



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Consultation on Whether to Introduce a Director Identification Number

Discussion paper

May 2017

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How to have your say

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on a proposal made by the Insolvency Working Group to introduce an identification number for company directors. Submissions close on **Friday, 23 June 2017**. Questions are posed throughout the document to guide your submission.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples. There is a submissions template on MBIE's website that you can use for your submission.

You can send your submission as either a Microsoft Word or pdf document to:
corporate.law@mbie.govt.nz

Please direct any questions that you have in relation to the submissions process to
corporate.law@mbie.govt.nz

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on whether to introduce a director identification number.

We may contact submitters directly if we require clarification of any matters in submissions.

Submissions are subject to the Official Information Act 1982. MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this matter. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that MBIE may publish.

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Executive summary

1. The Insolvency Working Group was a panel of experts set up by the Government to examine aspects of corporate insolvency law and provide independent advice. The Insolvency Working Group released its first report in 2016. In this report, it recommended introducing a unique identification number for directors of companies. We received some public submissions on this proposal at that time. Although submissions were broadly supportive, they indicated that the Government should undertake further work and consultation on the proposal.
2. This paper seeks public submissions on the desirability of introducing a director identification number. We are particularly interested in your views on what issues a director identification number would address and the benefits and costs of a director identification number.
3. Written submissions close on **Friday, 23 June 2017**. Your submission will help us to finalise advice to the Minister of Commerce and Consumer Affairs on whether to introduce a director identification number.

1. Introduction

1.1 How is this document set out?

4. The discussion paper is split into four sections:
 - **Section 1** outlines why we are doing this work and the current policy settings.
 - **Section 2** identifies some issues that a director identification number may address and the possible costs and benefits of an identification number.
 - **Section 3** identifies some key design features of a director identification number, should the Government decide to introduce one.
 - **Section 4** sets out the next steps for this work.
5. There are questions throughout this paper to help guide your submission. We welcome other relevant comments that are not covered by the questions.

1.2 What are the drivers for this work?

6. The Insolvency Working Group was a panel of experts set up by the Government in November 2015 to examine aspects of corporate insolvency law and provide independent advice. In 2016, the Insolvency Working Group released its first report covering the regulation of insolvency practitioners and voluntary liquidations. In this report, it recommended introducing a unique identification number for existing and future directors, after an identity verification process, to make it easier for creditors and regulators to identify and trace the activities of a director¹.
7. We received a number of written submissions on the Insolvency Working Group's recommendation when its first report was released in 2016. While there was generally strong support for the proposal, there were concerns about the compliance costs of introducing a director identification number and wider consultation was recommended because of possible privacy issues.
8. In response to these submissions, this paper seeks further feedback on the desirability of introducing a director identification number.
9. Your feedback will be used to inform MBIE's advice to the Minister of Commerce and Consumer Affairs.

1.3 What are the current settings?

10. The companies register is an important source of public information. The register provides information on which businesses are registered as companies in New Zealand, their shareholders and directors.
11. When someone becomes a director of a company, they must provide the Registrar of Companies with a signed form stating that they consent to be a director of the company. They also certify that they are not disqualified from being a director. Directors are asked for their full name, residential address and place and date of birth, although place and

¹ Report No. 1 of the Insolvency Working Group, on insolvency practitioner regulation and voluntary liquidation (July 2016).

date of birth does not form part of the public record². They are not asked if they are directors of any other companies in New Zealand.

12. Director details are treated as a separate record for each company a director is associated with. On the companies register, the name and residential address of each director is listed against the relevant company. Users can search the register using a director's name to identify which companies that person is, or has been, a director for.

