

Another uniform national register on the cards replacing 35 business registers

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Summary

In January 2012, the Personal Property Securities Register ('PPSR') became a unified register replacing the ASIC Register of Company Charges, the Australian Register of Ships, the Fisheries Register, state and territory bills of sale registers and registers of encumbered vehicles. Seven years on, the *Commonwealth Registers Bill 2019* along with four related Bills have been introduced into the House of Representatives as part of the National Business Simplification Initiative, a collaboration between the federal, state and territory governments aimed at helping businesses grow by cutting red tape. The proposed new legislative package will bring about two major changes, the creation of a new uniform national register and the introduction of the DIN – Director Identification Number.

Background

The *Commonwealth Registers Bill 2019* and four related Bills, *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* and *National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019* form a legislative package that is intended to introduce Acts which will, amongst other things, create a new uniform Commonwealth business register and introduce the director identification number (DIN).

A new national business register

The proposed new Commonwealth business register will in its first phase replace 34 existing business registers currently administered by ASIC as well as the Australian Business Register. Some of the registers to be replaced include the ACN Register, Business Names Register, Register of liquidators, Register of financial services licensees, Register of disqualified company directors and other officers.¹ Registers maintained by the Australian Financial Security Authority (AFSA) which include the PPSR and Bankruptcy Register are not part of the new regime.

The objective of this new register is to facilitate a modern government registry regime that is flexible, technology neutral and governance neutral and that facilitates timely and efficient access to information (including, where appropriate, on a real time basis) by regulators and other users of the information.² Additional registers may be merged into the proposed new national register by further legislative enactment.

DIN

The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019* will amend the *Corporations Act 2001* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* ('CATSI Act') to impose a director identification number (DIN) requirement.

Introduction of the DIN is aimed at curbing phoenix activities. Under the new regime, a person appointed as a director of a body corporate registered under the *Corporations Act* or the *CATSI Act* must apply for a DIN before they are appointed a director unless the period is extended by the regulations or unless they are provided an exemption or extension by the registrar.³ Civil and

criminal penalties apply for failure to comply with this requirement. A DIN is only issued if it is satisfied that the director's identity has been established.⁴

Civil and criminal penalties also apply to anyone who tries to undermine the new DIN requirement. The examples given by the Explanatory Memorandum are;

- deliberately providing false identity information in an application for a DIN (criminal penalty);
- intentionally providing a false DIN to a Government body or relevant body corporate (criminal penalty); or
- intentionally applying for multiple DINs (criminal penalty).⁵

Transitional provisions will apply to directors appointed prior to the start of the new regime. There will be a period for those directors to apply for a DIN. In addition, during the first 12 months of the operation of the new requirement, directors appointed during that period will have up to 28 days of appointment to apply for a DIN.⁶

According to the Explanatory Memorandum, the DIN will require all directors to confirm their identity and it will be a unique identifier for each person who consents to being a director. The person will keep that unique identifier permanently, even if they cease to be a director. It is not intended that a person's DIN will ever be re-issued to someone else or that one person will ever be issued with more than one DIN (except in limited circumstances such as when a record is corrupted).⁷

Implications

The intended legislative package will bring about major changes to existing business registers and the provision of information to be provided by individual directors. Information will become more easily accessible and transparent. The general public would benefit by being more informed about businesses they deal with and the individual controlling minds of companies. The DIN will enable directors to be traced across companies, although presently this may be done to an extent by way of ASIC's personal name extract. However, the information

provided by ASIC's personal name extract is limited by the lack of positive identification of the directors making it difficult to confirm whether two directors are the same individuals.

The Senate Economics Legislation Committee is in favour of passing the Bills. It may be sometime before the new regimes become law and are implemented. Once implemented, teething problems are expected, for example information may be incorrectly entered into the registers leading to ineffective searches or individual directors failing to apply for a DIN.

¹The full table is at pages 8–10 of the 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 Explanatory Memorandum ('Explanatory Memorandum')

²Page 7, Explanatory Memorandum, clauses 3 and 4 of the Commonwealth Registers Bill 2019

³Page 40, Explanatory Memorandum

⁴Page 41, Explanatory Memorandum

⁵Page 41, Explanatory Memorandum

⁶Page 41, Explanatory Memorandum

⁷Page 39, Explanatory Memorandum

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