

30 October 2020

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By email: [Pratiksha.Hebbandi@TREASURY.GOV.AU](mailto:Pratiksha.Hebbandi@TREASURY.GOV.AU)

Dear Pratiksha

### **Response to proposed Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020**

Link Group Limited (**Link Group**) welcomes the opportunity to provide feedback on the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (**Bill**).

Link Group's subsidiary, Link Market Services Limited:

- provides registry services to over 1,000 clients in Australia, of which 470 clients are listed on the Australian Securities Exchange; and
- conducts over 700 meetings on behalf of its clients each year.

Company Matters Pty Limited, another Link Group subsidiary, provides governance, company secretarial and legal support to over 400 clients each year, from S&P/ASX 20 entities to small caps, joint ventures and not for profits, and is well placed to provide feedback about some of the proposed changes.

For a number of years, Link Group in its own right and on behalf of its clients has been vocal and supportive of initiatives to introduce technological solutions and for existing laws to be amended particularly in the areas of the distribution of meeting notices and materials and the conduct of members' meetings.

In this regard, Link Group congratulates the Government on taking the initiative to make a number of temporary changes to the Corporations Act 2001 (Cth) (**Act**) introduced in the Corporations Act (Corporations (Coronavirus Economic Response) Determination (No 1) 2020 and Determination No 3), (**Determination**) permanent, and for taking this opportunity to bring the Act into line with the contemporary practices and general shareholder expectations to provide workable solutions for companies in meeting their statutory obligations.

#### **Observations to date**

In 2020, Link has facilitated 186 hybrid and fully virtual online meetings for our clients. During November and December 2020, we will deliver a further 150 meetings, the majority will be online.

Our clients have embraced the meeting technology and many clients have indicated that subject to the changes to the Act being made permanent, may adopt a fully virtual format in future.

Our statistics show an increase in investor engagement, with attendance of investors higher since the introduction of online meetings. Some clients have seen a significant increase in participation levels indicating that investors have also adapted to the online meeting format. Like a physical meeting, investors logging in to view and vote in the meeting are also given the opportunity to ask a question.

The data that we have gathered to date indicates that the outcome to voting issued capital has stayed about the same and that investors still have equal opportunity to vote before and during the meeting.

Investors also continue to embrace technology with a continued increase in the provision of email addresses and 'opting in' for electronic communications up approx. 3-4% for some of our large retail Issuers.

## Online meetings result in cost savings for clients

There are significant cost savings associated with online meetings, including removing the requirement to print and post meeting documentation to investors<sup>1</sup>, and removing costs relating to venue hire, catering, security, travel and related expenses for directors/executives attending meetings.

Online meetings do incur costs such as audio visual/video conference/webcast directors into the meeting from various locations – however these costs are generally less than the overall costs associated with holding a physical meeting.

We have analysed the costs associated with physical meetings compared to online meetings. Looking at an ASX100 company with venue hire in a major city, flights and accommodation was estimated to cost around \$60,000. For an online meeting (including webcast, AV, video conference bridge (optional) and project management of the virtual meeting) the cost was estimated at approximately \$18,500.

In addition to the savings for the event itself, the cost of printing and mailing hard copy documents to all investors **without** an email address and who have not elected to receive the meeting documentation electronically can be significant. The production of the notice of meeting can cost approx. \$0.50 per mail pack for small print runs and postage rates vary depending on the size and weight of the mail pack from \$1.00 to \$1.80.

The investor response to the temporary changes further evidences the unnecessary cost of sending these meeting materials to all investors. In the example of one of our larger Issuers the client chose to send a postcard to notify investors of the availability of meeting materials through their website, (therefore saving costs associated with print and mail of notice of meeting documentation). The client received minimal requests for copies of the materials be sent to investors (less than 0.2% of the register).

## Using technology as the default position to distribute meeting documentation results in cost savings for clients and positive sustainability outcomes

Currently, meeting documentation must be posted to a member unless the member has elected to receive electronic communications. While temporary relief has been provided by the Determination, Link supports permanent amendments being made to the Act to allow meeting documentation to be provided electronically.

Link has been encouraging changes to the Act for a number of years to permit companies to distribute meeting documentation using technology as the default position.

Under the current law, members have to “opt-in” to receive documentation electronically, which means the default position is that companies must print and post meeting documentation to all members who have not “opted-in.” This results in considerable cost to companies, as well as the consequential environmental impact of printing and posting meeting documentation. Often these costs and impacts are unnecessary, as the member is unaware that the default position is printing and posting documentation.

## Questions and comments must be recorded in the minutes

Link Group is generally supportive of the proposed amendments set out in the Bill, however we have highlighted some areas for consideration.

*Proposed amendment after paragraph Section 251A(1)(a) and at the end of subsection 253M(1) of the Bill*

Link does not support the proposed amendments to require:

- any questions or comments submitted by a member before the meeting; or
- any questions asked by, or any comments made by, a member at the meeting,

conducted using virtual meeting technology to be recorded in the minutes of the meeting.

It is well established that minutes of a meeting are not intended to be a transcript or verbatim recording of the meeting.<sup>2</sup> The purpose of minutes is to record decisions made at a meeting and the process, or proceedings by which those decisions have been made. Minutes of a meeting should not be a report or transcript of the discussion or debate during the meeting or a record of individual member contributions.

<sup>1</sup> Link does print and post meeting documentation to investors who request a hard copy be sent to them.

<sup>2</sup> Refer to the Joint statement on board minutes released by the Australian Institute of Company Directors and Governance Institute of Austral in August 2019 for further information on contemporary practices relating to minutes.

We understand that the intention of these proposed amendments is to provide for transparency and to protect the rights of members to participate in meetings. Section 250S of the Act provides that “the chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company.” Failure to comply with section 250S of the Act is a strict liability offence.

In addition, section 250S of the Act is also supported by section 250SA of the Act which provides “at a listed company’s AGM, the chair must allow a reasonable opportunity for the members as a whole to ask questions about, or make comments on, the remuneration report.” Section 250T of the Act also provides that if the company’s auditor or their representative is at the meeting, the chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor questions relevant to certain members. Both section 250SA and section 250T are also strict liability offences.

The proposed amendments to allow virtual meetings do not erode the fundamental right of members to participate in meetings as set out in the Act. We understand these rights will continue to apply, irrespective of the form of meeting.

From a practical perspective, unless the company is using technology that records all questions submitted/asked in electronic written form, it may be difficult to accurately capture the question completely, especially if the member asks a lengthy question or their observation is lengthy in nature.

Consideration should also be given to whether it is appropriate to record all questions and comments as part of the formal minutes, especially if questions submitted by members may be irrelevant or defamatory in nature.<sup>3</sup>

Link suggests that this proposed amendment either be deleted or be amended to include a reference to only “relevant” or non-defamatory questions or comments.

I am available to discuss the points raised in this submission in more detail. Please do not hesitate to contact me on 0431 960 865 or at [lysa.mckenna@linkgroup.com](mailto:lysa.mckenna@linkgroup.com)

Yours sincerely,



Lysa McKenna  
Co CEO Corporate Markets Link Group

<sup>3</sup> See for example, section 249O(5)(a) of the Act which provides a company is not required to give notice of a resolution if it is more than 1,000 words long or defamatory.