



Corporations (Coronavirus Economic Response) Determination (No. 3) 2020

I, Josh Frydenberg, Treasurer, make the following determination.

Dated 21 September 2020

Josh Frydenberg
Treasurer

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement	1
3 Authority.....	1
4 Interpretation.....	1
Part 2—Meetings	2
5 Provisions about meetings	2
Part 3—Execution of company documents	4
6 Methods of executing document	4
7 Assumptions that can be made about execution of document	4
Part 4—Miscellaneous	6
8 Effect of modified provisions	6
9 Repeal and savings.....	6

Part 1—Preliminary

1 Name

This instrument is the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 1362A of the *Corporations Act 2001*.

4 Interpretation

Note: Expressions have the same meaning in this instrument as in the *Corporations Act 2001* as in force from time to time unless the contrary intention appears—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

the Act means the *Corporations Act 2001*.

the regulations means the *Corporations Regulations 2001*.

Part 2—Meetings

5 Provisions about meetings

- (1) The operation of the provisions specified in subsection (2) is modified as follows, in relation to each class of persons in relation to whom the provisions apply, subject to the conditions set out in subsection (3):
 - (a) a meeting may be held using one or more technologies that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place, and paragraphs (b) to (e) of this subsection apply if the meeting is held in that way;
 - (b) all persons so participating in the meeting are taken for all purposes (for example, a quorum requirement) to be present at the meeting while so participating;
 - (c) a vote taken at the meeting must be taken on a poll, and not on a show of hands, by using one or more technologies to give each person entitled to vote the opportunity to participate in the vote in real time and, where practicable, by recording their vote in advance of the meeting;
 - (d) a requirement to allow an opportunity for persons attending the meeting to speak (for example, by asking questions) may be complied with by using one or more technologies that allow that opportunity;
 - (e) a proxy may be appointed using one or more technologies specified in the notice of the meeting;
 - (f) 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.
- (2) The provisions specified are each provision of the Act, the regulations, the Insolvency Practice rules, and the Passport Rules for this jurisdiction, that:
 - (a) requires or permits a meeting to be held, or regulates giving notice of a meeting or the conduct of a meeting; or
 - (b) gives effect to, or provides a means of enforcing, a provision in the constitution of a company or registered scheme, or in any other arrangement, that requires or permits a meeting to be held, or regulates giving notice of a meeting or the conduct of a meeting.
- (3) The modifications in subsection (1) are subject to the following conditions:
 - (a) the person required or permitted to give notice of a meeting that is held as mentioned in paragraph (1)(a) must include in the notice information about

Section 5

how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so);

- (b) if notice of the meeting had already been given before the commencement of this section, the person required or permitted to give notice of the meeting must, at least 7 days before the meeting is held, give a fresh notice of the meeting that includes the information referred to in paragraph (a) of this subsection, unless the first notice already included that information;
- (c) if a person (the ***appointer***) is entitled to attend the meeting, or to vote at the meeting, by proxy, the person conducting the meeting must treat a duly appointed proxy in the same way as the appointer would be entitled or required to be treated if he or she attended the meeting in person.

Part 3—Execution of company documents

6 Methods of executing document

(1) The operation of subsection 127(1) of the Act is modified, as set out in this section, in relation to companies, directors of companies, company secretaries, and persons having dealings with companies.

(2) In this section:

document includes a document in electronic form.

(3) A company may also execute a document without using a common seal if each person specified in paragraph 127(1)(a), (b) or (c), as the case requires, of the Act either:

- (a) signs a copy or counterpart of the document that is in a physical form; or
- (b) complies with subsection (4) of this section in relation to an electronic communication (within the meaning of the *Electronic Transactions Act 1999*).

The copy, counterpart or electronic communication must include the entire contents of the document, but need not include the signature of another person signing the document nor any material included in the document because of subsection (4) of this section.

(4) A person complies with this subsection if:

- (a) a method is used to identify the person in the electronic communication and to indicate the person's intention in respect of the contents of the document; and
- (b) the method:
 - (i) is as reliable as appropriate for the purpose for which the company is executing the document, in light of all the circumstances, including any relevant agreement; or
 - (ii) is proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

7 Assumptions that can be made about execution of document

(1) The operation of subsection 129(5) of the Act is modified, as set out in this section, in relation to companies and persons having dealings with companies.

(2) A reference to a document appearing to have been signed in accordance with subsection 127(1) of the Act includes a reference to a document (including a document in electronic form) appearing to have been executed in accordance with subsection 127(1) of the Act operating as modified by section 6 of this instrument.

(3) For the purposes of making the assumption first referred to in subsection 129(5) of the Act operating as modified by subsection (2) of this section, a person may also assume that anyone who:

- (a) complies with subsection 6(4) of this instrument; and

(b) is identified in the electronic communication as the sole director and sole company secretary of the company;
occupies both offices.

Part 4—Miscellaneous

8 Effect of modified provisions

Anything done in accordance with the modified operation of provisions modified by this instrument is as valid and effective for all purposes as if it had been done in accordance with those provisions in their unmodified operation.

9 Repeal and savings

- (1) The *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* is repealed.
- (2) For the purposes of Part 3 of this instrument, regard may be had to an act done before the commencement of this instrument if regard would have been had to that act for the purposes of Part 3 of the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* had it not been repealed.

Example: Before the commencement of this instrument, a director of a company signs a physical counterpart of a document on behalf of the company. After that commencement, another director complies with subsection 6(4) of this instrument in relation to an electronic communication that includes the contents of the document. Those 2 acts together constitute execution of the document by the company under subsection 127(1) of the Act operating as modified by section 6 of this instrument.
- (3) This instrument is repealed at the end of the period of 6 months beginning on the day after it was made.