



10 September 2021

Manager
Market Conduct Division
The Treasury
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TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL 2021: USE OF TECHNOLOGY FOR MEETINGS AND RELATED AMENDMENTS

Consultation Comments: Making permanent reforms in respect of use of technology to hold meetings and sign and send documents – August 2021

Institutional Shareholder Services (ISS) thanks the Australian Government and the Treasury for the opportunity to provide our comments to the Exposure Draft materials in the above Bill (the Consultation).

Introduction

ISS is the world's leading provider of corporate governance and responsible investment solutions, market intelligence and fund services, and events and editorial content for institutional investors and corporations, globally. This includes corporate governance and voting-related research, analytics, and voting recommendations for institutional investors. Covering more than 45,000 company meetings annually, we have over 2,000 clients globally who rely on ISS' expertise to help them make informed investment and voting decisions, and to execute their votes.

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We have over 35 years of experience in corporate governance, and our team of more than 1,000 research, data, voting operations, technology, and client service professionals are located in financial centres worldwide, including in Sydney, Singapore, Tokyo, Manila, London, Paris, Brussels, Berlin, Stockholm, New York, Boston, San Francisco, and Toronto. ISS has been a long-standing participant in the corporate governance community in Australia and internationally and has over the years worked closely with various stakeholders, including regulators and institutional investors in Australia and around the globe.

Our comments in this Consultation represent our views in our capacity as a thought leader in the area of corporate governance and shareholder voting. They are not necessarily the views of all our clients and are not presented as such.

We reiterate our comments in the submission to the previous consultation in relation to "Using technology to hold meetings and sign and send documents" which was undertaken between 15 June 2021 and 16 July 2021. Our focus remains on the use of technology in holding shareholder meetings, and specifically our concerns regarding any ability for a listed company to hold a shareholder meeting using only virtual technology with no facility for shareholders to attend or participate in person.

We also reiterate the findings of our 2020 ISS Global Policy Survey, the results of which were released in September 2020. Specifically, a significant majority (72 percent) of investor respondents supported the hybrid shareholder meeting format; namely, shareholder meetings which are conducted to allow both physical attendance by shareholders and participation using virtual technology. Only 11 percent of investor respondents supported virtual-only meetings. To put this another way, most investor respondents understood that extraordinary circumstances, such as the temporary restrictions necessary due to the COVID-19 pandemic, may dictate virtual-only meetings being the only possibility at a particular period of time, but they did not support virtual-only meetings becoming a permanent feature for the future.

Comments

We observe that Section 249R(c) has been revised to state that a company may hold a meeting of its members,

"using virtual meeting technology only, if this is required or permitted by the company's constitution expressly".

The addition of the word "expressly" is welcomed and appears intended to address our concerns raised previously regarding ambiguous drafting of constitutional amendments. Our understanding is that some shareholders may have previously approved such ambiguous amendments to allow for use of technology on the mistaken assumption that this would be used under a hybrid meeting format

We continue to observe resolutions from companies to amend constitutions where the wording remains ambiguous despite this consultation. We raise concern that despite the proposed re-drafting of Section 249R(c) some companies would nevertheless assert that their wording could be construed to be "expressly" allowing virtual technology only. We remain of the view that Section 249R could be more specific and differentiate between scenarios where virtual technology is used in conjunction with



availability of physical attendance under a hybrid meeting format and contrasting this with use of technology in a virtual-only meeting format.

As noted in our previous response in July 2021 and given the substantial support by investors for the hybrid meeting format shown in the 2020 ISS Global Policy Survey, any constitutional ability to convene virtual-only meetings must in our view require shareholder approval on a fully informed basis, and absent any ambiguity which may be created under the Corporations Act or through drafting of an amendment to a company's constitution.

Conclusion

Our position remains unchanged from our previous submission and we continue to urge the Treasury to review the provision which could allow companies to hold virtual-only shareholder meetings.

Thank you again for the opportunity to provide our comments on this Consultation. Please contact the undersigned in relation to any questions or if the Treasury seeks any further information regarding these comments.

Yours sincerely



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