, NZ Ministry of Business, Innovation and Employment.

- When obtaining, or being provided with, an identification number, both new and existing directors would have their identity verified. This is in line with NZ privacy principles.
- Directors could have their identity verified by a passport or driver's licence number. This information would be used to verify that the identity documents exist and that they match the director's details.

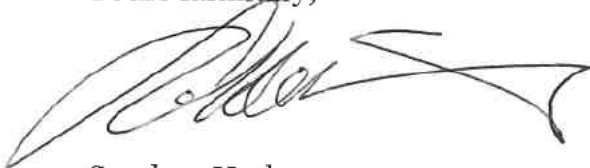
Offences

New Zealand also proposes that it should be an offence for directors to knowingly apply for more than one identification number or provide false information to its regulator. We think that should be the case in Australia. At present, a director who uses a false name is in breach of several laws, for example, s 1308(2) Corporations Act, and breaches of their directors' duties and possibly criminal laws.

Contact

Should you seek further clarification for the above, please contact Stephen Hathway on email at [REDACTED] or [REDACTED]

Yours faithfully,



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