

26 October 2018

Matthew Sedgwick  
Consumer and Corporations Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [Regmod@treasury.gov.au](mailto:Regmod@treasury.gov.au)

Dear Mr Sedgwick,

Thank you for the opportunity to participate in the recent discussions on the Modernising Business Registers and Director Identification Numbers legislation.

Our members rely heavily on publicly available company information and accurate director identification to make fully informed decisions and support businesses of all sizes with the provision of credit.

Currently access to information is not efficient and often inaccurate, we therefore support the modernisation of the registers and have been a long-time advocate for the verification of director identities.

While DINs and modernisation of the registers is urgently required, we raise the following concerns which we feel should be addressed prior to implementation of this legislation:

- **Intended registrar**

Due to ASIC's role in regulation and likely efficiencies to government and industry of combining regulatory and registry functions, we question the proposal to remove registry powers from ASIC without clear benefits.

While we question the removal of registry functions from ASIC we believe efficiencies could be obtained by centralising all complimentary registers such as those considered in this proposal and others such as the Personal Property Securities Register.

A central government body with the sole responsibility of acting as registrar for all registers would also provide significant benefits to businesses of all sizes by providing a single touch point. Small businesses and other unsophisticated credit providers would benefit significantly from this approach, for example:

- Awareness of the registries and available information is a current challenge and a one-stop-shop would address this issue significantly.
- A search for one specific purpose, such as ABN verification, could also return additional search options such as PPSR information.

- **Verification of director identities**

To ensure a very high level of verification/identification is established and maintained we feel the legislation should detail the minimum requirements.

While we support the ability of the registrar to determine appropriate data standards, the minimum standard for director verification should not be subject to variation. We strongly recommend that the legislation details a minimum standard including:

- A 100-point style identification process drawing on identity verification from multiple government and non-government sources.
- Preventing the application process from being delegated so there is no possibility that an individual obtains a DIN without their knowledge.
- A physical step in the process, such as lodging the application in person.

We emphasise the importance of preventing directors from delegating the application process to a third party. Any capacity to delegate the process will prevent the measure achieving its goals, specifically the below issues will continue:

- Directors being appointed without full knowledge/understanding  
If a director is only required to action a minor part of the application, it remains possible for individuals to accept directorships without their knowledge or full understanding.
- Directors not understanding the importance of their role  
A thorough application and verification process that cannot be delegated makes it clear that obtaining a directorship is not a matter to be taken lightly as opposed to the current situation which makes applying for a library card seem more significant.
- No understanding of director duties or potential liabilities  
By undertaking the application personally, the process could ensure individuals have seen and acknowledged their obligations and responsibilities as a director.

The importance of the verification process should not be compromised in anyway including if this precludes the use of some technology. “Verification” not “Simplification” should be the priority of the DIN.

- **Retrospective application for DIN**

We disagree with the need to allow 28 days to apply for a DIN as very few directorships would be appointed without a high level of prior knowledge/expectation.

Requiring prospective directors to obtain a DIN prior to appointment could maximise the value of the DIN by assisting companies to fully consider all appointments. For example, the appointing board/company could check that the director has been correctly identified, is not currently disqualified (or previously disqualified), if they have other current directorships and other factors that may influence the applicant’s ability to discharge their governance obligations.

Additionally, during the 28 days credit providers will be making credit decisions on incorrect and incomplete information. This could be significant in cases where directorship changes are linked to ownership changes.

Finally, allowing 28 days to apply for a DIN may also impinge on the company’s obligation to advise ASIC of new appointments when a director obtains their DIN towards the end of their 28 day period, leaving the company with little or no time to notify within their allowed 28 days.

- **DIN for life**

We emphasise the need for individuals to be identified by a DIN that is unique to them and they only have one DIN for life.

As a unique identifier DINs will be used by our members for numerous functions such as linking customers with common directors.

Should it be necessary to reissue a DIN, the Registrar must be required to take steps that minimise the impacts e.g. by linking files when a new DIN is issued so both DINs can be tracked to the right individual.

- **Continuity of data**

The current information on directors is vital to informed credit decisions therefore the legislation should require that the current information including directors (and previous directors) address, date of birth and driver licence number be provided in perpetuity.

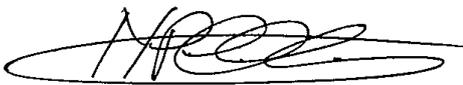
In making this recommendation we consider the benefits of obtaining a corporate vehicle creates a requirement for credit providers to have access to this information and be able to verify the identities of the controllers of the entity. We specifically note that DOB's and driver license numbers will remain an active verification method in practice to verify identities for director guarantees and confirming authority to enter agreements.

- **Shadow and de facto directors**

Considering the objective of the DIN to combat illegal Phoenix activity, we recommend the immediate incorporation of a requirement for individuals who act in the manner of directors to obtain a DIN. Excluding this requirement allows the true controllers to manipulate this and continue to appoint sham directors. Additionally, this may provide an effective mechanism to disrupt the unregulated advisors and individuals who engage in illegal phoenix activity by acting against these individuals for not obtaining a DIN.

Should you have any queries arising from our submission please contact myself.

Yours sincerely



Nick Pilavidis  
Chief Executive Officer  
Australian Institute of Credit Management