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

By Email: regmond@treasury.gov.au

Dear Sir/Madam

Pitcher Partners' Business Recovery and Insolvency Division submission on the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018

Thank you for the opportunity to comment on the Exposure Draft of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018.

This submission will only address Director Identification Numbers which is set out in Schedule 2 of the Treasury Laws Amendment.

We have considered the proposed draft legislation and make the following comments:

Timeframe for the provision of a Director Identification Number after application

The proposed legislation applies a strict timeframe of 28 days for directors to apply for a DIN, or any other such timeframe as granted by the Registrar. The legislation, however does not provide a timeframe within which the Registrar, after being satisfied that the person's identity has been established, must issue a DIN.

We consider it appropriate that a timeframe within which the Registrar will issue a DIN is also legislated. We suggest that given the significant advances in electronic registration, that a period not exceeding 14 days would be appropriate within which the Registrar will issue a DIN after being satisfied of the person's identity.

Requirement to have a DIN

A person appointed as a director has 28 days under the proposed legislation to apply for a DIN from the date that they are appointed a director, unless an exemption is provided by the Registrar.

In addition, the proposed legislation contains a transitional period of 15 months for those persons currently appointed as a director at the time the new requirements apply.

We make the following comments with respect to the proposed timeframes:

- The period of 28 days for persons appointed to a corporate entity to make an application for a DIN is considerably longer than is necessary.

We appreciate that the second tranche of the proposed reforms will provide further clarity on the implementation and utility of the application process, however we consider that the proposed system will provide for a more streamlined application process that is currently in place.

We submit that this period should be no more than 14 days.

- We consider that the transitional provision of 15 months for currently appointed directors is overly generous and gives rogue operators a significant period in which to engage in illegal phoenix activity. For this reason, we suggest that Treasury considers reducing the transitional provision period from 15 months to 3 months.
- It is not clear from the draft legislation what will occur if a validly appointed director applies for but is subsequently refused a DIN.

Collaboration between the new register and the existing register

We foresee issues of the migration of data. In our view, directors and companies will fit into the following categories post the introduction of the legislation:

- Existing companies whose directors apply for and are allotted a DIN.
- New companies whose directors apply for and are allotted a DIN, or who already have one at the time of incorporation.
- Existing companies whose directors do not ever apply for DIN (Unclaimed Companies). This may occur for numerous reasons including the following:
 - The director has forgotten that they are a director of the Unclaimed Company.
 - The existing ASIC records with respect to the director's name, address and/or date of birth are incorrect and cannot be verified.

It must be an express aim of the introduction of the DIN system to end up with a comprehensive and accurate register of directors.

To mitigate the risk that this incorrect data is migrated to a new system and to safeguard the continued integrity of the new register, we propose that the requirement to notify the DIN should be two-tiered:

- Firstly, every existing director must provide his or her DIN to the company or all companies of which they are a director within a specified period after receipt from the Registrar.
- Secondly, every company must within a specified period of the receipt of the DIN from the director, supply the DIN of all its directors to the Registrar.

We consider that this would place the administrative burden upon the director and the company, rather than upon the Registrar.

Deregistered companies

The draft legislation does not propose to deal with those corporate entities that have been deregistered, pursuant to ss.601AA to 601AC of the Corporations Act 2001.

This is a gap in the legislation that may affect certain users of the register. For example, insolvency practitioners will have regard to a director's involvement in registered and deregistered companies as part of the usual investigations of insolvent companies. If the draft legislation does not apply to deregistered companies, the ability of insolvency practitioners to have access to verified, reliable information about deregistered companies will be impeded. For this reason, we suggest that the Treasury apply DIN requirements on deregistered companies for a period of 7 years prior to the enactment of the DIN legislation.

Applying for additional DIN's

The legislation proposes that a person must not apply for a DIN if the person knows that the person already has a DIN. We consider that this legislation should be expanded to encapsulate the following:

- A person who has already been allotted a DIN shall not apply for, obtain, possess or use another DIN unless on behalf of another person with that person's express authority.
- A person who has not been allotted a DIN shall not obtain, possess, or use a DIN of another person who has been allotted a DIN, unless on behalf of another person with that person's express authority.

We submit that any individual who contravenes or attempts to contravene these provisions should be subject to offences under the Corporations Act 2001. We do not consider the possible sanctions against these individuals in this submission.

Obligation to indicate DIN

We note that the legislation fails to address any obligation on any person, or company, to supply a DIN when making a return, or providing information or particulars, as may be required under the Corporations Act 2001. The draft legislation should require them to do so.

We consider that these proposed changes will assist in the deterrence of illegal and rogue phoenix operators.

Should you have any queries in relation to this submission, please do not hesitate to contact me on 

Yours faithfully
PITCHER PARTNERS



PAUL GERARD WESTON
National Chairman
Business Recovery and Insolvency