

**PRODUCTIVITY COMMISSION
BUSINESS SET-UP, TRANSFER AND CLOSURE INQUIRY**

RESPONSE TO REQUEST FOR INFORMATION

**Further submission to the Productivity Commission on the Director Identity Number
by**

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The Productivity Commission has asked us to clarify our position on the Director Identity Number (DIN) in light of recent media and public debate.

In our submission to the Productivity Commission dated 11 February 2015 (which was responding to the Issues Paper of the Commission published on 19 December 2014) we recommended the introduction of a DIN as one of a number of ways to reduce illegal phoenix activity. We wrote:

We believe that would-be directors should be required to establish their identity via 100 points of identity proof. This is well-accepted and uncontroversial in the context of opening bank accounts and obtaining passports. The Productivity Commission Issues paper identifies examples of current regulatory arrangements and requirements that are faced by some persons setting up a business.¹ They include 'obtaining licences, registrations or approvals to operate the business, acquiring relevant re-zoning and development approvals, establishing the required reporting systems and having the appropriately qualified staff employed in or operating and managing the business.'² Arguably imposing the requirement of a DIN would constitute a lesser burden on honest business operators than most, if not all, of these other existing requirements.

With relatively little inconvenience to honest business operators, a DIN should eliminate the problem of fictitious identities being used for company directorships when new companies are registered. Requiring people to cite their DIN would also assist ASIC in 'joining the dots' between multiple failed companies so that they might seek to have a person with a consistent history of insolvent companies banned from managing any further companies. It would also alert ASIC if disqualified persons attempted to register as directors.

Moreover, it would also assist the ATO in data gathering. The regulator's suspicions might be raised when a single person's name is used for the directorships of dozens of companies that the person could not possibly be managing or supervising in compliance with their legal obligations. Anecdotally, we hear that pensioners are sometimes paid a fee to be nominated as a company director, in order to shield a disqualified person. By utilising the DIN, the ATO's extensive database could

¹ Productivity Commission, *Business Set-up, Transfer and Closure - Issues Paper*, December 2014.

² *Ibid*, 7.

prompt its phoenix risk team to investigate instances where an elderly person with no assessable income appears to be running one or more companies. The advantages of a DIN are obvious for agencies such as the ACC and the AFP.

In its draft report published on 21 May 2015, the Commission wrote:

The Commission agrees and considers that the benefits of tracking through data matching for regulators should outweigh the relatively low compliance costs for directors. Concerns about privacy can also be overcome in a manner similar to other confidential data held by agencies such as the ATO. To reduce compliance costs, DINS should be available online at the time of an individual's first directorship.³

The Commission made the following draft recommendation 15.8:

Section 117 of the *Corporations Act 2001* (Cth) should be amended to require that, at the time of company registration, that directors must also provide a Director Identity Number (DIN). A DIN should be obtained from the Australian Securities and Investments Commission (ASIC) via an online form at the time of an individual's first directorship. In order to obtain a DIN individuals should be required to provide 100 points of identity proof, and verify that they have read brief materials on directors' legal responsibilities provided as part of the online registration. For existing companies, their directors should be required to obtain a DIN. The director DINs should then be provided to ASIC at the annual review date for the company, as a change to company details. To enforce these requirements, ASIC should be empowered under section 205E of the *Corporations Act 2001* (Cth) to ask a person who is a director to provide their DIN.⁴

Our suggestion of a DIN relates to directors having to prove their identity, so that fictitious or dummy directors can be detected by regulators. The use of a unique identifying number, only allocated after 100 points of identification have been produced, also allows regulators to know that Fred A Smith is actually the same person as Fred Smith, Frederick Smith and Frederick A Smith. Currently, regulators do not necessarily connect each of these people, and insolvency practitioners and others have to conduct separate searches for each of these names. This is a waste of time and money for all concerned.

The ultimate objective of the DIN is to deter those seeking to improperly use the corporate form to avoid payment of accruing debts, and where that behaviour still occurs, to enable regulators to more easily enforce laws against the wrongdoers.

A separate issue is the fact that directors' personal information, including addresses and dates of birth, is discoverable, for a fee, from the ASIC website. The recent submission to the Productivity Commission by the Governance Institute indicates that this may facilitate identity theft. The Governance Institute has recommended that:

- ASIC retain the personal details of all officeholders;
- ASIC issue each officeholder with a unique identification code; and
- the ASIC public register not display the date of birth, residential address and place of

³ Productivity Commission, *Business Set-up, Transfer and Closure- Draft Report*, May 2015, p 383.

⁴ *Ibid*, p 384.

birth of officeholders, but the officeholder name, unique identification code and a service address.

The recommendation of the Governance Institute to reduce the amount of information about directors currently publicly available has been opposed by a number of journalists who have written to the Assistant Treasurer indicating their opposition.⁵

Some media commentary has indicated that we are supportive of reducing the amount of information that is currently publicly available about directors. This commentary is mistaken. We have not made any public statements or submissions regarding whether the amount of information currently publicly available is appropriate or not and we have not investigated this issue as part of our research on illegal phoenix activity.

We submit that should the Productivity Commission consider it necessary to investigate whether the amount of information currently publicly available about directors is appropriate or not, the important issue of the desirability of the DIN can and should be considered separately from this issue.

⁵ Letter to the Hon Josh Frydenberg MP, Assistant Treasurer, 13 July 2015, available at http://www.alliance.org.au/documents/asic_database_letter.pdf