

Wednesday 26th August 2020

Department of the Senate
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Select Committee hearing on Financial Technology and Regulatory Technology held on 30 June 2020

Background

We refer to the above during which the Chairman requested Computershare provide the headline matters where company Member registers would benefit from digital reform.

Industry view

The overarching industry view is that modernising the Corporations Act (2001) (*Cth*) (**Corporations Act** or **Corps Act** or **Act**) and any other relevant legislation to allow electronic communication to be the primary form of communication wherever possible would be far more efficient and cost effective for members and companies than the status quo.

Below is a non-exhaustive list of items for review. Computershare would be happy to participate in a round table or advisory panel to refine the recommendations for each of these items.

Guiding principles

When considering changes to legislation please consider the following guiding principles:

- current and future technology;
- inclusivity of a wide range of modern electronic mediums;
- the degradation of postal services;
- the benefits of straight through processing that electronic mediums provide; and
- the Corporations Act has not evolved at the same pace as technology and the increase in the size of Company Registers.

Areas for review

1. Member Meetings

a) General

Background and summary: Regulatory reform should be considered and aligned for both listed companies and listed management investment schemes.

Provisions to consider: We note there are certain provisions of the Corporations Act, relating to the conduct of meetings for companies in Part 2G.2 that do not appear in the corresponding sections of the Act relating to registered schemes in part 2G.4. Examples include Section 250BC (transfer of non-chair proxy to chair in certain circumstances) and section 250B (proxy documents).

b) Opt-in to receive Notice of Meeting (NOM) and Proxy Form

Provisions to consider: Sections 249J(3), 249J(4), 249J(5) and 249(Z) and 249J(3A) of the Corporations Act.

Local precedent: The Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007 was changed to allow companies to require Members to opt in to receive hard copy annual reports rather than the previous opt-out requirements. This change had a positive environmental impact and significantly reduced costs for companies without disenfranchising Members.

Summary: Regulatory reform adopting a similar approach to annual reports could apply for distribution of Notice of Meeting and Proxy form, with appropriate safeguards being put in place for undelivered electronic communications. For example, Members who do NOT opt-in to receive the Notice of Meeting and Proxy form (either by mail or electronic communication) would be deemed to have received the Notice of Meeting and Proxy form.

There is also the option of sending a Notice to all Members (either by mail or electronic communication) advising the Notice of Meeting and Proxy form is available and accessible online. When reviewing reforms to be made separate consideration should be given to Annual General Meetings, General Meetings, Registered Scheme Meetings (under Section 2G.4) and Scheme of Arrangement Meetings (under Part 5.1 of the Corporations Act).

Currently Notice is taken to be given 3 days after it is posted or 1 day after it is sent electronically. Under an electronic communication regime, the electronic communication could be taken as being received on the same day it is sent. Consider amending the day on which Notice of Meeting is taken to be given.

Global comparison: Notice and Access of Meeting documents is a communication method available in the USA.

c) Virtual Meetings

Provisions to consider: Section 249R of the Corporations Act.

Local precedent: The Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 implemented as a result of COVID-19 addresses the use of technology in the conduct of Meetings.

Summary: Consider implementing the provisions of Determination (No. 1) on a permanent basis with respect to virtual meetings.

Global comparison: Virtual only meetings is a method available pre COVID-19 in New Zealand, 28 states in the USA and 7 Provinces in Canada.

d) Proxy Voting by electronic means

Provisions to consider: Section 250BA(1)(a) and 252Z(3A) of the Corporations Act.

Context: The above sections of the Corporations Act require Companies and registered schemes to accept proxy forms received by facsimile.

Summary: Given the challenges with postal services and the desire for straight through processing using technology, consideration should be given to allow receipt of proxy forms by current and future electronic mediums and remove reference to old fashioned mediums such as facsimiles.

Summary of matters for consideration for Member Meetings

Reference	Act Impacted	Description	Current Process	Consideration
1 a)	Corps Act	Member Meetings and Registered Scheme Meetings	Different requirements re proxy	Align requirements for Member Meetings and Scheme Meetings
1 b)	Corps Act	NOM & Proxy Form	Required to send to all members	<ol style="list-style-type: none"> 1. Member opt in to receive NOM and proxy form and/or; 2. Send member Notice advising they can access their NOM and proxy form online 3. Change timing of Notice of Meeting aligning with an electronic regime
1 c)	Corps Act	Virtual Meeting	COVID-19 relief for virtual meeting until March 2021	Implement relief provided for COVID-19 on a permanent basis
1 d)	Corps Act	Proxy Voting by electronic means	Not articulated other than must accept facsimile	Inclusivity on a wider range of current and future electronic mediums. Remove the specific mention of old fashioned mediums such as facsimile as a required channel for receipt of proxy forms

2. Takeovers

a) Despatch of Takeover documents

Provisions to consider: Section 648B of the Corporations Act.

