

## Article Information

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## Draft legislation released for permanent reforms for virtual meetings and electronic execution of documents

**Following on from the temporary relief announced in May 2020 in response to COVID-19, the Commonwealth government has released for consultation draft legislation proposing to make permanent and expand on, the changes to meeting requirements and execution of documents**

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### Overview of the changes

On 19 October, Treasury announced that it is proposing to 'make permanent and expand upon' the temporary changes to the *Corporations Act 2001* (Cth) (**Corporations Act**) in relation to virtual meetings and electronic document execution. This follows a successful outcome from the changes announced in May.

The draft explanatory materials note that 'companies have embraced the use of electronic means and alternative technologies to hold meetings and execute company documents. The use of these technologies has resulted in regulatory savings for industry and increased productivity'.

In summary, the key changes provide for:

#### *Execution of documents*

- electronic execution of company documents (including deeds), documents relating to meetings and documents lodged with ASIC;
- observing the fixing of the common seal via videoconferencing; and
- directors / secretaries signing different copies or counterparts of the document (whether physical or electronic form) where executing under section 127 of the Corporations Act;

#### *Meetings*

- meetings (including directors meetings, shareholder meetings and meetings of members of a registered scheme) being held as virtual or hybrid meetings provided all persons entitled to attend the meeting have reasonable opportunity to participate;
- notices of meetings and other documents relating to meetings to be communicated electronically to prospective attendees, provided they include 'sufficient information' to allow those entitled to attend to participate using virtual meeting technology. For example the dial in details or a link to the relevant website;
- meeting documents to be sent to the recipient's nominated email address or to another electronic address that the sender believes on reasonable grounds to be that person's recent electronic address;
- documents being tabled at a virtual meeting by giving the document before or at the meeting;
- voting at a virtual or hybrid meeting being required to be taken on a poll with participants given the opportunity to elect to either vote in real time or, if practicable, in advance of the meeting; and
- the minutes of virtual meetings of shareholders and members of registered schemes to 'include any questions or comments submitted by a shareholder or member (before or during the meeting)'.

The new rules relating to electronic execution and electronic meetings (with the exception of changes relating to the time and place of meetings) will apply as sections of the Corporations Act rather than replaceable rules, meaning that a company's constitution cannot displace or modify the rules.

Treasury believes the changes will ensure corporate accountability and transparency and provide companies flexibility when engaging with their shareholders, reduce costs and drive efficiencies. This will be particularly important for smaller listed companies and those facing tight liquidity, but will also have positive consequences for the environment via the impact from reduced paper and printing. Whilst retail shareholder advocate groups have voiced concerns that a lack of physical meetings may limit the capacity of retail shareholders to keep Boards accountable for their actions, holding AGMs that are accessible to all shareholders wherever they are physically located may increase participation and accountability.

The draft legislation can be found here [\[Exposure Draft\] Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020](#) and [Exposure Draft Explanatory Materials](#).

The proposed changes aim to facilitate the use of electronic means and alternative technologies to hold meetings and execute company documents and ultimately reduce the cost and burden of complying with regulatory requirements. The rules do not preclude companies from using a traditional approach.

The draft legislation also includes a provision for a review of the effectiveness of the changes after the end of five years after the new rules apply and that a written report must be prepared.