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Ministry of Business, Innovation and Employment
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Submission on introducing director identification numbers and insolvency law reform

Thank you for the opportunity to provide feedback on MBIE's discussion paper on director identification numbers (DINs) and the Insolvency Working Group's second report on insolvency law reform.

In 2016, the Insolvency Working Group's first report on corporate insolvency law recommended introducing DINs. We supported this in our submission. MBIE's discussion paper considers in greater detail the desirability of introducing DINs and how they could work if implemented.

Our submission mainly focuses on DINs. However, we also comment on insolvency law matters.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,000 members drawn from NZX-listed corporations, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities.

Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

General comments on DINs

We are aware of significant issues with the Companies Register including:

- there can be confusion between directors with the same or similar name
- there can be problems where names are not recorded in the same format across different entities
- there are inefficiencies when director details change and need to be altered separately across a range of different entities.

The Register is the central record about companies and directors, and has a key role in supporting commerce and our economy. The Register must be fit for purpose, and directors, shareholders and the public must have confidence in its information.

We continue to support introducing DINs as the best way to help improve the Register. When people access the Register, they should be able to get an accurate picture of a person's directorships and the process should be user-friendly. At the same time, when directors update their details on the Register, this should be simple and straightforward.

Benefits and costs

There are a number of benefits to introducing DINs set out in MBIE's discussion paper:

- they would provide an accurate way to distinguish between directors with similar names and identify which company directorships a person holds
- they would make it easier for creditors and others doing business with a company to track a director
- they would help government agencies to identify and locate directors with obligations under their legislation and inform proactive enforcement activities
- they would help increase the accuracy of the Register, for example, by assisting the Companies Office to identify people who are disqualified from being a director and helping other agencies identify cases for referral to the Companies Office for investigation
- it would be quicker for directors of multiple companies to update their details on the Register as they would only have to update one record
- introducing an identity verification process should provide greater certainty about a director's identity and reduce the possibility of someone using a fake identity.

MBIE has also identified potential costs and risks. Most of these are relatively remote/minor, for example:

- DINs may be incorrectly perceived as granting recognition of a person's qualifications to be a director or run a company
- it would create another number for people to remember, or may get mixed up with other numbers associated with the company or director

There are other costs/risks around privacy and identity fraud which are more serious. However, these can be addressed and mitigated, including through establishing a reliable personal verification system (which is proposed). On balance, the IoD believes the benefits exceed the costs/risks involved.

How DINs could work?

Set out below is MBIE's suggested process for how DINs could work:

- all directors would be assigned a unique identification number
 - it would be used to identify them for all company directorships
 - it would be assigned by the Companies Office, kept on public record and could be searched to identify all the directorships one person holds
 - people who are no longer company directors would not be affected
- *new* directors would be assigned a number when the Companies Office provides them with their *first* consent form to be a director
- for existing directors, identification numbers would be phased in over a twelve-month period:
 - companies would need to provide DINs in their first annual return following the introduction
 - existing directors could apply for DINs at any time before the annual return was due
- both new and existing directors would have their identity verified when applying for an identification number. For most directors, they would need to provide their passport or drivers licence number (to be matched against their details).

The process is intended to be quick and easy with low compliance costs and no application fee. The IoD generally supports the suggested process.

MBIE notes that DINs could enable changes to the current process for consent forms for directors and shareholders. The IoD supports efficiencies and costs savings in compliance matters, provided the Companies Register is fit for purpose.

MBIE has suggested that it would be an offence for directors to knowingly apply for more than one identification number or provide false information to the Registrar. The IoD supports this and considers monetary sanctions would be appropriate.

Directors' residential addresses

In our submission on the Insolvency Working Group's first report, we highlighted concerns around directors' residential addresses being publically available. As a solution, we suggested that directors should be able to publish on the Companies Register a *service* address that is not their residential address (as is the case in other countries such as the United Kingdom, Canada, Singapore, Hong Kong and Australia). This would allow directors to protect their privacy while ensuring they could still be contacted. We are aware that a large number of directors in New Zealand of SMEs through to our largest companies (including in the state sector) have actual and potential issues related to their residential addresses being publically available.

We believed it was a good opportunity for MBIE to consider directors' residential addresses and DINs at the same time given the natural alignment between the matters. We are disappointed that these matters have been separated and MBIE now plans to consult on directors' residential addresses at a later date. We are concerned about the delay in dealing with this and the potential for it to become less of a priority with the implementation of DINs.

Insolvency law reform

The Insolvency Working Group's second report focuses on voidable transactions, Ponzi schemes and other corporate insolvency matters. The report also refers to the following proposed insolvency law changes in Australia:

- a 'safe harbour' for directors from liability in facilitating the restructure of a company that may be insolvent (designed to strike a better balance between encouraging entrepreneurship and protecting creditors)
- limiting *ipso facto* clauses in certain circumstances (these clauses can allow, for example, a supplier to terminate a contract on an insolvency event).

The report notes that it is important to keep these proposed changes under review and a further assessment about their potential relevance to New Zealand should be made after the Australian Government makes the details public. Given that these proposals are now before the Australian Parliament, we support the Insolvency Working Group giving greater consideration to them in the New Zealand context. We also note that other countries, including the United Kingdom, are reviewing their insolvency regimes and are considering similar proposals to ensure they remain at the forefront of insolvency best practice.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely

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