

PROPOSED REFORMS TO COMMUNICATE WITH SHAREHOLDERS AND SAVE TREES

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Legal Briefings - By **Rebecca Maslen-Stannage** and **Debra Ellis**

On 4 May 2016, Treasury released a consultation proposal for the technology neutral¹ distribution of company meeting notices and materials. This article discusses the proposed reforms which would increase flexibility for distribution of particular shareholder documents by means of digital services such as SMS, email and mobile apps.

SUMMARY

- On 4 May 2016, Treasury released a consultation proposal for the 'technology neutral' distribution of company meeting notices and materials.
- The reform proposals are welcome, to save companies time and money.
- In this article, we discuss the proposed changes and our view on the potential for them to be expanded to other shareholder documents such as scheme booklets.

PROPOSED REFORMS TO COMMUNICATE WITH SHAREHOLDERS AND SAVE TREES

Treasury has released a consultation proposal for the "technology neutral" distribution of company meeting notices and materials.¹ These reforms would increase flexibility for distribution of notices of meeting, and perhaps other documents such as scheme booklets, by means of digital services such as SMS, email and mobile apps.

The reform proposals are welcome, to save companies time and money. We support the broadest flexibility of the changes, including its extension to other shareholder documents such as scheme booklets and notices of takeover related meetings – and would welcome them being extended further again, for example to bidder's statements and target's statements.

THE CURRENT POSITION

Currently, the default distribution method under the Corporations Act for notices of meeting is either personally or by post. Although other methods are available by shareholder's election including electronic address or electronic means, these are technology-specific and give limited flexibility to move with changes in technology.

For schemes of arrangement, at present, a court order is required if a target company wishes to send scheme booklets to members in electronic form, such as by email with a hyperlink to the scheme booklet. The courts take the same approach as for notices of meeting, restricting use of this method to members that have previously consented unless it is provided for in the target's constitution.

THE PROPOSED CHANGES

The proposed changes would allow companies to serve notices of meeting by using one or more of the following methods set out below. If a company would like to change its communication method to Method A, B or C, then it must first notify its shareholders of the method(s) it wishes to adopt by using the channel it currently uses to communicate with the relevant shareholder.

- Method A: any universally or near-universally accepted channel as a default method. These are services that are widely used, available and reliable, such as mail (universally accepted) or mobile phone (near-universally accepted, being used for phone calls and texting by 94% of adult Australians as at May 2015). Treasury estimates that 86% of the population have a home internet connection and so e-mail, website or mobile apps would not, in Treasury's opinion, constitute a universally or near-universally accepted channel until usage levels Australia-wide are higher for these services. An example of Method A is sending meeting notices via SMS, which would likely include instructions on how to view the notice and materials on either a Method B or Method C channel.
- Method B: alternative method of communication with the consent (implicit or explicit) of

the shareholder. For example, sending the meeting notice by email where the shareholder has previously contacted the company by email.

- Method C: alternative method of communication that is determined by the company as effective with opt-out option to revert to Method A or Method B. Since the onus would be on the company to ensure that this method is 'effective', the company would need to satisfy itself that the method it is using is reaching all shareholders.

Treasury is consulting on the details of the proposal, including the ability of a company to impose a method on shareholders and what a company should do if they do not have the shareholder's contact details required for an alternative communication method.

FURTHER EXPANSION

Those shareholders who are sufficiently keen to actually read the information provided by a company can typically readily find it – whether on the internet or by calling the company or a designated information line. So we suggest that whatever digital means of communication will bring it to the attention of shareholders widely, and allow those who wish to do so to read the information – with the least cost to the company practicable – should be facilitated by the law. We therefore welcome the proposed changes and their expansion to other shareholder documents such as schemes booklets, and would support increasing flexibility to communicate takeover documents, including bidder's statements and target's statements, by digital means.

ENDNOTES

1. [Technology neutrality in distributing meeting notes and materials proposals paper.](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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