Context: Takeover documents such as bidder statements and Scheme of Arrangement documents (often weighing upwards of 500g) are required to be despatched to all members. Under a Scheme of Arrangement, the result of the scheme meeting is subject to court approval. In the absence of clarity around electronic despatch of scheme documents, they are most commonly despatched by mail at large expense to the company.

Summary: Provide clarity on despatching Takeover documents by electronic means while ensuring the documents are easily accessible and available in a public domain.

Where no email address is on file (because the target company currently is not required to send an email address (see b below), consider sending Notice to Members that the takeover documents are available and accessible online.

Global comparison: Takeover documents can be sent by electronic means in New Zealand and USA.

b) Email address, mobile telephone number and bank account and Tax File Number to be included in information provided by target to bidder

Provisions to consider: Section 641(1) (a) of the Corporations Act

Context: Section 641(1)(a) of the Corporations Act requires the target company to provide the bidder company with the name, address and balance of securities for each member holding bid class securities

for the purpose of despatching takeover documents such as the bidder statement, acceptance and transfer form, and if the offer is accepted, payment of cash consideration due.

Summary: Consider reviewing what information about the Member the bidder company is required to provide to the target company in order to facilitate electronic communication and electronic payment where cash consideration is payable.

Additionally, where consideration is in securities, the TFN of the Member needs to be recorded for future dividend payments. To avoid the bidder company having to communicate with all new members at considerable cost to solicit the TFN, consider adding TFN to the data elements required to be provided.

Global comparison:

- In New Zealand, email address and bank account details are made available by the target company.
- In USA, email address, bank account and Tax Identification Number (TIN) details are made available by the target company.

Possible impact of or on other legislation or regulation: This potentially has a dependency on the Privacy Act, TFN rule and guidelines.

Summary of matters for consideration for Takeovers

Reference	Act Impacted	Description	Current Process	Consideration
2 a)	Corps Act	Despatch of Takeover documents	Required to send to all members	Send by electronic means/send Notice and Access where no email address
2 b)	Corps Act Privacy Act, TFN rule and guidelines	Email address, mobile telephone number, bank account & TFN	Target company is not required to provide email address, mobile telephone number & bank account & TFN	Require target company to provide email address, mobile telephone number, bank account and TFN to bidder

3. Lost Members

a) Sending mail to Member's former address each year for 6 years

Provisions to consider: Section 1343(b) of Corporations Act.

Context: Companies are required to communicate with members who have had unclaimed mail sent to their registered address for 6 consecutive years. In large companies, this creates a significant cost. Additionally, it also commonly aggravates the person(s) who now resides at the registered address as they continue to receive mail for 6 years for the previous tenant.

Summary: Consider reviewing the number of years the Company is required to send mail to the Member's former address.

b) Use of technology to connect lost members with their assets

Summary: Consider utilising technology for connecting lost members with their assets. Data matching processes that may be considered are matching Tax File Number of lost Member with ATO records and removing barriers that prevent stockbrokers from providing email addresses to companies' registries.

Global comparison: In the USA, database matching is required under [SEC Rule 17Ad-17](#). It specifically allows matching by US Tax Identification Number.

Possible impact of or on other legislation or regulation: This may have a dependency on the Privacy Act, TFN rule and guidelines.

Summary of matters for consideration for Lost Members

Reference	Act Impacted	Description	Current Process	Consideration
3 a)	Corps Act	Lost Members - communication	Must send mail for 6 years	Review no. of consecutive years required to send mail to Member's former address
3 b)	Corps Act Privacy Act, TFN rule and guidelines	Lost Members - data matching	No data matching is available	Enable data matching with external organizations such as ATO and stockbrokers

4. Capital Raisings

Local precedent: Regulatory Guide 107 was first issued by ASIC in March 2014 and provided guidance on the use of email and internet to make Offers of securities under CH 6D of the Corporations Act.

