

TEMPORARY RELIEF AHEAD OF AGM SEASON

After a lengthy consultation period, the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (TLA1 Bill)* was finally passed by both Houses of Parliament on 10 August 2021, just in time for 2021's AGM season.

From the day after the TLA1 Bill receives Royal Assent, the law introduced by the TLA1 Bill will, among other things, modify various important procedural requirements in relation to the holding of meetings, and provide welcomed regulatory relief for companies as they approach AGM season in the midst of the ongoing disruption caused by the Delta variant of COVID-19.

The measures contemplated by the TLA1 Bill are only effective from the day after the TLA1 Bill receives Royal Assent until 31 March 2022 (**Transitional Period**).

Accordingly, companies may wish to consider amending their constitution this AGM season, to "future proof" their constitution, given the probability of ongoing disruption related to COVID-19 beyond 31 March 2022.

Most significantly, and among other things, the law introduced by the TLA1 Bill modifies the *Corporations Act 2001 (Cth)* (**Corporations Act**), allowing meetings of a company's members (and directors and committees) to be held using virtual meeting technology only, provided that:

- the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate (including the right to speak and ask questions, both verbally and in writing); and
- all persons participating in the meeting who are entitled to vote must be given the opportunity to vote in real time.

The law introduced by the TLA1 Bill also provides for electronic sharing of meeting-related documents (such as notices of meetings) as the "default", establishing a system whereby shareholders must "opt-in" to receiving hard copy materials.

From 1 April 2022, once the Transitional Period has lapsed, it is contemplated that permanent changes to the laws regarding hybrid and virtual meetings will have been implemented; indeed, an exposure draft of the *Treasury Laws Amendment (Measures for Consultation) Bill 2021 (MFC Bill)* has been circulated for consultation.

Although temporary relief has, at various stages since the onset of the COVID-19 pandemic, been in place; the Corporations Act has not historically permitted company meetings to be held entirely virtually, unless provided for by a company's constitution. Significantly, under new section 294R(c) of the Corporations Act which has been proposed by the MFC Bill: from the lapsing of the Transitional Period, companies will only be permitted to hold general meetings virtually if permitted to do so by their constitution. Companies may therefore wish to consider amending their constitution this AGM season, to "future proof" their constitution, in anticipation of that change to the law and the probability of ongoing disruption related to COVID-19 beyond 31 March 2022.

The Government has estimated that the reforms contemplated by the MFC Bill will generate compliance-related savings of \$442 million per year. It is uncertain as to when the MFC Bill will be introduced to Parliament. However, the exposure draft materials which accompanied the MFC Bill indicated that work was being undertaken to ensure that these amendments can be progressed in Parliament's spring sitting period. We will be watching these developments closely.

This Alert is intended as general information only. It does not purport to be comprehensive advice or legal advice. Readers must seek professional advice before acting in relation to these matters.

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