



15 April 2021

Data Economy Unit

Market Conduct Division

The Treasury

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By email: regmod@treasury.gov.au

**Treasury Consultations on Modernising Business Registers
(Director Identification Number Regime)**

The Australian Financial Markets Association (**AFMA**) welcomes the opportunity to comment on the proposed data standard and disclosure [framework](#) to support the Director Identification Number (**Director ID**) regime and the related transitional application periods.

AFMA is a member-driven and policy-focussed industry body that represents participants in Australia's financial markets and providers of wholesale financial services. AFMA's membership reflects the spectrum of industry participants including banks, corporate advisers, stockbrokers, dealers, market makers, market infrastructure providers and treasury corporations.

AFMA understands that the introduction of this regime is centred on addressing concerns around illegal phoenixing activity and aims to prevent the appointment of fictitious directors and facilitate tracing their profile and relationships with companies over time. AFMA supports the policy objective for the regime. However, key practical issues have emerged for global financial services firms that do not appear to have been considered from an implementation perspective.

We consider that there should be increased clarity on the application of the regime for directors of registered foreign companies, given that a large number of foreign financial services firms operate in Australia through a branch without a locally incorporated subsidiary.¹

Under this regime all directors of a foreign company with an Australian branch are expected to apply for a Director ID, while already being subject to regulatory identification requirements in

¹ <https://www.apra.gov.au/register-of-authorized-deposit-taking-institutions>

their home jurisdictions. The Director ID requirement will impose an additional regulatory burden that is disproportionate considering that it is unlikely that these individuals are the expected target of the regime with respect to fraud deterrence and eradication of illegal phoenixing activity.

1. Applying on behalf of a foreign director

The data standard requires that directors make applications for Director IDs themselves unless the Registrar is satisfied that the individual is “unable to make the application on their own behalf”, with individual circumstances assessed on a case by case basis. Some clarification is required around what is meant by this and whether it extends to situations where a director of a registered foreign company is practically unable to do so.

The expectation that a director of a foreign bank will make an application themselves is simply not realistic. For a director of a large organisation like a bank, dealing with an incidental foreign jurisdiction regulatory requirement would necessarily be a matter for which professional advice and support would be relied upon. Accordingly, there needs to be clarity provided on the circumstances in which the Registrar will allow local representatives to make applications on a director’s behalf (beyond incapacity or illness as noted in the Explanatory Statement).

2. Acceptance of foreign identification documents

The Explanatory Statement states that individuals applying for a Director ID are required to prove their identity using key Australian identity documents, noting that additional documents may be accepted sometime in the future. We note that this is currently unworkable for member firms with directors based in foreign jurisdictions who do not have the requisite Australian identification documents.

AFMA acknowledges that the Statement also provides for foreign directors to follow the existing ATO proof-of-identity (POI) process (which would include provision of certified copies of primary and secondary documents), this is closely aligned to taxation compliance needs such as reliance on equivalent tax identification numbers and is not well-suited to persons with no personal financial connection to Australia.

3. Transitional application periods

AFMA has brief comments to provide in relation to the draft legislative instruments relating to transitional application periods for directors to apply for a Director ID released for [consultation](#) on 29 March.

The draft instrument provides for a grace period of 28 days for newly appointed directors to apply for a Director ID in the first 12 months of the regime. While we understand that directors locally may have become familiar with the obligations of the new regime by the end of the transitional application period in November 2022, it is unreasonable to expect directors of corporations headquartered overseas to do the same. We note that under s1272E(2) of the *Corporations Act* the Registrar may issue a legislative instrument to allow a specified class of persons a longer time period for to apply for a Director ID. As such, AFMA proposes that a grace period of 28 days after appointment be provided to those foreign directors required to apply for Director IDs, beyond the initial 12 months transitional period.

Please contact me on (02) 9776 7979 or nthompson@afma.com.au if you would like further clarification on the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Natalie Thompson', written in a cursive style.

Natalie Thompson
Policy Manager