Summary:

- Consider implementing a Notice and Access regime for all capital raisings. Members would receive Notice that capital raising documents are available to be accessed online. Where possible, Notice would be provided to Members electronically, otherwise Notice would be provided by post.
- All applications and payments for securities would be made electronically.

Global comparison: Notice and Access of Capital raising documents is a communication method available in USA.

Summary of matters for consideration for Capital Raisings

Reference	Act Impacted	Description	Current Process	Consideration
4	Corps Act	Electronic comms under CH 6D for capital raisings	May send by electronic means in certain circumstances (RG107)	Allow Notice and Access for all capital raisings

5. Dividend Advices

Summary: Consider enabling members to opt in or out of receiving electronic dividend advices.

Context: The Income Tax Assessment Act requires dividend advices to be made available to members on payment date.

Companies are required to send files to the ATO showing the details of each dividend paid to each member so when members with a TFN complete an online tax return, the ATO prepopulates the dividend details onto their tax return.

Possible impact of or on other legislation or regulation: This has a dependency on the Income Tax Assessment Act (1997) (*Cth*).

Summary of matters for consideration for Dividend Advices

Reference	Act Impacted	Description	Current Process	Consideration
5	Income Tax Assessment Act	Requirement to send dividend advices	Dividend advices are sent to all holders	<ol style="list-style-type: none"> 1. Allow members to opt out of receiving a dividend advice 2. Whether the requirement to issue dividend advices is still relevant

6. Electronic signing

Summary: Consider review and aligning the definition of what constitutes an electronic signature and in what circumstances it can be used.

Possible impact of or on other legislation or regulation: This potentially has an inter-dependency with the Electronic Transactions Act.

Summary of matters for consideration for Electronic signing

Reference	Act Impacted	Description	Current Process	Consideration
6	Corps Act Electronic Transactions Act	Electronic signature	Definition and use is unclear across multiple Acts	Align definition and use of electronic signature across all relevant Acts

7. Off Market Transfers (OMT)

Provisions to consider: Section 1071B and Section 620 of the Corporations Act.

Context: Currently OMTs are generally received in paper form with a wet signature.

A paper OMT with a wet signature is no longer an assurance of a bone fide transfer form. Accordingly, it is common for Companies to implement a security check at some level on the transferor commensurate with the value of the securities being transferred.

Summary: Consider reviewing and providing clarity on validity of all types of Off Market Transfer forms received in electronic form with electronic signature, including Transfer & Acceptance Forms and Master transfer forms under a Takeover Offer.

Possible impact of or on other legislation or regulation: This may have a dependency on ASX Listing Rules and the Electronic Transactions Act.

Summary of matters for consideration for Off Market Transfers (OMT)

Reference	Act Impacted	Description	Current Process	Consideration
7	Corps Act Electronic Transactions Act	Electronic OMT with electronic signature	Paper OMT with wet signature	Enable electronic OMT with electronic signature

8. Share Certificates

Provisions to consider: Section 1071H of Corporations Act.

Background: Unlisted Companies and unlisted securities of listed companies are issued certificates as evidence of title. Under a regime where registers are maintained electronically, evidence of title is held within the electronic register.

Summary: Consider allowing an electronic confirmation of holding be available in lieu of a certificate.

Global comparison: Share certificates are not issued for companies in New Zealand.

Summary of matters for consideration for Share Certificates

Reference	Act Impacted	Description	Current Process	Consideration
8	Corporations Act	Certificates for unlisted securities	Certificates are issued for unlisted securities	Provide an electronic confirmation of holding be available in lieu of a certificate

9. Electronic Communication Principles

Summary: Consider defining electronic communication mediums to be more inclusive of a wide range of electronic communication mediums and less prescriptive.

The overarching requirement would be that in circumstances where documents are to be made available online, they must be in a public domain and easily accessible.

Summary of matters for consideration for Electronic Communication Principles

Reference	Act Impacted	Description	Current Process	Consideration
9	Corporations Act Electronic Transactions Act	Electronic communications mediums	Uncertainty across multiple Acts as to what is included in electronic communications	Align definition and use across all relevant Acts to be wide ranging and less prescriptive

10. Possible impact of or on other legislation or regulation

Regulatory change to facilitate digital reform may impact multiple regulatory requirements such as the Electronic Transactions Act, Privacy Act, Income Tax Assessment Act and the ASX Listing Rules.

Consideration will need to be given as to the extent of the changes and whether a change in one act overrides provisions in other areas of the regulatory framework.

Yours sincerely,



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