

# DIRECTOR IDENTIFICATION NUMBERS AND REVAMPED BUSINESS REGISTRIES COMING SOON

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Legal Briefings - By **Melissa Swain-Tonkin, Phillip Smith and John Slater**

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All company directors (including those based overseas) will soon be required to register for a unique 'Director Identification Number' in a bid to crackdown on illegal phoenix activity. This requirement is likely to commence by mid-2021.

Australia's 35 existing business registries are set to be streamlined into a single, 'super-registry' responsible for administering the names and other details of all business entities and certain registered professionals.

## OVERVIEW

Two long-awaited reforms to Australia's corporate governance regime have recently passed the Federal Parliament:

- the introduction of Director Identification Numbers; and
- the consolidation of the 35 existing business registries into a single 'super-registry'.

The legislative package consists of five bills (together **the Bills**),<sup>1</sup> and forms part of the Government's National Business Simplification Initiative, which is aimed at reducing the complexity of regulation for businesses and making their dealings with government easier. In this article, we discuss what these reforms mean for businesses operating in Australia and how to get ready for their implementation.

## **DIRECTOR IDENTIFICATION NUMBERS**

All 'eligible officers' will be required to register for a unique identification number (**DIN**) that can be used to track their former and current roles across different corporations over time. Eligible officers is defined to include:

- a director, alternate director of a company or body corporate (including a registered foreign company and Aboriginal and Torres Strait Islander corporation); and
- any officer of a company or body corporate (including a registered foreign company and Aboriginal and Torres Strait Islander corporation) prescribed by regulation.

To prevent the use of false identities, eligible officers will be required to provide proof of their identity upon registration. While the details are yet to be confirmed, it is likely the process will follow the 100 point identity verification process commonly used by government departments.

## **ENHANCING DIRECTOR ACCOUNTABILITY**

DINs are principally aimed at combatting illegal phoenix activity, which generally involves winding up an indebted company and transferring its assets to a separate entity to avoid paying liabilities. It is hoped that DIN's will assist anti-phoenixing enforcement efforts by enabling a director's corporate history – in particular, their ties to failed companies – to be easily traced, as well as preventing the registration of fictitious names by directors as a means of evading the scrutiny of regulators.

The introduction of DINs follows the passage of a raft of anti-phoenixing reforms earlier this year, which included:

- prohibitions on the last remaining director of a company resigning;
- new offences relating to property transfers aimed at defeating creditors;

- empowering ASIC to make orders in connection with illegal phoenix activity, such as preventing the transfer of property and intervening where a liquidator has not fulfilled its obligations to recover company property; and
- allowing the Commissioner of Taxation to collect estimates of anticipated GST liabilities and hold directors personally liable for their company's GST liabilities.<sup>2</sup>

Apart from enhancing director accountability, it is expected that the new regime will also improve the efficiency of the insolvency process by enabling directors to be more readily identified and tracked by administrators and liquidators.

## **WHEN DO I NEED TO REGISTER FOR A DIN?**

Watch this space. The regime will commence on a date fixed by proclamation, which reports indicate is likely to be by mid-2021.

For the 12 months following the commencement of the regime, a director will have 28 days after their appointment to register for a DIN, after which it will be mandatory for prospective directors to obtain a DIN before their appointment. The date by which existing directors must obtain a DIN will be fixed by regulation at a later date.

## **MODERNISING BUSINESS REGISTRIES**

The Australian Business Register and the 34 individual business registries maintained by ASIC are set to be revamped into a single, streamlined database. Administered by the Australian Taxation Office, this new 'super-registry' will be responsible for maintaining the names and details of:

- business entities, including both incorporated and unincorporated entities, such as partnerships and sole proprietorships;
- persons banned or disqualified from holding certain positions under corporate and financial services regulations; and
- registers of certain licensed professionals, including financial advisers, auditors, liquidators and insurance brokers (among others).

This new regime is designed to overcome the inefficiency of businesses having to update their information across multiple separate registries. It also seeks to facilitate better use of business data by government and regulators, which is currently limited by the inconsistent rules and systems used by the existing registries.

As with DINs, this reform is also aimed at bolstering corporate accountability. As the Final Report of the Black Economy Taskforce observed in 2017, the existing fragmented approach to business registries is open to misuse by fraudulent operators seeking to evade tax and regulatory operations.

## WHAT INFORMATION WILL BE COLLECTED?

Initially, it is expected that the new 'super-registry' will contain the same information held by the existing business registries, which consists of a mix of basic public data and non-public data accessible by certain government bodies. However, the registry will have the ability to set new 'data standards' regarding the information that entities and persons covered by the regime must disclose. It is expected that this power will be used to move towards a uniform approach towards data collection, in line with the legislation's object of facilitating a registry regime that's "flexible, technology neutral and governance neutral."<sup>3</sup>

## HOW WILL THE INFORMATION BE USED?

Like its predecessors, the "super-registry" will provide a touchpoint for the public and government bodies seeking to verify business information. The Government has also said the initiative will "lay the foundation stone for future 'regtech' initiatives" - meaning the use of technology by businesses to manage regulatory compliance. It is clear that the Government envisages a growing role for regtech in Australia's regulatory landscape, particularly in the financial services sector. In 2019, it established a Senate Select Committee tasked with examining, among other things, the opportunities for consumers and businesses arising from FinTech and RegTech - including the opportunities for RegTech to strengthen compliance and reduce costs. The committee's final report is due on 16 April 2021.<sup>4</sup>

## ENDNOTES

1. *Commonwealth Registers bill 2019; Treasury Laws Amendment (registries Modernisation and Other Measures) Bill 2019; Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019; Corporations (Fees) Amendment (registries Modernisation) Bill 2019; National Consumer Credit Protection (Fees) Amendment (registries Modernisation) Bill 2019.*
2. *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019.*
3. Explanatory Memorandum, pages 6, 7 and 13.
4. Select Committee on Financial Technology and Regulatory Technology, accessible at < [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Financia...](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Financia...)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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