1.4 International context

13. India introduced a director identification number in 2006. All existing directors had to obtain an identification number. Applications for a number require proof of identity, proof of residency and a current photograph.
14. Some countries, such as Hong Kong, Singapore, Sweden and Norway, use their national identity numbers for individuals as identity numbers for directors.
15. Australia and the United Kingdom do not have identification numbers for directors.
16. In 2015, the Australian Productivity Commission recommended that, in addition to existing requirements for directors, directors must, at the time of company registration, also provide a director identity number. This recommendation had the following elements:
 - A director identity number should be obtained from the Australian Securities and Investments Commission (ASIC) via an online form at the time of an individual's first directorship. Individuals should be required to provide proof of identity (based on the personal identification requirements for opening a bank account), and verify that they have read brief material on directors' legal responsibilities provided as part of the online registration.
 - For existing companies, directors should be required to obtain a director identity number. The number should be provided to ASIC at the annual review date for the company.
 - ASIC should be empowered to ask a person who is a director to provide their director identity number.
 - There should be no lessening of the existing recording of, and means of accessing, director information.
17. The Australian Government has not yet released its response to this Productivity Commission report.

1.5 Directors' residential addresses

18. A relatively small number of directors have raised concerns about their residential address being publicly available. As the issues involved are complex and require careful balancing with the need to ensure transparency, we intend to undertake further work on this issue. We intend to publicly consult on this matter and potential solutions in early 2018.

² Companies Act 1993, sections 12, 152, 159 and 367A.

2. Should New Zealand have a director identification number?

2.1 What issues could a director identification number address?

19. It has been suggested that a director identification number could help identify which companies a director is currently associated with, or has been a director of in the past. This information can be important for firms, creditors and consumers undertaking due diligence when deciding whether to do business with a company. This information could also help enforcement agencies to detect suspicious activities.
20. Currently, it can be difficult to quickly and accurately find information about all the companies someone is a director for.
21. On the companies register, director details are treated as a separate record for each company someone is a director for. Someone checking if a director is associated with multiple companies needs to match up details across different companies. It can take some time to check each company's record, particularly if the director has a common name.
22. Searches on a director's name may get "false positives" where two or more directors have the same name. The only way to currently check if the director is the same person is to see if they have the same residential address. This check is not always accurate. For example, where a director has moved address then historical documents will have their old address, making it difficult to tell if they are the same person.
23. It can also be difficult to link directors to different companies if there are inconsistencies in the spelling of a director's name or it is recorded in a different format for different companies (eg Robert Smith or Bob Smith). In some circumstances, if a director has changed their name, then a search on the register will not return information on companies they were a director for under their old name.
24. It can also be inefficient to update a director's details on the register as, if they are a director of multiple companies, their details must be individually changed on each company's record.

- 1 Are you aware of the issues identified? Please describe the extent to which you think they are a problem.
- 2 Are there any other issues that we have not identified? If so, please describe them and provide evidence if available.
- 3 Do you think a director identification number is the best way to address the issues identified?

2.2 Objectives

25. We propose to use the following objectives to assess whether it is desirable to introduce a director identification number:
- People are able to easily identify directors and have certainty about their identity.
 - Implementation maintains or improves the integrity of the companies register.
 - Implementation is practical and efficient for the Registrar, companies and directors and compliance costs are minimised.

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What are your views on the proposed objectives for assessing whether to introduce a director identification number?

2.3 Should there be a director identification number?

26. We're interested in your views on the benefits and costs of introducing a director identification number. Our preliminary views are set out below.
27. The benefits of a director identification number are:
- It would provide an accurate way to distinguish between directors with similar names and identify which companies someone is a director for.
 - It would make it easier for creditors and others doing business with a company to track a director.
 - It would help government agencies to identify and locate directors with obligations under their legislation and inform proactive enforcement activities.
 - It would help increase the accuracy of the companies 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 companies 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.
28. The costs or risks of a director identification number are:
- Directors may be concerned about having their information linked using an identification number and the privacy implications from this, for example if a director identification number increases the risk of identity fraud.
 - There may be a small increase in compliance for directors, particularly for people who do not have a New Zealand identification document (see next section).
 - A director identification number 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.
- These costs/risks may deter people from being a director making it harder to find good directors.

5

What are your views on the benefits and costs of a director identification number?
Are there any other benefits, costs or risks?

6

Do you support the introduction of a director identification number?

