

Article Information

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New consultation released: draft legislation for permanent reforms for virtual meetings and electronic execution

The government recently released for consultation draft legislation (*Treasury Laws Amendment (Measures for Consultation) Bill 2021*) (Consultation Bill) that proposes to make permanent changes to enable electronic execution of company documents, distribution of meeting-related materials and use of technology in meetings.

Context of proposed amendments

- The *Treasury Laws Amendment (2021 Measures No.1) Bill 2021* (**2021 Measures Bill**) was introduced to allow companies and registered schemes to hold virtual meetings and electronically sign documents until 15 September 2021. That Bill is yet to be passed. See our earlier update [here](#).
- The Consultation Bill proposes to amend, and add to the previous reform proposals outlined in the 2021 Measures Bill. In particular, the Consultation Bill clarifies the use of hybrid and virtual meetings and provides additional detail around how electronic execution is to be undertaken.
- Unlike the 2021 Measures Bill, which has a sunset period of 15 September, the reforms under the Consultation Bill would be permanent from commencement, which will likely be from 15 September 2021.
- Submissions on the Consultation Bill are open until 16 July 2021 (see [here](#)).

Hybrid and virtual meetings

The Consultation Bill provides that a company may hold a meeting:

- at one or more physical locations (a physical meeting);
- at one or more physical locations and using technology to allow virtual attendance (a hybrid meeting); or
- using technology to allow members to attend virtually – but only if this is expressly permitted in a company's constitution (wholly virtual meeting).

Regardless of how a meeting is conducted, the members as a whole must be given a reasonable opportunity to participate. The Consultation Bill and its explanatory note clarifies this to mean that:

- For a physical meeting or a hybrid meeting, the physical venue for the meeting must be reasonable. If there is more than one physical venue, only the main physical venue (as set out in the meeting notice) needs to be reasonable. The reasonableness of a physical venue could be determined by considering where the company or registered scheme is registered, where the members reside or where the directors are located.
- The meeting must be held at a reasonable time.
- Reasonable technology must be used to connect more than one physical venue or facilitate virtual attendance.
- Where members have a right to speak, comment or ask questions, the member must be given the right to do so either orally or in writing.
- If a document is tabled at a meeting, a copy of the document must be made reasonably accessible to the members

as a whole, either before or during the meeting. At a virtual meeting, this could be done by screencasting the document.

The Consultation Bill permanently allows any document that relates to a meeting to be given electronically and signed electronically (for example by email or by providing a link to a website).

Importantly, a document can only be given electronically if the person receiving the document has not opted to receive the document in hard copy.

Minutes may also be recorded and kept electronically if it is reasonable to expect that the information would be readily accessible so as to be usable for subsequent reference.

Request for independent reports on polls

The Consultation Bill provides that a member or group of members with 5 percent of voting power may request that the company or responsible entity appoint an independent person to observe and/or prepare a report on the conduct of the polls at the meeting of the members. The independent person is appointed at the company or responsible entity of the registered scheme's cost and any report prepared by the independent person must be made available to the members within a reasonable time.

Electronic execution

The Consultation Bill provides a statutory mechanism for companies to execute electronically. Some key points to note:

- the fixing of a seal can be witnessed electronically (for example via videoconference);
- a document may be executed by the sole director of a proprietary company that does not have a company secretary;
- individuals can sign a copy or counterpart of the document (rather than the original);
- a technology neutral approach has been taken and the Consultation Bill does not mandate the use of any particular type of technology; and
- people dealing with companies are entitled to assume that a document is validly executed if the new rules are followed. This replicates the assumptions in the Corporations Act.

A director, secretary or witness may electronically sign the document (or a copy or counterpart of the document) if three conditions are satisfied:

- the copy must include the entire contents of the document;
- a method must be used to identify the person and indicate their intention to sign the document; and
- the method must be as reliable as appropriate for the purposes for which the document was generated or proven in fact to have indicated the person's identity and intention.

Key points to note

- The Consultation Bill only permits fully virtual meetings if the company's constitution permits them (regardless of whether the constitution was amended before or after the commencement of the reforms). Each company will need to consider their constitution and make any necessary amendments to accommodate the incoming changes.
- It is not clear when the Consultation Bill will be passed by Parliament. The explanatory note to the Consultation Bill notes that work is being undertaken to ensure the changes can be progressed in the Spring sitting even if the 2021 Measures Bill is not passed.