



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Virtual-only Meetings) Instrument 2022/129

This is the Explanatory Statement for *ASIC Corporations (Virtual-only Meetings) Instrument 2022/129*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. This instrument allows listed companies, together with listed and unlisted registered schemes, to hold virtual-only meetings of their members for an additional two months beyond the expiry of the current temporary relief measures introduced by the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*. The extension to 31 May 2022 is intended to provide these entities - including companies with financial years ending on or before 31 December 2021 which are required to hold their annual general meetings (*AGMs*) during this time - additional flexibility to plan and prepare for holding upcoming meetings given the uncertainty and risks associated with the ongoing COVID-19 pandemic.
2. The instrument also includes a similar extension for unlisted companies. This extension is for three months consistent with the longer period unlisted public companies with 31 December 2021 financial year ends have to hold their *AGMs* (to 30 June 2022) in accordance with the *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*.
3. The relief is provided on the condition that the directors of a company or responsible entity of a registered scheme first pass a resolution that, in the opinion of the directors voting for the resolution, it would be unreasonable for the company or registered scheme to hold a meeting of its members, wholly or partially, at one or more physical venues due to the impact of the COVID-19 pandemic.

Purpose of the instrument

4. *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* conferred on ASIC permanent powers to grant short-term relief to allow companies and registered schemes to hold meetings of their members using virtual technology only (even if not required or permitted by the entity's constitution expressly). ASIC may

exercise this power if it considers that it may be unreasonable to expect entities to hold meetings wholly or partially at one or more physical venues due to a situation beyond the control of entities in the specified class (such as circumstances related to the COVID-19 pandemic).

5. This instrument utilises the powers given by Parliament to ASIC in *Treasury Laws Amendment (2021 Measures No. 1) Act 2021*.
6. *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* also introduced temporary amendments to the *Corporations Act* enabling virtual meeting technology to be used to hold meetings of members or directors until 31 March 2022 provided certain conditions are met.
7. Subsequently, the *Corporations Amendment (Meetings and Documents) Act 2022* introduced permanent measures which allow companies to hold hybrid meetings incorporating a physical meeting at one or more venues while using virtual meeting technology to enable remote participation. While the Act also enabled companies and registered schemes to hold their AGMs using virtual technology only, this is limited to entities who have amended their constitution to expressly require or permit virtual meetings.
8. The purpose of the relief in this instrument is to provide additional flexibility for entities to address the uncertainty and risks relating to the ongoing COVID-19 situation having regard to the relevant circumstances of the entity and its members. The timing of the relief acknowledges that there will likely be an increase in the number of meetings between April and June 2022 given companies with a financial year end date of 31 December 2021 are required to hold their AGMs by 31 May 2022 (if listed) or 30 June 2022 (if unlisted). It also acknowledges that entities need to make arrangements for their AGMs well in advance of the date of the meeting.
9. ASIC is satisfied that, in light of the uncertainty associated with the course and ongoing impact of the COVID-19 pandemic over the period covered by this instrument, it may be unreasonable to expect entities in each of the classes covered by the instrument, to hold meetings wholly or partially at one or more physical venues, having particular regard to matters such as:
 - the recent ‘Omicron’ outbreak and its impacts in different parts of Australia; and
 - the potential for sudden changes in pandemic conditions and the corresponding need to adopt relevant health and safety measures.

The situation giving rise to these matters is beyond the control of the entities the subject of this instrument.

10. As a condition of accessing the relief, the board of directors of a company or responsible entity of a registered scheme must pass a resolution that, in the opinion of the directors voting for the resolution, it would be unreasonable for the company or registered scheme to hold a meeting of its members, wholly or partially, at one or more physical venues due to the impact of the COVID-19

pandemic. This requirement is intended to ensure boards and responsible entities remain accountable to their members by considering the impact of the COVID-19 pandemic on the format of the entity's meetings.

Consultation

11. ASIC has consulted with a number of industry stakeholders regarding the exercise of this power.

Operation of the instrument

Provisions that apply to listed companies and listed and unlisted registered schemes

12. Under this instrument, all listed companies and listed and unlisted registered schemes will, for an additional two months (the period from 1 April 2022 to 31 May 2022), be able to hold a meeting of their members using virtual technology only, even if not expressly required or permitted by the entity's constitution.
13. To rely on the relief, a listed company or listed and unlisted registered scheme must pass a directors' resolution that, due to the impact of the COVID-19 pandemic, it would be unreasonable for the listed company or registered scheme to hold a meeting of its members, wholly or partially, at one or more physical venues in the opinion of the directors voting for the resolution.
14. For example, this means that a listed public company would be allowed to hold a virtual-only AGM until 31 May 2022 provided the board of the listed company passed a resolution that it is unreasonable to hold a physical or hybrid meeting, due to significant public health measures or concerns related to the COVID-19 pandemic.

Provisions that apply to unlisted companies

15. Under this instrument, all unlisted companies will, for an additional three months (the period from 1 April 2022 to 30 June 2022), be able to hold a meeting of their members using virtual technology only, even if not expressly required or permitted by the entity's constitution.
16. To rely on the relief, an unlisted listed company must pass a directors' resolution that, due to the impact of the COVID-19 pandemic, it would be unreasonable for the unlisted company to hold a meeting of its members, wholly or partially, at one or more physical venues, in the opinion of the directors voting for the resolution.
17. For example, this means that an unlisted public company would be allowed to hold a virtual-only AGM until 30 June 2002 provided the board of the unlisted company passed a resolution that it is unreasonable to hold a physical or hybrid meeting, due to significant public health measures or concerns related to the COVID-19 pandemic.

Commencement

18. This instrument commences on the later of 1 April 2022 and the day after it is registered on the Federal Register of Legislation.

Retrospective application

19. This instrument is not retrospective in accordance with subsection 12(2) of the *Legislation Act 2003* because it does not commence before the instrument is registered.

Legislative instrument and primary legislation

20. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because it is made under a power specifically delegated to ASIC in recognition that ASIC, rather than Parliament, is best situated to make the necessary assessments in response to emerging circumstances and market conditions. It allows ASIC to modify or affect the operation of sections 249R and 252P of the *Corporations Act 2001* (as they apply from 1 April 2022) in circumstances which may be unreasonable and beyond the control of companies, consistent with a tailored and flexible regulatory framework that is fit for purpose for the market.

Duration of instrument

21. This instrument is repealed at the end of 30 June 2022. This is considered an appropriate duration given the instrument has no practical application after that date. ASIC would need to re-satisfy itself of the matters in subsection 253TA(2) of the *Corporations Act 2001* if it were to make another determination after the repeal of this instrument.

Possible future amendments to primary legislation

22. Section 1687J of the *Corporations Act 2001* requires a review of amendments made by Schedule 1 to the *Treasury Laws Amendment (2021 Measures No. 1) Act 2021* and the *Corporations Amendment (Meetings and Documents) Bill 2021* within two years of the commencement of the *Corporations Amendment (Meetings and Documents) Act 2022*.
23. ASIC understands that the Government may consider the merits of making future amendments to the relevant enabling Acts.

Legislative authority

24. This instrument is made under subsection 253TA(2) of the *Corporations Act 2001*.
25. This instrument is a disallowable instrument under the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

26. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. This instrument allows companies and registered schemes an additional period to hold AGMs using virtual technology only without being required or permitted by an entity's constitution expressly, provided the board of directors of the company or responsible entity pass a resolution that, in the opinion of the directors voting for the resolution, it would be unreasonable for the entity to hold a meeting of its members, wholly or partially, at one or more physical venues due to the impact of the COVID-19 pandemic.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.