

# Company Secretary's update

November 2006

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## [The Companies Act 2006 – electronic communications](#)

The Companies Bill, previously known as the Company Law Reform Bill, received Royal Assent on 8 November 2006. The new Companies Act 2006 is in part a consolidation act but there is a lot of new content, and its 1,300 or so provisions and 16 Schedules make it the largest ever UK Act of Parliament. The new Act supersedes the Companies Act 1985, Companies Act 1989 and the Companies (Audit, Investigations and Community Enterprise) Act 2004 (with minor exceptions). The Act, official explanatory notes and destinations and derivations tables, are expected to be available in the next fortnight.

PricewaterhouseCoopers LLP has produced a podcast with soundbites relating to the Companies Act 2006. To access this podcast go to [www.pwc.com](http://www.pwc.com) and click on UK, Issues – Companies Act 2006.

Provisions relating to the Transparency Directive apply immediately with Takeovers Directive rules to be implemented and electronic communications with shareholders in January 2007, with all provisions being in force by October 2008.

The clauses relating to electronic communications present significant cost savings for business, and may require companies to change the articles in order to take advantage of these savings.

With the implementation of the first Company Law Amendment Directive, there is a requirement for all companies to disclose their name, registered number and other

particulars on its website and order forms by 31 December 2006.

## [The Combined Code 2006](#)

In June the Financial Reporting Council (FRC) published a new version of the Combined Code on Corporate Governance. The new version updates the 2003 Combined Code.

## [London Stock Exchange to review AIM regulations](#)

The London Stock Exchange (LSE) has recently concluded a review of the operation of AIM, including an assessment of AIM's current regulatory structure. The review was carried out in conjunction with market participants and recommends three key changes.

## [Warning – boiler room scams and corporate identity theft](#)

The Institute of Chartered Secretaries and Administrators (ICSA) registrars group has recently produced a warning for use by listed companies following an increase in activity in so called boiler room scams. Companies need to be vigilant as the danger of corporate identity theft is on the increase, with small businesses often being targeted.

What do you think of Company Secretary's Update?

To give your feedback or to be removed from the mailing list click [here](#).

## The Companies Act 2006: electronic communications with shareholders – January 2007

The Government announced on 2 November 2006 that it will fast-track provisions that allow companies to communicate electronically with shareholders, with the remaining provisions in the Companies Act 2006 being fully implemented by October 2008.

### The current position

Shareholders can opt in to receive all shareholder communications electronically. This means that shareholders are given the option to receive reports, such as the annual reports and accounts and notice of meeting, electronically. If they do not opt in, they will receive communications in hard copy.

### The new position

From January 2007, subject to shareholder approval, companies will be able to provide all shareholder communications in electronic form as a default, unless the shareholder gives notice to the company that they wish to receive communications in hard copy. Communications that can be sent electronically will include the annual report, interim reports, notice of meeting and proxy appointments.



The pros	The cons
Companies will be giving shareholders the option of how they would like to receive company communications. The Act does not take away existing shareholder rights, but gives shareholders more choice.	Shareholders could feel neglected if they do not receive information about the company when they expect to do so. The communication of the change will be essential. There must be awareness among shareholders of how the changes impact them.
Cost-effective communications. Print run and distribution costs are likely to be reduced for companies with large shareholder bases.	Some shareholders will prefer to use paper copies of reports as they are easier to handle. These will still be available under the new clause, but will not be the default option.
Environmental considerations – a reduction in paper based reports will help companies to show they are environmentally conscious.	Shareholders may have difficulty with computer usage and this could make electronic communication difficult.

### What do you need to do?

- Have a well planned approach – ensure close liaison with investor relations and press teams to ensure that the approach is agreed and will fit with the company's communication policy.
- Look at your on-line function. Is it effective? Can it be improved in advance of additional usage? Is there an opportunity to make communications more interactive? Improvement ideas could include the use of search facilities and ensuring easy navigation of the site.
- Make sure your existing communications with shareholders convey your intentions, otherwise shareholders may feel disenfranchised if they unexpectedly stop receiving paper copies of reports.
- Make it clear that electronic communications are not being forced on shareholders. They will still have an option to receive hard copy reports.
- Ensure shareholders know where to find your website! Put the address on all communications going out. Use every marketing opportunity.
- Start looking at your articles now and consider what changes you might need to be made and put to the shareholders at the next AGM

## The Combined Code 2006

In June the Financial Reporting Council (FRC) published a new version of the Combined Code on Corporate Governance. The new version updates the 2003 Combined Code and contains a number of limited but important changes, including:

- 1 The restriction on a company chairman serving on a remuneration committee has been relaxed so that he or she can serve on the committee in addition to the recommended three (or two for smaller companies) independent non-executive directors, provided he was "considered independent on appointment as chairman". The chairman may not, however, chair the committee.

Although a helpful amendment it does not affect the number of independent non-executive directors required by a listed company, as the chairman is still not regarded as an independent non-executive director.

- 2 It recommends that a "vote withheld" option be included on proxy appointment forms for all general meetings, together with an explanation that a vote withheld is not a vote in law and will not be counted in the calculation of votes. This explanation must be included in any voting results announcements. The practice of marking vote withheld on proxy forms has developed among investors as a means of indicating reservations about resolutions without actually voting against the resolutions. In legal terms a vote withheld is the same as an abstention, however, it does not convey the same reservations about a resolution.