3. Possible design of a director identification number

29. The Government is still to decide whether to introduce a director identification number. While a final decision is still to be made, we would like to take this opportunity to also seek your views on how a director identification number could work, should the Government decide to implement one.
30. We have outlined some possible key design features of a director identification number below. The final design of any identification number would need to comply with the Privacy Act 1993 (see annex).

All directors would be assigned a unique number

31. All directors would have a unique identification number that would be used to identify them for all companies that a person is a director for, now and in the future. The number would be a unique number assigned by the Companies Office.
32. A director's identification number would be on the public register and kept on company records. The register would be able to be searched using the identification number, thereby linking someone who holds multiple directorships with different companies.
33. It would be an offence against the Companies Act for directors to knowingly apply for more than one identification number or provide false information to the Registrar. We are interested in your views on what types of sanctions would be most effective to ensure compliance.

When directors would get their identification number

34. New directors would be assigned an identification number when the Companies Office provides them with their first consent form to be a director.
35. Identification numbers would be phased in over a twelve month period for existing directors. Companies would need to provide a director's identification number in their first annual return following the introduction of identification numbers. Existing directors could apply for an identification number at any time before the annual return was due.

A director's identity would be verified

36. When obtaining, or being provided with, an identification number, both new and existing directors would have their identity verified. This is in line with privacy principle 12(3)³.
37. Directors could have their identity verified by:
 - using their existing RealME verified account
 - providing the Companies Office with their New Zealand passport or driver's licence number. This information would be used to verify that the identity documents exist and they match the director's details.

³ This identity process is not covered by the identity verification requirements under AML/CFT legislation.

38. If a director does not have a New Zealand passport or driver's licence, they would need to send the Companies Office a verified copy of an official document that includes the director's photograph, eg an overseas issued passport.

Compliance costs for directors

39. Applying for a director identification number should have low compliance costs for most directors. We estimate that the application process would be relatively quick and easy. For most directors, the only additional information that would be needed is the number of their identity document. People without a New Zealand passport or driver's licence, however, would have to send a verified copy of their identity document, which may slightly increase their compliance requirements.
40. We are not proposing to have an application fee for a director identification number.

People who are no longer directors would not be affected

41. A director identification number would not be given to individuals who have been a director in the past, but are not currently a director. Also, historical documents would not be amended to include an identification number. We consider that the costs associated with retrospectively implementing a director identification number would be greater than any benefits.

Consequential changes to director consent forms

42. Introducing a director identification number could enable changes to the current process for consent forms for directors and shareholders. Instead of providing the forms to the Companies Office, a company could be required to keep them as part of their records. The benefit of this consequential change would be one less step in the company incorporation process and a 24/7 incorporation service for most companies.

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If a director identification number is introduced, what are your views on how a number could work?

4. Next steps

43. We invite you to make a written submission on whether to introduce a director identification number. Please provide your feedback to MBIE by **Friday, 23 June 2017**. Instructions on how to submit your submission can be found at the beginning of this paper.
44. Once submissions have been considered, MBIE will finalise advice to the Minister of Commerce and Consumer Affairs. If the Government decides to introduce a director identification number, the Companies Act would need to be amended.

5. Annex: Privacy Principles

Privacy principle 12 on unique identifiers:

- (1) An agency shall not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the agency to carry out any 1 or more of its functions efficiently.
- (2) An agency shall not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless those 2 agencies are associated persons within the meaning of subpart YB of the Income Tax Act 2007.
- (3) An agency that assigns unique identifiers to individuals shall take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (4) An agency shall not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.

Public register privacy principles

Principle 1 Search references: Personal information shall be made available from a public register only by search references that are consistent with the manner in which the register is indexed or organised.

Principle 2 Use of information from public registers: Personal information obtained from a public register shall not be re-sorted, or combined with personal information obtained from any other public register, for the purpose of making available for valuable consideration personal information assembled in a form in which that personal information could not be obtained directly from the register.

Principle 3 Electronic transmission of personal information from register: Personal information in a public register shall not be made available by means of electronic transmission, unless the purpose of the transmission is to make the information available to a member of the public who wishes to search the register.

Principle 4 Charging for access to public register: Personal information shall be made available from a public register for no charge or for no more than a reasonable charge.