

Corps Act amendments

Reporting Update

4 March 2022, 22RU-06



Use technology to execute documents

Hold meetings in person or remotely

**Received royal assent
22 February 2022**

Highlights

- In a nutshell ...
- Temporary relief made permanent
- Signing and executing documents
- Hybrid/virtual meetings

In a nutshell ...

The purpose of the [Corporations Amendment \(Meetings and Documents\) Bill 2022](#) (the 2022 Bill) is to amend the *Corporations Act 2001* (Corps Act) to allow:

- companies to use technology to execute company documents such as contracts and deeds and to also sign meetings-related documents and provide those to their members
- companies and registered schemes to hold hybrid meetings, such as annual general meetings (AGMs) – giving members the option of either attending in person or remotely.

The 2022 Bill passed by both Houses of Parliament on 10 February 2022. The 2022 Bill received royal assent on 22 February 2022.

Specifically, the reforms provide greater certainty and flexibility to companies and registered schemes by:

- allowing them to hold physical and hybrid meetings, and if expressly permitted by the entity's constitution, wholly virtual meetings
- ensuring that technology used for virtual meetings allows members to participate in the meeting verbally and in writing
- allowing them to use technology to execute documents electronically, including corporate agreements and deeds
- allowing them to send documents in hard or soft copy and give members the flexibility to receive documents in their preferred format.

"The 2022 Bill now makes permanent the changes noted above.

These changes are welcomed by entities given the continuing evolving COVID-19 impacts on physical meetings and deliverables.

They are an effective modernisation of the provisions of the Corps Act."

**Michael Voogt
Director, Department of Professional Practice**

Temporary relief made permanent

Measures up to 21 March 2021

In May 2020 the government issued relief measures contained in [Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020](#) (Determination) that temporarily allowed companies and registered schemes to use technology to satisfy their obligations relating to meetings and document execution. These relief measures expired on 21 March 2021.

Measures from 14 August 2021

The [Treasury Laws Amendment \(2021 Measures No. 1\) Act 2021](#) (the 2021 Act) ensured that the changes made by the determination remained available to companies and registered schemes throughout the COVID-19 pandemic and associated global crisis. The changes made by the 2021 Act commenced on 14 August 2021 and are due to expire on 31 March 2022.

Measures in between

For the period between 21 March 2021 and 14 August 2021 ASIC adopted various 'no-action' positions around convening and holding AGMs using virtual technology. The 'no-action' positions did not cover the electronic execution of documents.

Virtual-only relief extended

In March 2022 ASIC issued [ASIC Corporations \(Virtual-only Meetings\) Instrument 2022/129](#) (AI 2022/129) which will commence on 1 April 2022. AI 2022/129 allows the following entities to hold virtual-only meetings of their members:

- listed companies together with listed and unlisted registered schemes – from the expiry date of the Measures Bill (31 March 2022) to 31 May 2022
- unlisted public companies – from the expiry date of the Measures Bill (31 March 2022) to 30 June 2022.

Conditional relief

The relief in AI 2022/129 is conditional on the directors of a company, or responsible entity of a registered scheme, passing a resolution that it would be unreasonable for the company or registered scheme to hold a meeting of its members, wholly or partially, at one or more physical venues due to the impact of the COVID-19 pandemic.

Moving forwards

The [Corporations Amendment \(Meetings and Documents\) Bill 2022](#) (the 2022 Bill) effectively makes the above relief measures to use technology to satisfy their obligations relating to meetings and document execution a permanent part of the Corps Act.

While the 2022 Bill also enabled companies and registered schemes to hold their AGMs using virtual technology only, this is limited to entities who have amended their constitution to expressly require or permit virtual meetings.

Signing and executing documents

Electronic execution of documents

The 2022 Bill included measures to facilitate the electronic execution of company documents to meet the requirements in the Corps Act relating to:

- executing company documents
- executing documents relating to meetings
- recording, keeping and providing minutes
- providing notice of a meeting and give other documents relating to meetings to the prospective attendees.

