



ASIC
Australian Securities &
Investments Commission

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Monday 29 March 2021

21-061MR ASIC adopts 'no-action' position and re-issues guidelines for virtual meetings

ASIC had adopted a 'no-action' position in relation to the convening and holding of virtual meetings. This position is a temporary measure.

Modifications to the *Corporations Act 2001* (Corporations Act) to facilitate the convening and holding of meetings using virtual technology were in place under the [Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020 \(the Determination\)](#). The Determination, which temporarily removed impediments to the use of virtual technology to hold meetings and permitted the dispatch of notices of meeting by electronic means, ceased to have effect on 21 March 2021.

The government has proposed to extend the measures in the Determination in the Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (Bill). The Bill was passed by the House of Representatives on 17 March 2021 but is awaiting debate in the Senate.

In order to provide the market with a degree of certainty during this time, ASIC's 'no-action' position:

- supports the holding of meetings using appropriate technology
- facilitates electronic notice of meetings including supplementary notices
- allows more public companies an additional 2 months to hold their AGMs

The position relating to the convening and holding of meetings using virtual technology applies to meetings held between 21 March 2021 and the earlier of:

- 31 October 2021; and
- The date that any measures are passed by the Parliament relating to the use of virtual technology in meetings of companies or managed investment schemes.

The position relating to the 2-month deferral of AGMs applies to entities with financial years ending up to 7 April 2021.

The full text of our 'no-action' position is included in this release.

Commissioner Cathie Armour said, 'It is important that business has certainty in the current environment. ASIC's position is intended to facilitate businesses to hold their meetings effectively during the ongoing pandemic where there is still uncertainty around restrictions on gatherings and travel'.

ASIC understands the benefit of hybrid and virtual AGMs in the current circumstances, but recognises that appropriate conduct of meetings is important to safeguard the rights of members to participate. Accordingly, ASIC reissued its [guidelines for investor meetings](#) using virtual technology which lapsed with the expiry of the Determination. These guidelines have been updated to reflect the current no-action position.

Background

On 20 March 2020, ASIC issued guidelines for meeting upcoming annual general meetings (AGM) and financial reporting requirements (refer [20-068MR](#)), which included a 'no-action' position in relation to non-compliance with provisions of the Corporations Act that may prevent the holding of AGMs via virtual technology. This position applied to entities with financial year ends of 31 December 2019.

On 6 May 2020, temporary modifications to the Corporations Act under the [Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#) (Determination No 1) took effect. The modifications were extended by Determination No 3 and lapsed on 21 March 2021.

On 6 May 2020 ASIC released guidelines for holding investor meetings using virtual technology which were in place while the modifications to the Corporations Act were in effect.

ASIC also previously adopted a no-action position on holding of AGMs within five months after the end of financial years that end from 31 December 2019 to 7 January 2021 to permit AGMs to be held within seven months after the end of those financial years (refer [20-276MR](#)).

Financial Reporting Obligations

In addition to our 'no-action' position on AGMs, ASIC also previously extended by one month the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act (refer: [20-276MR ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs](#)). This extension was given by legislative instrument and applies to entities with a financial year that ends between 21 February 2020 and 7 January 2021.

While ASIC has given a 'no-action' position for AGMs up to financial years ending 7 April 2021, ASIC is not currently intending to extend the class relief for financial reports to entities with financial years that end between 8 January 2021 and 7 April 2021. However entities may apply to ASIC for individual financial reporting relief should that be necessary in their circumstances. ASIC will have regard to the factors in s340 of the Corporations Act, as well as [Regulatory Guide 43 Financial reports and audit relief](#) and [Regulatory Guide 51 Applications for relief](#), in deciding whether individual relief is appropriate.

Electronic execution of documents

The Determination and Bill also included measures to facilitate the electronic execution of company documents. ASIC's no-action position does not extend to these measures as they are primarily concerned with the capacity of companies to enter arrangements with third parties rather than Corporations Act obligations administered and enforced by ASIC. ASIC does not have the power to modify the operation of these provisions in a way that affects third party rights and our no-action position similarly does not affect third party rights.

Review of 'no-action' position

ASIC's 'no-action' position is temporary and will be reviewed in September 2021 or earlier if relevant measures are introduced by Parliament.

ASIC's 'no-action' position on meetings held between 21 March 2021 and 31 October 2021

Due to the ongoing uncertainty of the COVID-19 pandemic and the potential for restrictions on gathering and travel to occur, entities may continue to face difficulties holding meetings.

ASIC does not have the power to modify the Corporations Act to facilitate meetings using technology that allows members to participate remotely by online or other electronic means (virtual technology) or to grant extensions of time to hold an AGM on a 'class basis', i.e. to all entities with a certain financial year end. We have therefore provided a 'no-action' position on meetings convened electronically or held using virtual technology and to upcoming AGMs that need to be deferred.

