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# Client Alert

## The Companies Act 2006: Electronic Communication for UK Companies

by Simon Fielder and Caroline Grange

**The Companies Bill received Royal Assent on 8 November 2006. The Companies Act 2006 (the “2006 Act”) repeals, and restates almost all of the current companies acts, which it will largely replace. The 2006 Act introduces reforms which will affect directors, auditors, shareholders and company secretaries of private, public and quoted companies.**

Most of the provisions contained in the 2006 Act will be in force by October 2008. Some provisions will come into force sooner and on January 20 2007 the provisions governing electronic communications were brought into effect. These provisions apply to all private and public companies incorporated in the UK.

### Key Changes Under the Companies Act 2006

- In circumstances where a company has provided an electronic address in a notice calling a meeting, in an instrument of proxy or proxy invitation a shareholder can now communicate with the company using such address.
- In addition, subject to shareholder approval companies can send documents and information to their shareholders via electronic means (e.g. fax, email or via a website). However if the company already has an individual’s agreement and the electronic address to circulate particular documents, then it may continue to use this authority.

### Communications to a Company

Where a company has given an electronic address in a notice of meeting, proxy instrument or proxy invitation it is deemed that any document relating to the meeting or proxy (as the case may be) may be sent to the electronic address provided.

### Communications by a Company

- A company may only send information in electronic form to a person who has agreed to such method.
- A company may only send information to a person via a website if the person has agreed or where the person is a shareholder, that person is deemed to have agreed to such method. A shareholder will be deemed to have agreed if either:
  - the company has passed a resolution authorising such communication; or
  - such communications are provided for in the company's articles of association,

in either case, the person must, in addition, have been asked and individually agreed to the method of communication or failed to have communicated a response to the company within 28 days of the request.

- In addition, the company must notify recipients of the fact that information is available on the website (such information to be available for such period as specified by the 2006 Act or 28 days from the date of notification), how to access the information and the website address.

### Amendment of Articles of Association

If a company's articles of association do not provide permission for electronic communication with its shareholders, or a company wishes to extend the provisions in its current articles of association, for example, to include sending out documents not currently covered, then a special resolution will need to be passed amending the articles of association.

### Key Steps Checklist

The following is a checklist of issues for companies when considering using electronic communication methods:

- amend meeting notice/proxy instrument/proxy invitation to include an electronic address;
- consider whether to impose any conditions on the use of the company's electronic address on the meeting notice/proxy instrument/proxy invitation;
- consider what form of authentication the company requires of the identity of the sender;
- consider whether any amendments to the articles of association are required;
- pass any required resolutions; and
- obtain individual members' consent.

Electronic communications for companies listed on a regulated market (AIM is not a regulated market for these purposes) are subject to variations on the above guidance. In addition, the 2006 Act's provisions on electronic communications need to be read alongside the electronic communication provisions in the

Disclosure and Transparency Rules which apply to issuers with transferable securities admitted to trading on a regulated market (AIM is not a regulated market for these purposes).

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