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The Treasury

By email: regmod@treasury.gov.au

Dear Matthew

Modernising Business Registers (MBR) Program – Data Standard and Disclosure Framework

CPA Australia represents the diverse interests of more than 168,000 members working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

The Treasury's Modernising Business Registers (MBR) Program **consultation** on the new data standard and disclosure framework supporting the commencement of the Director Identification Number (**Director ID**) regime is a critical step in the unification of the Australian Business Register (**ABR**) and the 31 business registers administered by the Australian Securities and Investments Commission (**ASIC**).

While the Director ID has its genesis in the Government's response to illegal phoenix activity, its implementation affects more than 2 million individuals¹, the vast majority of whom are and will continue to be fully compliant with their director responsibilities.

Data standards

The *Corporations Director Identification Number Data Standard 2021 Exposure Draft (the Data Standard)* and the accompanying **Explanatory Statement** do not provide significant detail on the method/s by which the Registrar will obtain the necessary information except to make reference to "an accredited digital identity provider". We anticipate that the Registrar will utilise **myGovID** for eligible applicants with alternatives for foreign directors and those who are not able to use myGovID. In obtaining the necessary information to verify a director's identity, we suggest that the Registrar align the requirements with established processes (e.g. working with children requirements or 100-point checks for bank accounts). The details of the method/s by which the Registrar will obtain the necessary information should be communicated as soon as possible so directors and registered agents can prepare.

We expect there will be some compliance costs for directors, particularly those without or who are not eligible for a myGovID, as they must apply on their own behalf for a Director ID². Feedback from our members highlights concerns about the inability for ASIC registered agents (**registered agents**) to initiate or facilitate Director ID applications.

We recognise the Government's intention that the Director ID process be similar to that of tax file numbers (**TFNs**)³ to maintain the integrity of applications, however there may be opportunities to better integrate intermediaries into the application process. For example, once the director has established his/her myGovID credentials, their company's registered agent could prepare and send the Director ID application to the director for approval and submission to the Registrar using those credentials. This would lessen the compliance burden on individual directors by enabling registered agents to perform their administrative functions and also provide the Registrar with a connection to the director's registered agent for future communications.

The Data Standard should also require the Registrar to allow directors to provide information such as:

¹ Paragraph 57 of the Explanatory Statement to the Data Standard.

² Section 8(2) of the Data Standard.

³ Registered tax agents cannot apply for TFNs on behalf of individuals.

- alternative address/es for service of notices and/or business premises
- nomination of a registered agent and/or alternative contact
- communication preferences for electronic correspondence including alternative email addresses.

The Data Standard makes reference to the Registrar confirming⁴ and correcting⁵ applicant details and the Explanatory Statement clarifies that this includes checks against other sources such as driver's licence information, ASIC registries and ATO client records⁶. This indicates that a director's information will need to be consistent across:

- myGovID or alternative document verification services – proof of identity information provided to establish credentials
- ATO client records – TFN information from income tax returns and ABN information from business activity statements
- ABR records – ABN information recorded on the ABR
- ASIC records – director information held across the existing ASIC registries.

We support efforts to improve the integrity and consistency of information held across government departments but note there are a range of reasons for data mismatches⁷. We suggest that the verification process be designed so that applications are not unnecessarily delayed due to minor errors and that the Registrar provide both digital and direct communication channels for directors and their registered agents to quickly resolve issues. We believe the Data Standard should also provide greater clarity as to how the Registrar will seek to identify and correct anomalies and seek the consent of the director before making changes. We also recommend that the Registrar works with intermediaries to design efficient processes that allow for the collection of consistent information by government, specifically the ABR, ASIC and ATO, as many intermediaries perform both registered agent and registered tax agent (**tax agent**) functions for their clients.

Finally, once the Director ID is established, the existing ability for registered agents to update director details must be retained. It is our view that registered agents will be performing many of the activities in relation to director details and it would be an inappropriate compliance burden for directors to have to undertake such functions themselves. The Registrar should also confirm that an update or correction relating to a Director ID will then be recorded against all the corporate entities with which it is associated⁸. That is, the Registrar will administer the Director ID regime in a manner that will remove repetitive information disclosures to minimise the compliance burden.

Disclosure framework

The *Corporations (Director Identification Number) Disclosure Framework (PGPA Bodies, courts and tribunals) 2021* legislative instrument (**the Disclosure Framework**) and accompanying **Explanatory Statement** reflect the treatment of Director IDs as protected information and authorises disclosure only to Public Governance, Performance and Accountability (**PGPA**) bodies, courts and tribunals⁹.

We support multi-agency and cross-government efforts to deal with illegal phoenixing and the Disclosure Framework enables the sharing of Director ID information to assist their activities. However, we believe that it is unlikely that many of the PGPA bodies¹⁰ would necessarily have any connection to the government's promotion of good corporate conduct or its response to illegal phoenixing. The Disclosure Framework should therefore include a requirement on the PGPA body to demonstrate its need to access the Director ID information rather than leaving it to the Registrar to determine the benefits and risks¹¹, and for individual bodies to prevent misuse¹². This would be similar to the onus placed on directors seeking that protected information not to be disclosed¹³.

