

DLK ADVISORY

DIRECTOR IDENTIFICATION NUMBERS COMING SOON



Being a director of a company comes with many responsibilities, this could soon increase with a government proposal to introduce a “director identification number” (DIN), a unique identifier for each person who consents to being a director. The DIN will permanently be associated with a particular individual even if the directorship with a particular company ceases. Regulators will use the DIN to trace a director’s relationships across companies which will make investigating a director’s potential involvement in repeated unlawful activity easier.

Although this initiative was conceived as a part of the anti-phoenixing measures, the introduction of the DIN will also provide other benefits. For example, under the current system, only directors’ details are required to be lodged with ASIC and no verification of identify of directors are carried out. The DIN will improve data integrity and security, as well as improving efficiency in any insolvency process.

At this stage, it is proposed that any individual appointed as a director of a registered body (ie a company, registered foreign company, registered Australian body, or an Aboriginal and Torres Strait Islander corporation) under the Corporations Act (or the CATSI Act) must apply to the registrar for a DIN within 28 days from the date they are appointed. Existing directors have 15 months to apply for DINs from the date the new requirement starts. Directors that fail to apply for a DIN within the applicable timeframe will be liable for civil and criminal penalties.



In addition to the penalties for failing to apply for a DIN, there are also civil and criminal penalties which apply to conduct that undermines the requirement. For example, criminal penalties apply for deliberately providing false identity information to the registrar, intentionally providing a false DIN to a government body or relevant body corporate, or internationally applying for multiple DINs.

Recently, there have been cases in the media where individuals have unknowingly or unwittingly become directors of sham companies for various nefarious purposes. The DIN proposal inserts a defence for directors appointed without their knowledge, due to either identify theft or forgery. However, it notes that the defendant will carry the evidential burden to adduce or point to evidence that suggests a reasonable possibility that the defence exists, and once that's done the prosecution bears the burden of proof. The government notes that the evidential burden has been reversed because it is significantly more costly for the prosecution to disprove than for the defence to establish.

CONTACT

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