

May 2020

## **COVID -19 - PIGOTT STINSON UPDATE – GENERAL MEETINGS - TEMPORARY MEASURES**

The Federal Treasurer Josh Frydenberg yesterday approved the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 (the Determination)*.

The Explanatory Statement issued by the Treasurer states that:

*“The Determination ensures that companies and other entities that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings. The Determination enables a quorum, votes, notices and the asking of questions to be facilitated electronically. The Determination also allows for information required for the meeting to be circulated and accessed electronically”.*

*The Determination alters the operation of section 127 of the Act to give certainty that when company officers sign a document electronically (including an electronic document), the document has been validly executed.*

At the time of announcing the changes, the Treasurer said that they will provide “certainty to companies and boards about how they can meet their legal obligations over the next six months”.

The Determination will remain in place for a period of six (6) months.

The Determination is relevant to clubs in New South Wales as the overwhelming majority of those clubs are companies limited by guarantee.

### **So what are the changes to General Meetings?**

Part 5 of the Determination allows companies to hold a meeting, including an Annual General Meeting remotely - that is as an online only meeting.

The changes in Part 5 of the Determination:

- make it very clear that members do not have to be physically present in the same room in order to reach a quorum; and
- allow those attending the meeting to speak using technology;

- require that votes be taken by a poll and not by a show of hands and that each person entitled to vote is given the opportunity to vote in real time and if practical, ahead of the meeting;
- allow a club to send notices to those members entitled to attend the meeting by using one or more technologies. In this regard Part 5(f) of the Determination provides as follows:

*“notice of a meeting may be given, and any other information to be provided with notice of a meeting, or at or in relation to a meeting, may be provided, using one or more technologies to communicate to those entitled to receive notice of the meeting:*

*(i) the contents of the notice and the other information; or*

*(ii) details of an online location where the items covered by subparagraph (i) can be viewed or from where they can be downloaded;*

*Example: A company has email addresses for some of its members. Under this paragraph the company could send those members an email setting out or attaching notice of a meeting, and other material relating to the meeting, or providing a link to where the notice and other material can be viewed or downloaded. To the other members the company could send a letter or postcard setting out a URL for viewing or downloading the notice and other material.”*

If a club wanted to hold an online meeting, then the notice of meeting must include information about how members can participate in the meeting, how members can ask questions and vote. The notice must also contain any other information members need to know to be able to participate using technology.

Even though a club can hold an online meeting under these changes, clubs should review their constitutions to ensure there are no restrictions or requirements which may restrict them from holding an online meeting.

Assuming clubs are not restricted from holding online meetings by their constitution, clubs will need to consider whether or not it is suitable to hold an online meeting or whether or not it is preferable to wait until after the restrictions on gatherings have been relaxed or lifted to hold a physical meeting at the club.

For example, if the business of the meeting is very important for the club or the business could be possibly controversial (for example, an amalgamation or disposal of core property), then the club may wish to proceed with caution and wait until the restrictions on gatherings are relaxed or lifted and then hold the meeting in the usual way at the premises of the club. However, this is a matter for clubs to determine on a case by case basis and there is no legal requirement for clubs to delay holding their meetings.

Furthermore, there may be pressing issues which require general meetings to be held online before the restrictions on gathering are relaxed or lifted. In those circumstances, it would be appropriate for those general meetings to be held online before the restrictions are relaxed or lifted.

We strongly recommend clubs obtain advice (legal and technical) in relation to conducting online meetings and the various issues which will need to be considered by clubs before making a final decision on whether or not to conduct online meetings.

Additionally, assuming the Determination remains in force for a period of six (6) months (which is currently intended to be the case), it is possible that clubs could send notices of meeting to members by email or in the other ways described in the above Example even after the restrictions on gatherings have been relaxed or lifted.

Although clubs have been able to send notices of meetings to members by email under the *Corporations Act* before the Determination, clubs were only legally permitted to do so if a member had given their formal consent to receiving notices in that manner.

Although clubs often collect email addresses of their members (for example, for marketing purposes), clubs do not always have their members nominate to receive notices by email.

Although it is not stated in the Determination, it is our view that the exemptions contained in the Determination (such as sending notices to members by email) will apply to companies for the prescribed period irrespective of what is contained in their constitution.

Hopefully this amendment will remain in force after the coronavirus pandemic has passed because it will allow clubs to make significant savings on the cost of printing and postage which can be substantial for a club with a large membership.

However, there is no guarantee that this amendment will remain in force.

As a result, there are two practical issues that clubs should consider so that the ability to send notices by email is not a "one off".

Firstly, does your club's constitution allow the Club to send notices by email? If not, your club's constitution will need to be amended by way of special resolution.

Secondly, how will your club ensure that new and existing members nominate to receive notices by email? For example, do your club's renewal and application forms need to be amended to obtain the necessary consent from members to receive notices by email.

Our firm can assist you with dealing with these matters.

### ***Further information***

If you have any questions regarding the matters raised in this newsletter or require assistance with the above matters, please contact your usual contact at Pigott Stinson or the author, Bruce Gotterson.

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