

Companies Act 2006

Greater use of electronic communications

Background Information

The Companies Act 2006 received Royal Assent on 8th November 2006. It contains roughly 1,300 sections and is said to be the largest ever UK statute. The Act, which will not come into effect in its entirety until October 2009, will replace virtually all of the Companies Acts 1985 and 1989.

This briefing is one in a series looking at the significant changes to existing company law and many areas of new law.

During the consultation exercise prior to the introduction of the Act considerable emphasis was placed on seeking improved communications and greater transparency in the relationship between companies and shareholders. The perceived benefits of greater use of communication by email and through websites include:

- 1 significant cost-savings for companies by being able to communicate electronically
- 2 improved accessibility to corporate information for shareholders
- 3 increased dialogue between companies and shareholders, giving shareholders more confidence to invest
- 4 a reduction in the administrative burden on companies, particularly smaller private companies.

This briefing focuses on two particular aspects of the changes in the law which enable companies to make greater use of e-communications.

Online Filing of Company Documents

Since 1st January 2007, companies have been able to file all incorporation and administrative documents electronically. In reality, companies were already using this facility for certain documents but there is now a formal obligation on Companies House to receive and retain these documents in an electronic format. Where documents are filed by post, they must now be stored electronically by Companies House.

Communications with Shareholders

The Companies Act 1985 permitted the use of e-communication for specific types of document, for example, the circulation of a company's annual report and accounts.

Since 20th January 2007, a company may communicate by email with persons who have agreed to receive email communications. In the case of a shareholder who wishes to communicate with a company by email, this is permitted if the company has agreed or is deemed to have agreed to receive email communications. The Act also provides that a company may communicate by means of a website with persons who have agreed, or are deemed to have agreed, to receive such communications.

Practical Steps

In order to use email communication with its shareholders, a company will need to obtain the consent (and the email address) of each intended recipient. If the individual does not

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Companies Act 2006

Greater use of electronic communications (continued)

consent, the company will need to continue to send information in hard copy form.

In order to use website communication with its shareholders, a company may need to obtain shareholder approval to amend its Articles of Association permitting the company to communicate in this way. If the Articles already allow for communication through the company's website, the company will need to:

- 1 ensure that its Articles are not restricted to the communication of specific documents only, such as the annual report and accounts; and
- 2 obtain the consent of each intended recipient. The shareholder will be deemed to have consented if contacted but no response is received within 28 days. If the shareholder does not consent, the company must continue to send information in hard copy form.

Companies should be aware that where shareholders have received information otherwise than in hard copy form, they can require the company to send them the information in hard copy form at any time, irrespective of any shareholder resolutions or consents which may previously have been passed or given.

A shareholder will not, however, be deemed to have agreed to accept website communications if the company's request does not explain clearly the consequences of failing to respond or the company seeks the shareholder's agreement more than once in any 12 month period.

Issues to Consider

The changes give rise to a number of practical issues that companies should consider:

- 1 when contacting shareholders to ask for permission to supply documents via their websites, companies should make it very clear that by not responding, its shareholders will be taken to have consented and that (save where otherwise expressly provided in the wording of the notice) by responding in any form, shareholders will be deemed to have not consented
- 2 companies will need to make a separate email address available for email communication and issue guidance for shareholders on what messages the company will receive at that address
- 3 all meeting notices and voting forms will need to be amended to include this email address and an explanation of shareholder rights, possibly using different forms for shareholders who have agreed to receive electronic communications
- 4 companies will also need to consider whether there should be any identification requirements for senders of email communications, such as password protection.

Points to Note

If a shareholder has already consented to receiving documents through a company's

Companies Act 2006

Greater use of electronic communications (continued)

website, that permission will remain valid until revoked. However, that permission will only extend to the specific documents that a shareholder has agreed to receive through the website.

If a company intends to use its website to supply other documents, it will need to obtain broader permission from its shareholders.

A company must notify shareholders when new documents are posted to its website.

Quoted companies are subject to more onerous requirements, set out in the Disclosure Rules and Transparency Rules issued by the Financial Services Authority.

Comments

These changes should be beneficial to UK registered companies. Although companies will have to deal with the administrative burden and associated costs of asking shareholders upfront for consent, in the medium to long-term, there should be significant cost-savings.

However, it is worth making the point that as the vast majority of UK registered companies are small, private companies, with a very small number of shareholders, the number of companies who are likely to derive any material benefit from these changes is proportionately small.

From the shareholder's point of view, the changes will either be a benefit or be neutral in the sense that shareholders can continue to receive hard copy documents if they wish. It remains to be seen whether the changes do result in a greater degree of communication between companies and their shareholders.

This briefing paper summarises and comments on certain provisions in the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 and the Companies Act 2006.

It is not intended to provide legal advice, which should be sought on particular matters.

Please refer to your usual contact at Thomson Snell & Passmore for further information. Alternatively, please e-mail James Partridge at james.partridge@ts-p.co.uk or call him on 01892 701280.

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