

DIRECTOR IDENTIFICATION NUMBERS BEGIN FROM NOVEMBER 2021

Date: 21 October 2021

Australia Corporate Alert

By: Adam Levine, Philip Vickery, Susan Parker, Ellen Richmond

From November 2021, directors of Australian companies will need to apply for and verify their identity as part of a new statutory requirement for them to have a Director Identification Number (DIN). Applications for DINs will open from November 2021.

WHAT IS A DIN AND WHO NEEDS ONE?

A DIN is a 15-digit identification number used by each eligible director as proof of their identity. An eligible director is a director or alternate director acting in that capacity of:

- a company, a registered Australian body or a registered foreign company under the *Corporations Act 2001* (Corporations Act); or
- an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

Charities and not-for-profits that are public companies limited by guarantee (under the Corporations Act) are therefore included in this regime. Directors of incorporated associations (including those registered with the Australian Charities and Not-for-profits Commission) do not need to apply for a DIN, unless the incorporated association has an Australian Registered Body Number to operate outside the state or territory in which it is incorporated.

Directors will only need to apply once for a DIN. They will keep their DIN forever even if they change companies, stop being a director, change their name or move overseas. Also, if an individual has applied for, or received, a DIN under one of these Acts, they do not need to apply for a DIN under the other Act.

The DIN regime was created with the purpose to promote good corporate conduct, detect, deter and penalise directors' involvement in the illegal phoenixing of companies (broadly, where directors of a company transfer the company's assets to a new company, so as to frustrate litigation against the first company), and generally improve the integrity of corporate data. It will allow regulators and advisors to obtain a more complete picture of a director's corporate history and every company of which that director has been a part. Further, it will give a clearer view of whether companies have participated in related party transactions, and whether directors have had conflicts of interest.

The DIN regime will be administered by the recently created Australian Business Registry Services (ABRS), a program implemented by the Australian Tax Office (ATO).

DEADLINE FOR APPLYING

The deadline for submitting a DIN application differs according to the date on which the director was appointed, as set out below:

Director type	Deadline to submit DIN application
Existing directors under the Corporations Act or those who are appointed as a director on or before 31 October 2021	30 November 2022
Appointed as a director under the Corporations Act between 1 November 2021 and 4 April 2022	Need to apply for DIN within 28 days of their appointment
Appointed as a director under the Corporations Act from 5 April 2022	Need to apply for DIN prior to their appointment
CATSI Act existing directors who are appointed on or before 31 October 2022	30 November 2023
CATSI Act directors who are appointed from 1 November 2022	Need to apply for DIN prior to their appointment

If you cannot apply by the date you need to, you can apply for an extension. Information on how to apply for an extension will be available on the ABRS website in November.

WHAT DOES THE APPLICATION INVOLVE FOR AUSTRALIAN-BASED DIRECTORS?

Directors will be able to apply for their DIN from November 2021. They must apply for their DIN themselves, rather than have someone else do so on their behalf. The ABRS has provided preliminary information about the application process on its [website](#), with further details to be released in November 2021.

Obtain myGovID

The ABRS currently recommends that directors apply for a myGovID in preparation for when applications will open. The myGovID will need to be a standard or strong identity strength for the DIN application.

If you don't have a myGovID you can set one up by following the instructions here. If you cannot get a myGovID, you can complete the DIN application over the phone or in paper form.

It should be noted that the myGovID is different from myGov. MyGovID is an app that you download to a smart device to prove who you are and log into a range of government services, including myGov.

Prepare Documentation

Until applications open, you can also ensure that you have your documentation ready. This will include:

- your tax file number (this is optional to provide, however the ABRS website states that providing this will speed up the process);
- your residential address as held by the ATO; and

- if you are completing an online application – information from two documents to verify your identity, such as bank account details, ATO notice of assessment, super account details or dividend statement etc. (find out more [here](#)).

Three Ways to Apply

Once the application has opened, you will have three options:

- use your myGovID to log on and fill out the application (the application link should be posted [here](#) in November 2021);
- complete the application over the phone – in addition to your tax file number (optional) and residential address, you will need to answer two questions based on the details known about you and will need one primary and one secondary identity document (find out more [here](#)); or
- complete a paper application – in addition to the information requested on the form, you will need to provide certificated copies of one primary and two secondary identity documents (find out more [here](#)).

Once you have received your DIN, you should provide it to the company or CATSI Act corporation record-holder. This could be a company secretary, another director, contact person or an authorised agent of the company.

WHAT ABOUT DIRECTORS RESIDING OUTSIDE OF AUSTRALIA?

Directors who are residing outside of Australia can make a paper application from November 2021.

If making a paper application, the director will need to provide the information requested on the form (which is yet to be released) and will need to provide certified copies of one primary and one secondary identity document. If a director has changed their name, they will need to provide another document showing the change.

Primary documents include:

- foreign birth certificate;
- foreign passport;
- Australian full birth certificate; or
- Australian passport (including passports that have expired in the past two years).

Secondary documents include:

- national photo identification card;
- foreign government identification;
- driver's licence, as long as the licence address matches the address details on your application; or
- marriage certificate (however, if this is used to verify your change of name, you can't use it as a secondary document).

Details of how these documents are to be certified are set out on the ABRS website: www.abr.gov.au.

WHAT ARE THE CONSEQUENCES OF NON-COMPLIANCE?

Directors who fail to meet the DIN obligations could be issued with an infringement notice or could expose themselves to civil or criminal penalties. For example, it is an offence if a director applies for a DIN and they know that they already have a DIN. It is also an offence for a director to intentionally represent to a corporation or CATSI Act corporation a director identification number that is not that director identification number.

The ABRS is responsible for the implementation and administration of director ID's. ASIC will be responsible for the enforcement of associated offences.

BE PREPARED

All Australian companies should ensure their directors (and alternate directors) are aware of the requirements and their obligations under this new regime. Directors should be encouraged to:

- collate the required personal identification documents (and in particular, the documents of their foreign directors, which could take more time) so that applications can be submitted in a timely manner; and
- if based in Australia, apply for a myGovID (if they do not already have one) now in preparation for submitting their application for a DIN.

This is most important for any new directors who are appointed after 1 November 2021, as they must apply for their DIN within 28 days of their appointment, if they have not already done so. As set out in the table above, existing directors have a longer grace period within which to apply.

KEY CONTACTS

**ADAM LEVINE**

PARTNER

PERTH

+61.8.9216.0965

ADAM.LEVINE@KLGATES.COM

**PHILIP VICKERY**

PARTNER

BRISBANE

+61.7.3233.1209

PHIL.VICKERY@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.