



Company secretaries 'online'

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The potential for Internet technologies to change the way companies trade has been long recognised. At the same time, amendments to the Corporations Law prompted by these changes, accompanied by increased access to the Internet and the emergence of an 'online' culture, present significant opportunities for companies to improve their investor relations and corporate administration.

In recognition of this fact, ASIC has created a special page on its website (accessible via a link at www.asic.gov.au) dedicated specifically to e-commerce issues and associated regulatory developments. From humble beginnings — in 1995 the ASIC Digest contained only one reference to e-commerce in the form of electronic document lodgment — there are now more than thirty entries communicating ASIC's approach or inviting comment on a range of international and local e-commerce activities, from the issue of electronic prospectuses to offers of securities on the net.

In this article, I have selected for discussion three issues of particular relevance for company secretaries — the staging of company meetings and the electronic transmission and lodgment of documents.

Company meetings


Corporations Law principles concerning meetings traditionally operated from the premise that shareholders must be physically present at a meeting or must appoint a proxy to attend in their place in order to participate. Typically, this has discouraged shareholder participation as many shareholders cannot attend the meeting at the nominated date, time

or place. From a company's perspective, there are also costs and difficulties associated with finding a venue that is appropriate and/or large enough to seat those shareholders who can attend.

However, legislative changes introduced in 1998 now permit a company to hold a meeting of its members at two or more venues provided that the technology used gives members a reasonable opportunity to participate. Moreover, directors' meetings may be held using any technology consented to by all directors. These reforms clearly pave the way for holding a 'dispersed AGM' at a number of locations using video-conferencing. More radically, they also raise the possibility of a 'virtual AGM', where the parties are connected online rather than located within the same physical space.

In practice, whilst some Australian companies have provided real-time broadcasts of their AGM to venues other than where the meeting itself is being heard, we are yet to see any significant activity in the area of dispersed or virtual meetings. At a News Corporation annual meeting in Adelaide last October, three directors were connected via a satellite link from London, but problems were experienced with the satellite picture sticking and the sound disappearing.

As the News Corporation example suggests, the real obstacle to further reform is the capability and reliability of the technology. Current telecommunications systems are limited in the speed at which they can transmit electronic communications — for an online meeting, only two-way audio or one-way audio-visual communication is likely to be available. Such limitations may mean that the meeting fails to comply with the legislative requirement that shareholders have a reasonable opportunity to participate (it would be an embarrassing and costly exercise to reconvene the meeting in such circumstances).



One way to overcome this objection could be to provide a real-time broadcast of the meeting via the Web and, at the same time, to allow shareholders to ask questions via email or a bulletin board. This could be operated in conjunction with a system of electronic voting, a practice that is becoming popular in the United States. Electronic voting could also occur prior to the meeting. There is no prohibition on electronic voting in the Corporations Law provided that it is permissible under a company's constitution.

In many instances, a provision for electronic voting could also remove the need to appoint a proxy. At present, the Corporations Law allows for the submission of a proxy by email or fax, but problems still exist with authenticating the appointment. The Corporations Law still requires a proxy appointment to be 'signed'.

The reforms introduced extend not only to the way a meeting is conducted, but also to how the members are notified. For example, a company is now permitted to give notice of a meeting via email address or fax. The Corporations Law contains a replaceable rule which deems when a message is sent, but this may be overridden by provisions in the constitution of the company.

Electronic transmission of documents

In addition to changes in the way proxy submissions and meeting notifications may be delivered, there is wider scope for the electronic transmission of other documents to shareholders. Some definitions in the Corporations Law such as 'document', have been expanded to encompass electronic communications. Other terms such as 'report' and 'distribute' are considered broad enough to include electronic means and remain unchanged.

Nevertheless, although it is

common for an annual report to be posted on the Internet, companies seem reluctant to substitute electronic delivery for postal delivery when complying with reporting requirements. The use of electronic delivery does have the potential to decrease costs, increase timeliness and overall efficiency, but the costs of establishing a system for electronic distribution can be high, especially where postal delivery will still be necessary for those who choose not to use electronic forms of communication. Internet use among the Australian public is increasing at a very fast rate. The Australian Bureau of Statistics suggests that in May 2000 over one-third of homes had Internet access, but this still leaves up to two-thirds of homes not yet online.

Electronic lodgment of documents

In addition to the dedicated e-commerce page on its website, ASIC has also sought to ensure that its own processes take advantage of online opportunities. Via its website, ASIC now provides a number of electronic lodgment options in addition to the usual paper methods. However, the Corporations Law requires that a document may only be lodged in this manner where ASIC and the person lodging it have agreed, in writing, that it may be lodged electronically or ASIC has given general approval to documents of that kind being lodged electronically. Also, a signed copy of any document lodged electronically must be retained and provided to ASIC if requested.

Companies are also able to subscribe to the eRegisters service which is aimed at directors and secretaries. Subscribers are permitted to lodge a company's annual return online using the service as well as lodge details of issues or shares or cancellations of shares. Company details may be viewed online and

necessary amendments to company office holders and registered addresses can also be made.

Lawyers and accountants that deal with a high volumes of lodgments are able to lodge annual returns and make similar changes to company details using the EDGE system. This system is widely used and permits lodging outside business hours. Registration of a company can also be done electronically now using ECR (Electronic Company Registration) which provides for electronic payment of monies also.

Conclusion

Clearly, Internet technology has the ability to substantially alter the processes of corporate administration. The transition to electronic communication for meetings and document delivery provides a range of advantages. Information is more timely and is more easily disseminated. Meetings conducted online would also be more inclusive and remove the need for proxy voting. Communication costs would also be reduced. All of these factors would help to improve efficiency and relations with investors.

Nevertheless, there are still barriers to realising some of the opportunities presented by electronic communication. Set-up costs remain very high. Also, the use of electronic communications assumes that access to electronic communications is readily available. Despite widespread use, not everybody has embraced or has access to the Internet. Moreover, there may still be cultural barriers which prevent widespread acceptance of the virtual meeting concept. Just as the success of video-conferencing has been limited by the preference for doing business face-to-face, so may similar prejudices affect the use of virtual meeting to replace the traditional AGM.

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