

The original Consultation Request Document issued by MBIE can be seen at the following web site. To read this in conjunction with the NZSA Submission copy this link to your browser.

<http://www.mbie.govt.nz/info-services/business/business-law/insolvency-law-working-group/report-no-2-voidable-transactions-ponzi-schemes-other-corporate-insolvency-matters/consultation-on-whether-to-introduce-a-director-identification-number.pdf>

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**23 June 2017**

## **New Zealand Shareholders Association Submission on Whether to Introduce a Director Identification Number**

### **Relationship of Submitter**

The New Zealand Shareholders Association (NZSA) is the only independent national group that represents the interests of retail investors in the equity markets.

One of our major concerns is the need to engender confidence in all facets of the regulation and operation of the New Zealand capital markets. Rules regarding companies and their directors should encourage transparency and be user friendly in addition to achieving a high level of cost efficiency.

While our key interest is the public company sector, in this case we have taken into account that the change will extend to all companies, large and small. We note that a number of directors of public entities are also directors in the private area.

### **Executive Summary**

NZSA is strongly supportive of the proposal to introduce a director identifier number. If adopted there would be considerable efficiencies introduced as well as a reduction in compliance costs in most cases.

Importantly, such a move would eradicate confusion surrounding directors with similar names. It would also become much easier to search the register which is an important factor for

investors (and potentially creditors) when considering the “track record” of a particular individual.

NZSA strongly supports the introduction of an address for service to solve some very real concerns about having to provide a residential address. At the same time, if properly instituted, such a change should make it easier to serve papers in working hours where necessary. So again we see efficiency gains and reduced compliance.

NZSA also considers a change is necessary in order to meet New Zealand’s obligations in regard to money laundering as set out by the international Financial Action Taskforce (FATF).

## **Responses to Questions in the Discussion Paper**

Our comments are set out in the same sequence as the online submission document.

### **1 Are you aware of the issues identified? Please describe the extent to which you think they are a problem.**

NZSA is aware of these and described them in correspondence to MBIE as far back as July 2010. In particular, the issue around identifying whether you have the right person is a very real problem because of the number of different people with the same name, as well as the variable way that the same person’s name and address may appear on different entries.

### **2. Are there any other issues that we have not identified? If so, please describe them and provide evidence if available.**

It is easy to infer from the long list of issues noted in the discussion paper that there is considerable inefficiency in the way the database is currently populated. This has a flow on cost in time or money for anyone attempting do a comprehensive and accurate search on a particular director.

Anecdotally from broad discussions, we think the time involved in determining whether you have the right person tends to put people off using the register data as much as it should or could be used.

The discussion paper is silent on New Zealand’s obligations to introduce measures recommended by FATF to prevent money laundering. The present system appears to be inconsistent with other sectors in this regard because of the weaknesses and potential confusion around identification described in the MBIE discussion paper.

### **3. Do you think a director identification number is the best way to address the issues identified?**

We are certain that it is. We note that IRD use a unique taxpayer number as does the health system with its NHI number system.

In the financial area, companies have a unique identifier number. Investors also have unique identification via the CSN and FIN number system.

In all these instances, a unique number is a demonstrated way to avoid mis-identification and create an efficient easily searched database.

By contrast, the Australian share registry system which has different identification numbers for every share holding is frequently the subject of complaints about the lack of user friendliness. Their format can lead to a great deal of compliance time and effort.

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

We agree that a director number would achieve each of the objectives noted in the discussion paper. What is missing from this list is a clear objective that instituting a director identification number would improve the **utility** of the companies register. This is different to the point made about **integrity**, although we do agree that is also a desirable objective.

Another objective should be to improve the safety and security of those listed on the companies register and their associated persons.

A further objective should be to ensure the process aligns with international obligations to FATF.

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

We agree with all of the benefits identified in section 27 of the discussion paper.

We also consider that if an identification number is introduced, the present requirement for a personal residential address should be dropped in favour of an address for service. This would need to be of an approved nature, such as the director's lawyer, accountant or other suitable professional. Those appointed would need to confirm that they are prepared to act in that capacity for that director. It could be made optional whether a residential address or an address for service is provided, but that is not our preference for the reasons below.

This adds an additional verification layer to the identification process as well as being an important step in protecting the partner and children of a director. The current system leaves them vulnerable to harassment in their home and we are aware of instances where this has happened with public company directors. It is uncertain whether other such incidents go unreported as there are no statistics available. We think an address for service also sits well with the guidelines in Annex 5. Some of these advantages would be lost if a choice of address type was allowed, and that is not desirable in our view.

NZSA believes that the proposed director identifier number would have a lower compliance cost for the vast majority of directors. In particular, the ability to update one entry and automatically populate all others is a major time saver, particularly if fees to do this are being charged by a professional.

The possible costs and risks identified in section 28 are overstated in our opinion.

We cannot see how introducing an additional identification check can increase the chances of identity fraud. We believe the opposite is true. In addition, the use of an address for service and the increased accuracy and timeliness of information on the companies register reduces the opportunity to arbitrage on register entry differences or by similar director names. We believe a combination of this additional checking and the proposal for a more robust system with a much lower possibility of error addresses the FATF requirements.

We accept that those without New Zealand identification may face slightly higher compliance costs, but believe the greater accuracy, reduced chance of identity fraud and the ability for the registrar to more easily identify non-compliers outweigh this. The discussion paper itself acknowledges that any additional costs would be minor.

There is no greater chance of a director with a director identifier number receiving “recognition” than exists in the current system. Equally, we do not accept that remembering one additional number is an unreasonable burden.

Within the current system, the variety of ways the same person gives their name indicates that a single number will actually make it easier for them as their data will be consistently recorded. In terms of entry error, it is no different to someone entering their IRD number – there is an expectation they will check that the resulting information is their own.

We disagree with the proposition that this change could limit the number of people taking up directorships. NZSA considers the proposal reduces risk. The higher ongoing compliance costs for many and higher risk of error inherent in the current system have not deterred people from becoming directors. The proposed change will have no negative effect.

## **6. Do you support the introduction of a director identification number?**

NZSA strongly supports the introduction of director identifier numbers.

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

NZSA broadly supports the proposed process for introducing director numbers including a 12 month phase in period.

We think the verification process proposed for most directors is lightweight. Simply sending a passport number without any certification is potentially open to abuse. Having the

information certified is a minor, one-off inconvenience. This can be mitigated by including JP's in a list of people who can do the certification. JP's provide a free service.

The current system seems to have few real sanctions, and if they exist, they are rarely enforced. We consider this potentially undermines the integrity of the current director identification system.

People seeking to become directors want that privilege. So, in order to achieve compliance, the most logical sanction is to prevent a director being registered for a period of time if they make a false declaration or apply for more than one number. A system of fines could also be used, but these tend to become less effective unless the amounts are regularly updated and the courts often treat offenders very leniently without seeming to consider the bigger picture.

Another option could be for the registrar to also record previous non-compliance on the director details that are publicly searchable. That would send a message to those looking at the register and would generally be something prospective or current directors would want to avoid.

## **Summary**

In our view, the logic for introducing director identifier numbers is overwhelming. It also makes sense at several levels to change the address requirements at the same time. We have suggested that a slightly tighter identification requirement is desirable.

The outcome will be a system which is more robust, more user friendly, and likely to carry a lower compliance burden.

NZSA strongly supports the proposal to introduce director identifier numbers.

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