As many companies already include a vote withheld option following the recommendation of ICASA, the National Association of Pension Funds and by Paul Myners in his report to the Shareholder Voting Working Group, it is not expected that this change will have a major impact.

- 3 The Code also wants companies to publish details on-line of proxies lodged at general meetings where voting takes place by a show of hands.

Again, many companies have chosen to include this information voluntarily following recommendation by Paul Myners and support from ICASA.

- 4 A change has also been introduced in respect of a number of the existing provisions in the Combined Code that require companies to make information available, for example terms of reference of the various committees. Companies will now be able to comply with these provisions solely by making that information available on their websites, without being obliged to make hard copies available on request.

In practical terms this will mean that companies will no longer need to make information available on individual request to shareholders.

The listing rules are not expected to refer to the new code until the second quarter of 2007. However, the FRC is recommending that listed companies adopt the revised Code on a voluntary basis for accounting periods beginning on or after 1 November 2006 given the limited number of changes.



## London Stock Exchange to review AIM Regulations

The London Stock Exchange has recently concluded a review of the operation of AIM including an assessment of AIM's current regulatory structure. The review was carried out in conjunction with market participants and recommends three key changes.

First, a new rulebook, the AIM Rules for Nominated Advisors, will be introduced. Primarily this rulebook will be a consolidation of the existing obligations on nominated advisers that are currently contained within the AIM Rules for Companies and in the nominated adviser eligibility criteria. The document will also set out in greater detail the responsibilities that the LSE expects nominated advisers to fulfil and the obligations a nominated adviser owes to the LSE.

A new set of responsibilities for nominated advisers intended to reflect current good practice have been included. A set of high level principles have been established for each of the responsibilities and under each principle there is a list of activities that the LSE would expect a nominated adviser to undertake. These principles and example activities will be used by the LSE as a basis for assessing the standard of work performed by a nominated adviser.

Second, all AIM companies will be required to make enhanced disclosure of core management and financial information on their website. This will include providing easy access on their website to historical information, such as the admission document. It is expected that new and existing companies will have six months to comply with the new rule from the effective date.

Third, the LSE has also taken this opportunity to provide a clearer understanding of their approach to dealing with breaches of the AIM rules. A warning notice has been introduced that may be used on completion of an investigation if it is believed that a breach of the AIM rules has occurred which does not warrant a fine, censure or more serious sanctions. It will also be taken into account in the event of further breaches. This will result in amendments to the AIM Disciplinary Procedures and Appeals Handbook.



## Warning – boiler room scams and corporate identity theft

### Boiler room scams

The ICSA registrars group has recently produced a warning for use by listed companies following an increase in activity in so called boiler room scams.

Boiler rooms are unauthorised overseas brokers who use high pressure sales techniques to persuade investors to purchase what often turn out to be worthless shares. They operate by legitimately acquiring shareholder lists to target small investors. The offer of a market report on the company in which the investor holds shares is often used as an opening line followed by further calls to offer other investment opportunities. In the majority of cases the investment opportunities turn out to be worthless by which time the boiler room has vanished. As the boiler rooms are based outside the UK there is usually no direct action the Financial Services Authority (FSA) can take to shut them down.

A recent survey carried out by the FSA revealed that among a sample of 100 victims of boiler room scams average losses were £20,000, with some reported losses of over £100,000.

The Companies Act 2006 will go some way to help protect shareholders from these scams in the future by requiring full details of the reason for the request for shareholder lists and by giving companies the right to refuse. In addition amendments to annual returns requiring only names and addresses of declarable holdings for listed companies will assist greatly.

In the meantime the ICSA registrars group has prepared a form of wording that has been endorsed by the FSA and ICSA for use by companies that want to warn their shareholders of such scams through their mailings to shareholders and their website. To access this template please use the following web address: [http://www.icsa.org.uk/images/pdfs/Latest\\_news/boiler\\_template.pdf](http://www.icsa.org.uk/images/pdfs/Latest_news/boiler_template.pdf)

### Corporate identity theft

Companies need to be vigilant as the danger of corporate identity theft is on the increase, with small businesses often being targeted. Company hijacks normally involve fraudsters changing details of the company's directors and registered office and then using the company's good name to order goods or services on credit which they sell, but never pay for. It usually takes some time for the scam to be uncovered, by which time the hijackers are untraceable. The result is the business is left to sort out the aftermath, including restoring its reputation and creditworthiness.

In an attempt to counter the fraud, Companies House has launched a free scheme called PROOF (PROtected Online Filing) which enables businesses to file documents securely online. The PROOF scheme uses passwords, confidential authentication codes and recognised email addresses in order to change company details. Paper versions of those forms will then be rejected and sent back to the company unless specifically authorised to accept them by the company. In this way companies can be sure that only they can file the forms to register such changes.

Despite these attempts the hijackers are reported to have contacted companies that have signed up for the scheme purporting to be from Companies House and asking customers to reveal their authentication codes. Companies House has now issued a warning statement on its website explaining that its personnel will never telephone a business to check its PROOF authentication codes.

The necessary forms to register for PROOF are available to download from the Companies House website.



If you would like to discuss any of the issues raised in this edition, please contact any of the people listed below.

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