

GOVERNMENT TABLES BILL TO MAKE VIRTUAL MEETINGS AND ELECTRONIC EXECUTION PERMANENT

The *Corporations Amendment (Meetings and Documents) Bill 2021 (Cth)* (**Amendment Bill**) was introduced to Parliament on 20 October 2021 to make virtual meetings and electronic execution of documents permanent features of the *Corporations Act 2001 (Cth)* (**Corporations Act**).

The Amendment Bill builds on the framework set out in the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021 (Cth)* (**TLA1 Act**) which received Royal Assent and commenced on 14 August 2021.

Relief provided by the TLA1 Act expires on 31 March 2022. The Amendment Bill would apply to documents sent and meetings held on or after 1 April 2022. The Amendment Bill also applies to documents executed on or after the day the Amendment Bill receives Royal Assent.

Clearly, members of companies and registered schemes can expect a swift transition from current, temporary measures to a more permanent framework.

If the Amendment Bill is passed, it would be prudent for companies and registered schemes to consider the impacts this may have on the facilitation of members' meetings and execution of documents. The 'future-proofing' of constitutions, adoption of new technologies, and adherence with new governance requirements are all crucial issues to consider.

Key features of the Amendment Bill include:

DOCUMENT EXECUTION

The Amendment Bill introduces a new Part 1.2AA which provides that certain documents may be signed in flexible and "technology neutral" manners. This change applies to:

- > the signing of certain documents (including deeds) by or on behalf of a company under section 127 of the Corporations Act; and
- > the signing of documents which relate to certain meetings or resolutions.

Examples of such documents include (but are not limited to):

- > notices of meetings of members of a company or registered scheme;
- > notices of a resolution to be considered by the directors or members of a company without a meeting; or
- > a meeting of the directors of a company (including a meeting of a committee of directors).

It is important to remember that if documents are executed by companies under section 127 of the Corporations Act using technology, certain formalities need to be satisfied. Please refer to our legal alert on [Electronic execution for more information](#).

To ensure documents can be signed in flexible manners, the Amendment Bill makes clear that split execution of documents under section 127 of the Corporations Act will be valid. The Amendment Bill does not require:

- > persons to sign the same page of the document as another person, provided that each person's copy of that page is identical;
- > persons to use the same method to sign the document as another person; or
- > the document signed by a person to include all the information recorded in the document.

Section 126 of the Corporations Act is also amended to extend the ability of an agent to execute a document (including a deed), as well as make, vary, ratify or discharge a contract without the need to be appointed by deed. This abrogates the common law rule which requires an agent acting on behalf of a company to be appointed by deed in order for them to execute a deed on behalf of the company.

The Amendment Bill also proposes changes to expand the execution mechanisms in section 127 of the Corporations Act to include proprietary companies with a sole director and no company secretary.

MEETINGS

If the Amendment Bill is passed, companies, registered schemes and companies registered as bodies corporate under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) will be able to validly hold both physical and hybrid members' meetings from 1 April 2022 (as is presently the case under the TLA1 Act). However, wholly virtual meetings would only be permitted if they are expressly required or permitted by the constitution of a company, registered scheme or a company registered as a body corporate under the ACNC Act.

Regardless of the format in which a meeting is conducted, the Amendment Bill mandates that the meeting must give the members as a whole a reasonable opportunity to participate. This includes (but is not limited to):

- > holding the meeting at a reasonable time and place;
- > using reasonable technology to connect more than one physical venue or facilitate virtual attendance. For example, the technology used to facilitate virtual attendance would need to be sufficient to allow members to vote; and
- > allowing members to exercise any pre-existing right that they may have to ask questions or make comments, both verbally and in writing.

Notably, the Amendment Bill also provides a member, or group of members with at least 5 per cent of the votes, with the ability to require a listed company or registered scheme to appoint an independent person to observe or report on a poll conducted at a meeting.

ELECTRONIC NOTICES

The Amendment Bill introduces a new regime that covers electronic communication of documents in a new Part in Chapter 1 of the Corporations Act. It allows any meetings-related documents to be provided electronically or in physical form. Examples of such documents include (but are not limited to) notices of meeting, notices of a resolution or minute books. Importantly, a document can only be given electronically if it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference at the time that the document is given.

Documents relating to meetings would be also be considered to have been validly signed and given using electronic means, regardless of whether the meeting is a virtual, physical or hybrid meeting.

RELATED DOCUMENTS

- > [Electronic execution permissible again](#)
- > [Temporary relief ahead of AGM season](#)

CONTACT DETAILS



Jeremy Schultz, Partner
jeremy.schultz@finlaysons.com.au
+61 8 8235 7408



Lan Lam, Partner
lan.lam@finlaysons.com.au
+61 8 8235 7838



Andrew Dyda, Managing Partner
andrew.dyda@finlaysons.com.au
+61 8 8235 7706



Rebecca Pereira, Associate
rebecca.pereira@finlaysons.com.au
+61 8 8235 7447