We also note the interaction between the Registrar and the Commissioner of Taxation (**the Commissioner**) in terms of confirming or providing TFN details as part of identity verification¹⁴ under the Data Standard. It would assist directors, registered agents and tax agents to have greater clarity of the relationship between the two agencies, understand how their information will be used and stored by each respective agency and the information exchange protocols between them. Explicit statements as

⁴ Section 10(3) of the Data Standard.

⁵ Paragraph 12 of the Data Standard.

⁶ Paragraphs 45 to 50 of the Explanatory Statement to the Data Standard.

⁷ Examples include different naming conventions, transposition errors, change in marital status, recent address changes, use of intermediary details, use of different email addresses and alternative addresses for service of notices.

⁸ This appears to be covered by section 10(4) of the Data Standard but is not explicitly stated.

⁹ In conjunction with sections 13(2) and (3) of the Data Standard, we understand that the Director ID will be accessible only to directors, "other persons permitted by law", PGPA bodies, courts and tribunals under the current design.

¹⁰ Department of Finance, 2021. **Flipchart of PGPA Act Commonwealth entities and companies (188)**, 4 January. Examples of bodies unlikely to deal with illegal phoenixing or corporate conduct include the Bureau of Meteorology, the National Blood Authority, Food Standards Australia New Zealand and the National Portrait Gallery of Australia.

¹¹ Paragraph 21 of the Explanatory Statement to the Disclosure Framework.

¹² Paragraph 24 of the Explanatory Statement to the Disclosure Framework.

¹³ Paragraph 19 of the Explanatory Statement to the Disclosure Framework.

¹⁴ Paragraph 50 of the Explanatory Statement to the Data Standard.

to what can and will be shared and how often will provide transparency and enhance understanding of the Registrar and Commissioner's respective roles. We expect that Director IDs would be linked to TFNs by the Commissioner in the same manner as Australian Business Numbers (**ABNs**) but that TFN-related information would not be disclosed to the Registrar due to legislative restrictions.

While the current Disclosure Framework only contemplates the provision of Director ID information to PGPA bodies, courts and tribunals, the broader issue of the public disclosure of director details remains. Our members continue to raise significant concerns about the availability of directors' residential addresses and dates of birth to the public, particularly with the increasing prevalence of identity theft in addition to more general risks to individuals' safety and privacy, including for those escaping domestic violence. We do not believe that a director should continue to be at risk or required to demonstrate the need to use an alternative address¹⁵ when the Director ID may be a viable alternative.

As part of the MBR Program, the Government, Treasury and Registrar should evaluate whether Director IDs may form an alternative and safer means for the public to validate directors' identities, like is done for ABNs. As a general principle, we would support the use of Director IDs as a publicly available identifier to replace the publication of directors' residential addresses and dates of birth.

Other comments

The MBR Program is a complex undertaking and the Registrar should be appropriately resourced and supported to ensure that implementation occurs with minimal costs and disruptions. This includes the necessary investment in technology and systems to prevent failures or excessive maintenance time as well as sufficient notification and staggering of deadlines to avoid disruptive workloads. Consideration should be given to incorporating additional time in the Director ID application process to allow for the proper rectification of tainted data or mismatches.

A substantial awareness and education component is required as many directors and their intermediaries remain unaware of the impending changes, and there remains some resistance to the legislated requirements within the community. The Director ID continues to be associated with illegal phoenixing and is therefore seen as an impost on the compliant majority, rather than a digital identifier that will decrease the compliance burden due to efficiencies in registration and verification processes.

As such, we recommend that the Registrar, supported by the Minister and Treasury, seeks to implement and administer the MBR Program in a manner which is sensitive to the current sentiment of directors and intermediaries after a particularly challenging 2020. The Program must be designed to create the promised efficiencies and seamless cross-agency interactions for their benefit.

With the success of government programs increasingly dependent on digital literacy, intermediaries will be important in educating clients to engage with government through electronic interfaces and to support those who are unfamiliar with or unable to interact digitally. While we recognise the legislative limitations placed on the role of registered agents in the Director ID process, we request the Registrar to identify and accommodate the needs of directors and intermediaries as much as possible to ensure the smooth implementation of Director IDs.

We also note that with the consolidation of registers under the Registrar, consideration should be given to the authorisation framework and the distinct and separate roles and obligations of registered agents and other intermediaries including tax agents, registered BAS agents and legal practitioners. In the effort to reduce regulatory burden, we seek a design where a single notification – be it under the *Corporations Act 2001*, a taxation law or laws administered by the Registrar – would effect changes across all registries where the identity is linked to a particular Director ID and his/her corresponding Australian company numbers, ABNs and TFN.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy, at CPA Australia on 0466 675 194 or elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,



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¹⁵ Section 205D of the *Corporations Act 2001* requires a director to either suppress their details first on an electoral roll or seek an ASIC determination that their personal safety or the personal safety of members of their family would be placed at risk.