



Special Release No.1

The Companies Act 2006

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Electronic Communications, Trading Disclosures and Electronic Filing: The New Rules

Introduction

The Companies Act 2006 (the 'Act') was finally passed in November of last year. The Act is the culmination of eight years of consultation, and repeals and restates almost all of our current company law. Due to this, the government has provided for staged implementation of the Act, with the first implementation date being 1 January 2007 and the final one being October 2008. Some of the provisions that have already come into force have had immediate practical impact for businesses, and this note focuses on three of these key areas.

Electronic Communications

The new rules allow the following:

Communications from companies to shareholders

- A company can send a document to a shareholder by **e-mail** if the shareholder has agreed to the use of e-mail, either in respect of a particular document or in respect of documents in general. A shareholder who so agrees will need to provide the company with an e-mail address.
- A company can send a document to a shareholder by **posting it on its website** if the shareholder has agreed to that method of communication, either in respect of that document in particular or in respect of documents in general. The company is, however, required to notify the shareholder that the document has been posted on the website. A shareholder will be deemed to have agreed to website communication if:
 - the company has internal approval to communicate in this way, either through a shareholder resolution or through a provision in its articles; and
 - the shareholder has failed to respond (within 28 days) to a request from the company to agree to communication by means of its website. The company's request must state clearly the effect of failing to respond and must not be sent within 12 months of a previous request in respect

of the same or a similar class of documents or information.

Any document/information supplied via a website must be made available in a form which enables the shareholder to read and retain a copy of it. A document must be made available on a website for the appropriate period specified in the Act or 28 days if no period is specified.

Existing arrangements taking advantage of limited opportunities under the current legislation to communicate electronically will be preserved. In relation to website communication, if a company's articles already enable this, no change will need to be made unless the wording in the articles covers only certain documents, in which case a new resolution will be required.

The new rules apply to all companies, whether private or public, listed or unlisted. However, **companies listed on the main market** of the London Stock Exchange will also have to comply with the provisions on electronic communications in the FSA's new Disclosure and Transparency Rules, under which (subject to an expected transitional arrangement for companies which already communicate electronically) companies are prevented from communicating by e-mail or website unless they have obtained the approval of their shareholders in general meeting.

Communications from shareholders to companies

The Act includes provisions allowing shareholders to send documents to companies by e-mail. A company will have to agree explicitly to communication in this form, but if it includes an

e-mail address in a notice calling a meeting it will be deemed to have agreed that its shareholders can send it material relating to that meeting by e-mail. A similar rule on deemed agreement applies if a company includes an e-mail address in a proxy document.

So what does this mean in practice?

- Companies should review their Articles of Association and existing shareholder consents to see what authorities they have in place already.
- Companies may then want to amend their Articles and/or gain shareholder approval in order to ensure that they can take advantage of the wider possibilities in the Act.

Trading Disclosures

All companies now need to specify their registered name, number, country of incorporation and registered office on their websites, e-mails and order forms. Failure to do so is an offence, which could give rise to a fine on the company and any officer responsible for the failure – directors who authorise e-mails or websites which do not contain the information are guilty of a criminal offence carrying a £1,000 fine. In addition to this, where a company is being wound up, documents in electronic form and all the company's websites must contain a statement that the company is being wound up.

The following format should therefore now be used in all e-mail correspondence:

ABC Limited

Registered in England & Wales no. XXXXXXXXX

Registered office: XXXXXXXXXXXXXXXX

The safest approach is to put this information on the footer of every e-mail sent by the company. In terms of the website, the information does not need to appear on every page – suitable places include the 'About Us' page or 'Legal information' page.

Electronic Filing

Although existing company law allowed for electronic filing of documents, the new provisions go further and include measures to make it easier to provide electronic copies to the Registrar and have those copies certified by the Registrar.

The Companies Act 2006 - Online

We have created a new area on our website dedicated to this significant piece of legislation. It contains numerous bulletins and helpful advice on this new Act. The new area can be found at:

http://www.davenportlyons.com/html/legal_services/dropdown_list/company_commercial/companies_act_index.htm

Contacts

This Special Release is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

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