

30 October 2020

Ms. Christine Barron
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: businesscomms@treasury.gov.au

Dear Ms. Barron

Exposure Draft Bill: Making permanent reforms in respect of virtual meetings and electronic document execution (Draft Bill)

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia supports the proposed amendments to the Corporations Act 2001 (the Act) to permit the use of digital technologies to facilitate both the conduct of meetings and the execution of documents required under the Act. This is a sensible step in modernising the Act.

We make the following suggestions in respect of the Draft Bill:

Regulatory oversight and guidance

Regulatory oversight and guidance provided by the Australian Securities and Investments Commission (ASIC) to support the proposed technology-based provisions being introduced into the Act will be important in ensuring the success of these important changes. Such oversight and guidance will support the proposed changes and ensure the right balance is achieved between:

- technology-based simplification of corporate compliance with statutory obligations around holding meetings and the execution of documents, and
- ensuring the rights of shareholders and members are protected and that they are not disadvantaged in any way by the introduction of proposed technology-based statutory provisions.

We highlight below a few matters that we believe would be better addressed in regulatory guidance developed by ASIC, whilst providing a principled framework through provisions in the Act:

- cybersecurity considerations that apply to both virtual meetings and electronic execution of documents
- guidelines around proxy voting in virtual or hybrid meetings
- proposed section 253Q(1) will require the virtual meeting technology to allow a reasonable opportunity for persons to participate in a virtual meeting. Whilst we support these proposals, we suggest establishing guidelines around the term 'participate'. For example, such guidance could include criteria to ensure members participating in a virtual meeting have the opportunity to be heard and provided a response where appropriate.

- clarity around what is meant by “sufficient information to allow members to participate in the meeting by means of technology” in section 249L(1)(a)(iii). For example, sufficient information could include a hyperlink, secure access details such as passwords, testing or trial facilities etc.
- consideration of backup plans in case of technology or other failure experienced by the company hosting the virtual meeting
- proposed subsection 127(3C) allows for the signing of a document that does not necessarily include another person’s signature. Presumably this enables circulation of documents to multiple parties simultaneously for their signatures. In such cases, we suggest guidelines be provided around compiling all electronic signatures into the final document.

Electronic communication of documents

Although the Draft Bill considers the electronic communication of documents pertinent to meetings, it does not address the communication of annual financial reports that may be required to be communicated to members prior to being laid at the Annual General Meeting of a company. We note that companies (other than companies limited by guarantee), registered schemes or disclosing entities have the option to provide the annual financial report through a website (section 314(1AA)(b)). A similar option is not available to companies limited by guarantee under section 316A. Whilst we appreciate a company limited by guarantee will only have to provide a copy of the annual financial report to those members who have made an election to receive a hard copy or an electronic copy under 316A(1), similar to the option available to other companies under section 314, we believe companies limited by guarantee should also have the option to provide the annual financial report through a website. We note that companies limited by guarantee that are also charities registered with the Australian Charities and Not-for-profits Commission (ACNC) do not have similar obligations as those set out in section 316A. The members of such entities are able to access the annual financial report from the ACNC website.

If you require further information on the views expressed in this submission, please contact Ram Subramanian, Policy Adviser – Reporting, on +61 3 9606 9755 or at ram.subramanian@cpaaustralia.com.au.

Your sincerely

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