

6th November 2020

Manager

Market Conduct Division

The Treasury

Langton Crescent

Parkes ACT 2600

**By email:** businesscomms@treasury.gov.au

Dear Madam or Sir,

**Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020**

**Exposure Draft Consultation**

Thank you for the opportunity to provide comments in relation to the proposals contained in the Exposure Draft for the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (the “**Bill**”)

Boardroom Pty Limited (‘**BoardRoom’**) is a leading Australian provider of professional services to both listed and unlisted entities. Founded in 1983 (then called Registries Limited), BoardRoom is now a wholly owned subsidiary of Singapore based Boardroom Limited, one of the largest professional services providers in the Asia/Pacific region with offices in Singapore, China, Hong Kong and Malaysia, as well as Australia. The Boardroom Group services over 5500 publicly listed and unlisted companies and employees over 600 staff.

The services provided by BoardRoom include securities registry management services, predominately servicing companies and managed investment schemes, and corporate secretarial services to entities both listed and unlisted.

BoardRoom has listed clients on both the Australian Securities Exchange (“ASX”) and the National Stock Exchange (“NSX”), ranging in size from small entities with a minimal number of securities holders to large corporates with registers of members approaching 200,000 securities holders. An integral component of the service provided to many of our clients involves the planning and management of meetings (AGMs and GMs).

A few years ago, BoardRoom assisted one of its clients to conduct a hybrid AGM, combining online access to the meeting as well as the ability for shareholders to attend in person if they wished. We have also assisted a client to conduct its AGM across two venues, one in Australia and the other in Singapore. Voting on resolutions was, in both cases, conducted by polls. In the past nine (9) months, we have assisted many of our clients to conduct their AGM or GM using a variety of the virtual meeting technologies available.

As such, BoardRoom has direct experience in, and clear understanding of the challenges facing companies and schemes in relation to the subject matter of the Bill.

**Support for the proposals contained in the Bill**

BoardRoom supports the amendments contained in the Bill.

In the past, there have been a number of proposals put forward to address some of the issues that have been identified in relation to the conduct of AGMs and GMs and the distribution of notices of these meetings (for example the “Technology neutrality in distributing company meeting notices and materials” Proposal Paper issued in May 2016). BoardRoom has been supportive of these proposals as a sensible means of recognising the changes in communication methods brought about by technology.

BoardRoom considers that the temporary relief measures implemented to support the holding of virtual and hybrid AGMs and GMs have been shown to have provided a balanced outcome for issuers (companies and registered schemes) as well as investors.

We consider that the proposed changes to allow for electronic signature of company documents is also a welcome change that has worked well during the disruption caused by the COVID-19 restrictions and should become a permanent feature.

**Specific Comments**

***Proposed section 253Q.***

In subsection 253Q(4) there is the requirement for the opportunity to be given to persons participating in the meeting to vote at the meeting or to record a vote in advance of the meeting. It is our recommendation that this provision dealing with virtual meetings be expanded to clarify what is meant by subsection 253Q(4)(b) “where practical, record a vote in advance of the meeting”.

There are already provisions requiring a company or registered scheme to enable members to lodge a proxy (for example sec 250A and 250B). However, these provisions deal with a member of a company or a registered scheme appointing another person (their proxy) to attend the meeting and vote on their behalf. The appointer can direct the proxy how to vote or leave the manner of voting to the proxy’s discretion.

To provide another pathway for a member to lodge a vote, a number of companies have successfully introduced what is known as Direct Voting. This method gives a member of the company the opportunity to by-pass appointing a proxy and simply lodge their vote directly wit the company. Many companies (such as Bendigo and Adelaide Bank Limited) have adopted specific rules to be applied in relation to the Direct Voting process.

The Direct Voting process has been adopted based on changes to the constitution of a company. However, the need to change the constitution has prevented widespread adoption and use.

It is our contention that the new sec 253Q be amended to provide a legislative framework for Direct Voting. That framework would then support the provision of voting in advance of the meeting. The structure of any legislative framework in relation to Direct Voting would be able to be developed based on the constitutional provisions and process rules that have previously been developed by companies.

***Proposed subsection 253R(3).***

While understanding the intent of this subsection, we believe it would be clearer for the opening wording of the section to be:

(3) If a company or registered scheme does not provide an opportunity for members or other entitled persons to physically attend the meeting:

***Definition of “electronic communications”***

As noted previously, BoardRoom had been supportive of the proposals contained in the “Technology neutrality in distributing company meeting notices and materials” Proposal Paper issued in May 2016.

In discussions with regulatory officials in respect of the proposals, it was emphasised any change would need to be constructed in such a way as to allow new forms of communication to be adopted without the need to undertake further amendment to the Corporations Act. Since that time, the methods available to companies and registered schemes, to communicate with their members has continued to grow. Many organisations now regularly use SMS to contact members and customers to advise of changes or to remind of an upcoming closing date. These SMS can contain links to websites if required.

The proposed definition appears to be broad enough to encompass many existing and new forms of communication. It is suggested however, there would be benefit in making available some guidance in relation to the types of electronic communication that will be acceptable. That could be achieved by either including additional definitions of the likes of email and SMS.

***Proposed subsection 105A(4)***

The current wording does not require an electronic communication to have been sent before it is deemed to have been received. Thus, while accepting it is not the intent, it is possible to argue that an electronic communication has been received by members due to the communication being capable of being retrieved, even if there has not been a communication to a m\ember to advise the communication is available.

We suggest for the sake of abundant caution, there be a requirement included that an electronic communication be required to be sent before it can be received.

***Proposed amendment to subsection 251A(1)***

This amendment is removing the reference to “or otherwise authenticated in a manner prescribed by the regulations”.

We suggest this wording needs to remain in place.

The wording was inserted at the time supportive provisions were included in relation to proxy appointments submitted electronically through an internet based method. In those cases, there is no proxy appointment lodged and hence no document that can be signed, either physically or by electronic means.

Therefore, to remove the wording would leave open the possibility of argument whether proxy appointments lodged via an internet based system would be valid.

It is BoardRoom’s experience that there are many instances of disputes arising in relation to the validity proxy appointments, based on challenges to the manner in which the form was signed (or authenticated) or the lodgement of the proxy appointment documents. As a result we strongly suggest the provisions in Sec 250A and 250B be reviewed to make it abundantly clear that a proxy appointment can be signed by electronic means (as well as authenticated in accordance with the regulations).

Further, we recommend that the current wording of subsection 250BA(1) be retained and the only addition be the wording in proposed subsection 250BA(1)(b).

***Alignment of provisions relating to companies with those relating to registered schemes***

There have been a number of amendments to the provisions dealing with the conduct of meetings. Many of those have only been enacted in relation to meetings of companies. For example, the provisions in section 250C dealing with the transfer of proxies to the Chair in certain circumstances, are not replicated in the provision relating to meetings of registered schemes. That has enabled there to continue to be instances where a person appointed as a proxy has failed to accept a proxy appointment and hence not voted where the direction they have been given by the member, is contrary to the result to proxy appointee wishes to see.

It is BoardRoom’s contention the provision relation to meetings of companies be, as far as is practicable, be aligned with those applying to meetings of registered schemes, thereby removing the possibility of members being disenfranchised.

We tryust you will take the above comments into consideration in your deliberations concerning the Bill. Should there be anything you wish to discuss, please contact the writer on Direct Phone 02 9290 9673, mobile 0412 149 212 or email martin.jones@boardroomlimited.com.au.

Yours sincerely



Martin Jones

**General Manager Corporate Governance**