

Australia—New virtual meeting and electronic signing provisions for companies in response to coronavirus (COVID-19)

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Restructuring & Insolvency analysis: In a significant development for companies, including companies in external administrations, the Federal Treasurer has exercised the temporary instrument making power granted recently to modify the Corporations Act 2001 (Act), the Corporations Regulations 2001 (Regulations) and the Insolvency Practice Rules (IPR) to allow:

Source: Federal Register of Legislation

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- virtual meetings (such as meetings of shareholders, creditors and those relating to managed investment schemes)—and
- electronic execution of documents by a company for the purpose of s 127 of the Act and ‘split executions’ where more than one officer is signing

These changes will be in effect for 6 months from 6 May 2020.

Virtual meetings

The [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#) (Determination) was made pursuant new powers granted to the Treasurer under the s 1362A of the Act to respond to coronavirus.

The Determination applies to meetings required or permitted to be held under the Act, the Regulations or the IPR (such as meetings of shareholders, creditors or managed investment scheme meetings).

Under the Determination, to hold a virtual meeting the following conditions must be satisfied:

- the notice information for the meeting must include details about how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so)—
- if notice of the meeting had already been given before the commencement of Determination, at least seven days before the meeting is held, a fresh notice of the meeting must be given that includes those details—
- a duly appointed proxy holder must be treated in the same way as if he or she attended the meeting in person

If those conditions are met, meetings may be held in the following manner:

- a meeting may be held using one or more technologies that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place—
- all persons so participating in the meeting are taken for all purposes (for example, a quorum requirement) to be present at the meeting while so participating—
- a vote taken at the meeting must be taken on a poll, and not on a show of hands, by using one or more technologies to give each person entitled to vote the opportunity to participate in the vote in real time and, where practicable, by recording their vote in advance of the meeting—
- a requirement to allow an opportunity for persons attending the meeting to speak (for example, by asking questions) may be complied with by using one or more technologies—
- a proxy may be appointed using one or more technologies specified in the notice of the meeting—
- notice of a meeting may be given, and other related information provided, by using one or more technologies to communicate:

- (a) the contents of the notice and the other information—or
- (b) details of an online location where such items can be viewed or from where they can be downloaded—

Example: A company has email addresses for some of its members. Under this paragraph the company could send those members an email setting out or attaching notice of a meeting, and other material relating to the meeting, or providing a link to where the notice and other material can be viewed or downloaded. To the other members the company could send a letter or postcard setting out a URL for viewing or downloading the notice and other material.

The Determination is also expressed to modify the relevant statutory provisions which give effect to or provide a means of enforcing a provision of a constitution of company or registered scheme, or in any other arrangement, that requires or permits a meeting to be held or regulates giving notice of a meeting or conduct of a meeting.

Execution of documents

The Determination modifies the operation of s 127 of the Act to allow company officers to sign documents electronically. To do so, a method must be used to identify the person in the electronic communication (within the meaning of the Electronic Transactions Act 1999) and to indicate the person's intention in respect of the contents of the document. That method must be:

- as reliable as appropriate for the purpose for which the company is executing the document, in light of all the circumstances, including any relevant agreement—or
- proven in fact to identify the person in the electronic communication and to indicate the person's intention in respect of the contents of the document.

A signed copy or counterpart or an electronic communication must include the entire contents of the document, but need not include the signature of another person signing the document. Accordingly, where more than one officer is signing, 'split executions' are permitted.

If it appears that a document has been executed in accordance with the Determination, a third party receives the benefit of the statutory assumption under s 129(5) of the Act regarding execution.

Key takeaways

The temporary modifications regarding virtual meetings provide much needed flexibility while social distancing restrictions remain in place. In particular, applications to court by external insolvency administrators for dispensations from the usual statutory requirements relating to holding of creditor meetings, such as those we reported on in a previous update will not be necessary for the next six months.

The modifications relating to execution of documents also temporarily provide flexibility and certainty as to validity when company officers sign documents electronically.

This article first appeared on LexisNexis Practical Guidance Australia—Insolvency Module.