

VIRTUAL MEMBERS' MEETINGS, ELECTRONIC COMMUNICATIONS AND ELECTRONIC EXECUTION OF DOCUMENTS

A large proportion of wine businesses are structured as companies. Many of those companies have old constitutions and all are subject to the Corporations Act, both of which were out of step with modern ways of doing business using information technology.

In our experience, many wine company meetings have not been validly held and many important documents (such as contracts) have not been validly executed because the out-dated laws have not been complied with.

Fortunately, the Corporations Amendment (Meetings and Documents) Act 2022 (Cth) (**Amendment Act**) has now made virtual members' meetings, electronic communications and electronic execution of documents permanent features of the Corporations Act 2001 (Cth) (**Corporations Act**).

The document execution amendments commenced on 23 February 2022 and the meetings and communication amendments commenced 1 April 2022.

The Amendment Act builds on the framework set out in the Treasury Laws Amendment (2021 Measures No.1) Act 2021 (Cth) (**TLA1 Act**) which commenced on 14 August 2021) ([Temporary Relief Ahead of-age Season](#)) and expired on 31 March ([Electronic-Execution-Permissible-Again](#)).

Key features of the Amendment Act include:

Document execution

The Amendment Act introduces a new Part 1.2AA into the Corporations Act, which provides that certain documents may be signed in a flexible and "technology neutral" manner. This change applies to:

- the signing of certain documents (including deeds) under section 126 of the Corporations Act (i.e. documents executed by an agent on behalf of a company) or under section 127 of the Corporations Act (by a director and company secretary); and
- the signing of documents which relate to certain meetings or resolutions.

Examples of such documents include:

- notices of meetings of members of a company;
- notices of a resolution to be considered by the directors or members of a company without a meeting; or
- notices of meetings of directors of a company (including meetings 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 ([Electronic-Execution-Permissible-Again](#)) for more information.

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

- sign the same form of the document as another person;
- sign the same page of the document as another person, provided that each person's copy of that page is identical;
- use the same method to sign the document as another person; or
- sign a document which includes all the information recorded in the document.

For example, a company may execute a document by one director signing a physical copy in "wet ink", and another director signing an electronic copy by electronic means.

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. If a company executes a document under section 126 of the Corporations Act, people will be able to rely on the assumptions in subsection 129(3) of the Corporations Act for dealings in relation to the company.

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

Meetings

Companies will be able to validly hold both physical and hybrid members' meetings from April 2022. However, wholly virtual meetings will only be permitted if they are expressly required or permitted by the company's constitution.

Regardless of the format in which a meeting is conducted, the Amendment Act 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 to 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.

Electronic notices

The Amendment Act 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 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 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.

Conclusion

The Government must review the operation of the provisions relating to meetings and electronic communications within approximately 2 years.

These amendments will be of great practical benefit to the owners of family wine businesses structured as companies. They will enable meetings to be lawfully held via an electronic platform and contracts to be executed in an efficient and convenient manner by directors signing separately and exchanging signed counterparts by email.

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