

Dear Sir/Madam

Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Use of technology for meetings and related amendments (Bill) and accompanying Explanatory Memorandum (EM).

Introduction

We note that the Government is seeking stakeholder views on the Bill which aims to support companies and their officers to use technology to satisfy Corporations Act 2001 requirements. We thank you for the opportunity for the FSC to make this submission which includes FSC's feedback on the Bill. The FSC is supportive of many of the proposals set out in the Bill and EM, and our comments and suggestions are made with a view to improving the new regime.

Submissions

Overall, we support the intent of the exposure draft Bill, which facilitates the use of technology in meetings, to execute company documents and send meeting-related materials. In particular, we note that as stated in the EM 1.17, "The new law takes a technology neutral approach and does not mandate the use of any particular type of technology. Rather, a range of technologies may be used including digital platforms and new technologies that may emerge in the future." We agree with this approach.

We would like to raise the following points for your consideration as follows.

Different sources of law

As stated in 1.13 of the EM, Schedule 1 of the Bill provides a permanent statutory mechanism for companies to execute documents electronically. We note that the States and Territories have also introduced permanent or Covid-19 related temporary measures to allow for electronic signing and witnessing of documents.

Whilst the Corporations Act changes apply specifically to company documents we would like to highlight the challenge for all parties where different rules and requirements apply to different documents at a Federal and State level. Parties signing and witnessing documents need to determine if the Corporations Act requirements apply and/or if the Electronic Transactions Act (Cth) requirements apply. Similarly, parties need to determine which of the relevant State or Territory requirements apply.

While this is not directly within the scope of this consultation, we would like Treasury to consider if further improvements can be made to simplify or align the current various requirements.

Method of Identifying the signatory

We note that Schedule 1 to the Bill provide a permanent statutory mechanism for companies to execute documents electronically (noting that the secretary, director or witness may sign the document electronically). One of the conditions stated in EM 1.15 is:

"Further, the 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 [emphasis added].

[Schedule 1, item 14, section 1679F]"

It would be beneficial if guidance can be provided as to what methods might be considered appropriate for how a person's identity can or should be verified when signing electronically.

Reliance on Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 commencing before the Bill.

We refer to the Application and transitional provisions – it would seem this exposure draft Bill currently relies on Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 commencing before the Bill. We note the dependency here and have concerns that the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 has not yet passed Parliament.

Priority should be given to the passage of Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 to ensure no unintended consequences for this Bill. That said, we note that the EM confirms that “work is also being undertaken to ensure that these amendments can be progressed in the Spring sitting period even if Treasury Laws Amendment (2021 Measures No. 1 Bill 2021) does not receive passage” and we would confirm that this should be a focus moving forward.

We would welcome the opportunity to discuss further any queries you may have in connection with FSC's submissions.

Regards

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The FSC conducts its meetings, and requires its members when participating in its meetings to conduct themselves, in accordance with all legal obligations. Please refer to [this link](#) which sets out the FSC rules for conduct of meetings and the FSC competition law compliance statement.

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