

Director Identification Number

New legislation launched against illegal phoenix activities

The Australian Federal Government has implemented legislation to combat illegal phoenix activities by company controllers which includes the requirement for company directors to obtain a Director Identification Number (DIN).

The Bill[1] has finally passed and awaits Royal Assent, after a failed attempt to introduce it in 2018.

The Bill will amend the *Corporations Act 2001 (Cth)* (the Act), to require all company directors, including foreign and alternate directors, to hold a unique DIN issued and administered by ASIC, and will permanently remain with that director across all current and future directorships once launched.

Applying for DIN

An 'eligible officer' (a director, alternate director or any other officer of a registered body of a kind prescribed by regulations) **must** apply to ASIC for a DIN. Prospective directors may apply for a DIN up to 12 months prior to appointment (or if directed by the ASIC Registrar).

Eligible officers will be required to submit prescribed personal information (to be determined by the Registrar) and undergo a 100 point identity verification with ASIC. Whilst the Registrar has the power to request an applicant's Tax File Number, they have no power to compel its provision.

Once verified, ASIC will issue a DIN to the director.

Prohibitions & penalties

Both civil and criminal penalties (including imprisonment) apply for contravention of the DIN requirement.

In addition, a director must not:

- Apply for additional DINs; or
- Misrepresent a DIN to a Government or registered body (or provide false or misleading information to the Registrar to obtain a DIN).

Only the Registrar will have the power to cancel and reissue a DIN, a director will hold its DIN forever, even if they cease to be a director and will not be entitled to change or cancel it unless done so by the Registrar.

Action required

Directors are to apply for a DIN as follows:

- **Existing Company Directors** – An application must be made within a timeframe to be specified by the Registrar. ASIC will notify directors of the requirements and time frame to make an application.
- **New Company Directors** – Any person intending to become a director must have made an application before they consent to act (or as directed by the Registrar). For the first 12 months, the transitional provision will permit a new company director to apply for a DIN within 28 days of their appointment to the Board.

Who doesn't need a DIN

Directors of unincorporated entities, such as unregistered joint ventures or partnerships, or persons acting as shadow or de facto directors will not be required to have a DIN at this stage.

The legislation will allow the Minister to implement these requirements in future if considered necessary.



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How does this impact your company?

Benefits of the DIN requirement are:

- **Traceability of Director Interests** – Companies will be able to clearly identify all board positions held by a director to identify involvement in failed companies, associated interests or any perceived or actual conflicts of interest.
- **Prevention of Phoenix Activity** – Directors will no longer be able to change personal information or disassociate themselves with a company. The register will record all interests in a company, including companies wound up in insolvency.

The main purpose of introducing the DIN is to prevent illegal phoenix activity and prevent directors from registering under different names to escape liability.



Daren McDonald
Partner, Business & private
client advisory

T +61 3 8635 1979

E dmcdonald@shinewing.com.au



Kerry McGoldrick
Partner, Assurance & advisory

T +61 2 8059 6825

E kmgoldrick@shinewing.com.au

Going forward

Introducing DIN will be a huge aid for corporate governance.

By ensuring directors apply within the appropriate timeframes and corporate records are updated accordingly, companies may have an opportunity to review its directors' interests to ensure they have not acted in any illegal phoenix activity, have made any misrepresentations to the Board, or hold positions which may be an actual or perceived conflict of interests.

How we can help

Contact Daren McDonald, Kerry McGoldrick or your SW Australia team to discuss how these changes might impact you and your business.