Legal status of hybrid and virtual meetings

ASIC considers that hybrid meetings are permitted under the Corporations Act but entities need to check whether their constitution restricts meetings being held in this way.

There is some doubt as to whether the Corporations Act, in the absence of the amendments made by the Determinations, permits virtual AGMs and there may also be doubt as to the validity of resolutions passed at a virtual AGM. Entities should also consider whether they can hold a virtual meeting under their constitution.

Entities that are concerned about the validity of virtual meetings may wish to seek legal advice on section 1322 of the Corporations Act. Various irregularities associated with meetings held for the purposes of the Act are not invalidated unless the Court makes a contrary declaration. A person may be also able to apply to the Court for an order addressing other irregularities.

No action position on holding meetings using virtual technology

ASIC has adopted a 'no-action' position on non-compliance with provisions of the Corporations Act that may restrict the holding of virtual meetings where an entity elects to hold a meeting using virtual technology. This position applies to meetings held between 21 March 2021 and the earlier of:

- 31 October 2021; and
- The date that any measures are passed by the Parliament relating to the use of virtual technology in meetings of companies or managed investment schemes.

This 'no-action' position on virtual meetings is conditional on:

- the technology or technologies used to hold the meeting providing members as a whole a reasonable opportunity to participate (sections 249S and 252Q). This includes ensuring that members who are participating remotely are able to ask questions and make comments at the meeting;
- voting at the meeting occurring by a poll rather than a show of hands
- each person entitled to vote being given the opportunity to participate in the vote in real time (where practicable voting should also be available in advance of the meeting); and
- the notice of meeting including information about how those entitled to attend can participate in the meeting (including how they can vote, ask questions, make comments or otherwise speak at the meeting to the extent they are entitled to do so)

In holding virtual meetings in reliance on this 'no-action' position, entities should consider ASIC's guidelines on the appropriate approach to take when conducting investor meetings using virtual technology (refer: [ASIC guidelines for investor meetings using virtual technology](#)).

No action on convening meetings electronically

ASIC has also adopted a 'no-action' position in relation to a contravention of the Corporations Act if an entity sends notice of the meeting, or sends supplementary information in relation to the meeting, using one or more technologies to communicate to those entitled to receive notice of the meeting.

This position applies to meetings held between 21 March 2021 and the earlier of:

- 31 October 2021; and
- The date that any measures are passed by the Parliament relating to the use of virtual technology in meetings of companies or managed investment schemes.

Conditions attaching to this 'no-action' position are:

- Notice of the meeting or supplementary information in relation to the meeting, whether given electronically or otherwise, must either include the contents of the notice or details of an online location where the contents of the notice can be viewed or from where they can be downloaded
- Where electronic addresses have not been nominated by those entitled to receive notice of the meeting, notice of how to access the contents of the notice must still be given personally or by post
- Supplementary instructions for on-line participation in the meeting must be given at least two business days before the meeting is held by:
 - electronic message (if the member has provided the relevant details);
 - a notice on the entity's website; and
 - a market announcement if the entity is listed on a market.

This no-action position covers any failure of the supplementary instructions to comply with sections 249J of the Corporations Act.

No action for AGMs held within 2 months after their due date

ASIC has also adopted 'no-action' position for public companies with a financial year end between 7 January 2021 and 7 April 2021 that do not hold their AGMs within five months after the end of the financial years, where these meetings are held up to seven months after year end. This builds on the existing equivalent no-action position that applies to public companies with financial years that ended from 31 December 2019 to 7 January 2021 (refer: [20-276MR ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs](#)).

This 'no-action' position means that ASIC will not take action against an entity with a financial year end of between 7 January 2021 and 7 April 2021 who fails to comply with s250N(2) of the *Corporations Act 2001* provided the entity holds the AGM within seven months after their financial year end. It does not operate to formally extend the time by which entities must hold their AGM.

Note on status of ASIC's 'no-action' positions for virtual meetings

ASIC's general policy on 'no-action' positions and their status is set out in [Regulatory Guide 108 No-action letters](#). In particular, it should be noted:

- a no-action letter is an expression of regulatory intention about how to exercise ASIC's powers. The purpose of a no-action letter is to provide an indication as to the future regulatory action that we might take. Entities do not need to apply to ASIC to avail themselves of this no-action position
- an ASIC no-action letter does not necessarily preclude third parties (including the Office of Director of Public Prosecutions) from taking legal action in relation to the same conduct or conduct of that kind. Nor does it prevent a court from holding that particular conduct infringes the relevant legislation. ASIC does not represent that the conduct covered by the no-action letter will not be held to contravene the relevant legislation. Nor does ASIC undertake to intervene in an action brought by third parties in respect of such conduct.