



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

Manager, Market Conduct Division

The Treasury

Australian Government
Langton Crescent
Parkes ACT 2600

Sent by email: businesscomms@treasury.gov.au

30 October 2020

Re: Exposure Draft: Making permanent reforms in respect of virtual meetings and electronic document execution

Dear Madame or Sir,

Led by investors responsible for assets under management in excess of US\$54 trillion, the International Corporate Governance Network (ICGN) is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 50 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide.¹ We have a strong membership base in Australia and most of our investor members will have equity and debt holdings in Australian companies.

We are pleased to comment with regard to the Exposure Draft "*Making permanent reforms in respect of virtual meetings and electronic document execution.*" This is an important topic that has relevance to institutional shareholders, and it is a shame that the consultation timeframe is so short.

The Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 ("Bill") covers two related, but different, topics relating to technology and corporate law. We will not comment on the electronic communications aspect of the Bill, but are generally sympathetic with the need to facilitate the digital transformation that is facing all companies with regard to electronic documentation and communications.

¹ For more information on ICGN see: <https://www.icgn.org>

However, we would like to comment on the virtual shareholder meetings dimension to the Bill. While the development of virtual meetings has featured in some markets globally pre-Covid-19, this is a topic that has generated considerable attention in the investor community in 2020—given that virtual meetings proved necessary if they were to occur at all. Earlier this year ICGN produced a global overview of how annual general meetings (AGMs) were taking place in different markets around the world in response to Covid-19, and it documents how virtual meetings took place in markets where they were previously not allowed.²

There can be benefits to virtual meetings if they are structured and managed well. For one thing it makes it more practical for institutional investors to take part in multiple AGMs without having to travel—including the possibility to attend AGMs in different jurisdictions on the same day in many cases. But there are also potential disadvantages that could weaken shareholder rights if virtual meetings are structured or managed poorly. Many investors believe that board accountability to shareholders is heightened in physical shareholders meetings and are concerned about having their rights diluted through virtual meetings-- particularly with regard to handing investor questions and spontaneous dialogue.

This begs the question about what a post Covid-19 environment might look like in terms of virtual shareholder meetings. In this ICGN context produced a subsequent Viewpoint report in September 2020 “The Future of Annual General Meetings” which seeks to establish what the “groundrules” might be for future virtual AGMs.³ We encourage you to review this Viewpoint report to gauge the perspective of the international investment community. Ultimately, we advocate a “hybrid” meeting as the best way forward and articulate in our report an investor perspective on what the basic groundrules should be.

With regard to your Bill, this means that we would strongly discourage reverting to virtual only meetings. The goal should be to take advantage of virtual technology, but also to replicate as best as possible an in-person shareholder meeting through allowing the physical presence of shareholders.

² See ICGN Viewpoint “How markets are handling shareholder meetings during the Covid-19 health emergency” (March 2020): <https://www.icgn.org/how-different-markets-are-handling-shareholder-meetings-during-covid-19-coronavirus-health-emergency>

³ ICGN Viewpoint “The Future of Annual General Meetings” (September 2020): <https://www.icgn.org/future-annual-general-meetings>

Key features of high-quality virtual shareholder meeting environment

As detailed in ICGN's recent Viewpoint we see the following key features as critical to high-quality interactive virtual shareholder meetings:

- Virtual meetings should be in video format, audio-only is inadequate and should be discontinued. While video format is undoubtedly more complicated logistically and more expensive, an audio-only meeting does not allow participants to observe company representatives as they make their statements and answer shareholder questions, as well as see the reaction of the audience. The ability of meet directors face-to-face and question them directly is the main attraction of attending an AGM and is best replaced by video format.
- Any participant should be able to address the shareholder meeting on request – advance requests as well as “open microphone” approaches should be accommodated. Shareholder statements, whether supportive or critical of the Board and management, represent an important part of shareholder meeting proceedings and are an important tool for exercising effective stewardship for investors.
- Companies should ensure that all shareholder proposals on the agenda are voted on, including making contingency provisions in the event the proponent may have difficulty in joining and presenting the proposal at the virtual meeting.
- Any participant should have a possibility to ask questions of the board, as well as the ability to follow up on their question if they found the answer unsatisfactory – for virtual participants this should be similar to holding a microphone in a physical meeting.
- All questions raised to the Board/management in advance of and during the meeting should be made public. There should be ultimate transparency around all the questions asked. Ideally, this should be done in real time in the same way as it would happen in a physical meeting. Questions should come from named shareholders, in an audio/video format, and follow up opportunity should be provided. Availability of a public chat function can increase the number and diversity of questions, while technology that allows participants to “like” or “support” questions they would like to have answered can help companies prioritise written questions during the meeting.
- Virtual participants should be able to cast live votes during the meeting. The ability to cast live votes would enable investors to take the explanation from Board members for a particular agenda item into account when exercising their voting rights.

- Using a universal proxy card should facilitate dealing with contested director elections in a virtual environment.

We have also been in contact with our colleagues at Australian Council of Superannuation Investors (ACSI) regarding this consultation and support the comment letter they drafted on this matter. We hope and believe that our response complements ACSI's letter by adding the perspective of the international investment community.

We hope these comments are helpful with regard to your deliberations on these matters. Please contact ICGN Policy Director George Dallas if you would like to discuss this in further detail: george.dallas@icgn.org

Yours sincerely,



Kerrie Waring
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