

New proposal on the table - Director Identification Numbers

As part of its efforts to combat illegal "phoenix" activity, the Federal Government has proposed new legislation that will result in all company directors receiving a unique identification number.

What is phoenix activity?

Illegal phoenix activity occurs when a new company is registered to take over the failed business of a predecessor company - such activity costs the Australian economy between \$2.1 and \$5.1 billion annually. Typical phoenix activity involves transferring assets to a new company (often for little or no value) before handing the original company over to a liquidator.

As directors are not personally liable for a failed company's debts and the unsuccessful company has no assets of its own, creditors to whom it owes debts are left empty handed. The director is then free to continue trading through the phoenix company, which often bears a similar name. The costs of this fraudulent debt-avoidance are borne by not only by commercial creditors, but employees through lost wages and superannuation entitlements, and the general public through lost government revenue.

The Government's Response

To respond to this phenomenon, in October last year the government introduced the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018* to Federal Parliament. Amongst other amendments, the Bill introduces a Director Identification Number (**DIN**) - a unique number retained for life. A DIN is assigned only after a director's identity has been verified with the Australian Securities and Investments Commission (**ASIC**), which expands ASIC's current duty beyond simply recording director identifies, to authenticating them as well.

The new regime eliminates the ability for directors to hide their phoenix activity by setting up companies using a fictitious identity such as their name spelt incorrectly or an incorrect date of birth, and facilitates the tracking and punishment of directors of future phoenix companies. Commentators have proposed a 100 point identification system, but the mechanism for confirming the identity of directors applying for a DIN is not yet confirmed.

After the commencement of the Bill (a set date yet to be determined), all new company directors will be required to register for a DIN within 28 days of becoming a director. Existing directors will be required to apply for a DIN within 15 months of the commencement of the new laws. The Bill makes it an offence to apply for additional DINs and to misrepresent a DIN.

The DIN will be recorded by a registrar in an updated government registry regime replacing the 35 separate business registers currently kept by ASIC and the Commissioner of the Australian Business Register. Guided by its open data policy, the government will make registry data

available to the public.

Penalties will apply to breaches of the new legislation.

In addition to combatting illegal phoneixing, the regime offers additional benefits such as improving the efficiency of the insolvency process, and supporting law enforcement in tracking organised crime. It also arms potential creditors and employees with knowledge of a director's corporate history.

We will keep you updated on the progress of this proposed legislation.

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