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Technology neutral

The 2022 Bill takes a technology neutral approach and does not mandate the use of any particular type of technology. There are a range of different technologies that are currently in use, such as, online platforms or using stylus tools to sign PDFs. The 2022 Bill is also sufficiently flexible to allow for the use of other technologies that may be developed in the future.

Nothing in the 2022 Bill prevents a document from being signed in the traditional manner or using traditional practices.

Effective date

The above measures contained in the 2022 Bill are effective from 23 February 2022.

Hybrid/virtual meetings

Summary of key features

The 2022 Bill makes permanent changes to clarify that companies and registered schemes can use technology to hold meetings. Companies may hold a meeting at:

- one or more physical locations (a physical meeting)
- one or more physical locations and using technology to allow persons to attend virtually (a hybrid meeting), or
- using technology to allow members to attend virtually if this is expressly permitted or required by the constitution (a wholly virtual meeting).

How meetings may be held

The change is not prescriptive about how a meeting should be conducted. It does not mandate a particular format for a meeting or a particular way in which a show of hands or a vote on a poll is to be conducted.

Reasonable opportunity to participate

Regardless of how a meeting is conducted, the members as a whole must be given a reasonable opportunity to participate. This requirement has several components as detailed in the 2022 Bill.

All persons participating in the meeting (whether by being physically present or using electronic means) are taken to be 'present'.

Ability to ask questions

The 2022 Bill makes explicit that the technology used to facilitate virtual attendance must allow members to exercise any pre-existing right that they may have to ask questions or make comments both verbally and in writing.

Use of polls

The 2022 Bill also provides that votes on resolutions which are set out in a meeting notice paper for a meeting of a listed entity's members must be conducted by way of a poll. This requirement is not a replaceable rule and will need to be complied with even if there is a contrary clause in the company's constitution.

Independent poll scrutiny

The 2022 Bill provides that certain members of listed companies and registered schemes may request that the company or responsible entity appoint an independent person to observe and/or scrutinise and prepare a report on the outcome of the polls at the meeting of the members.

Effective date

The above measures contained in the 2022 Bill are effective from 1 April 2022.

Annual General Meetings (AGMs)

Public companies (listed and unlisted) are generally required to:

- dispatch notices to convene an AGM
- hold AGMs within five months of the end of the relevant financial year.

Convene an AGM

The 2022 Bill permits the dispatch of notices of meeting by electronic means.

Examples of such documents include:

- notices of meetings
- notices of a resolution or a record of a resolution
- notices of a statement in relation to a meeting or a matter to be considered at a meeting
- minute books.

A document may be provided either by:

- sending the document in physical form
- giving the document to the person by using electronic means (for example, sending an email)
- providing the person, in physical or electronic form, with details sufficient to allow them to view or download the document electronically (for example, by giving them a card or sending them an email with a link to a website), or
- in any other permitted way (for example, in a way permitted by a more specific provision which deals with how a particular type of document is sent to a person or in a way which is set out in a company's constitution).

However, a document can only be given electronically if it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference at the time that the document is given.

Methods to provide documents

Should be useable

Annual reports

Annual reports and documents prescribed in the regulations are taken to be sent if they are made readily available on a website. It is expected that companies and registered schemes would satisfy this by publishing the document on their website or a share registry website.

A member may elect to receive documents in physical form or electronically.

Hold virtual meetings

Consider constitution of entity

Hold an AGM

Some entities may wish to hold their AGM using technology instead of traditional physical meetings. This could take the form of online meetings (virtual) or physical and online meetings (hybrid).

Entities need to check whether their constitution restricts meetings being held in this way. Entities that are concerned about the validity of virtual meetings may wish to seek legal advice.

To assist companies and responsible entities, ASIC has historically issued:

- [guidance](#) setting out its views on the appropriate approach to calling and holding meetings using virtual technology
- [FAQs](#) on holding virtual meetings on or before 31 March 2022.

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