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WEBSITE COMMUNICATION

INTRODUCTION

The company website has become one of the key tools for companies to communicate with both customers and investors and there is an increasing trend towards use of the website for communicating with a variety of stakeholders. This trend has been strengthened by gradual changes to legislation and regulations albeit on a piecemeal basis. This Prism Briefing sets out details of recent legislation that encourages the move to use of the website particularly in relation to a company's shareholders. Exact requirements will vary depending on whether the company is private, a traded company and whether it has a main market or AIM listing.

COMPANIES ACT 2006

Deemed consent – Schedule 5, paragraph 13

Legislation allowing the company to communicate with shareholders electronically has been in place for some time. However, the introduction in the Companies Act 2006 of the 'deemed consent' regime whereby shareholders effectively have to opt-in to receive hard copies of documents, has greatly increased the use of electronic and website communication. In order to take advantage of this option shareholders have to be consulted individually as to whether they wish to receive hard copies of documents, however if the shareholder has not responded within 28 days they are deemed to have agreed to communicate with the company electronically. Following this consultation any document or information circulated by a company to its shareholders may be published on its website and a notification sent to the shareholder either electronically, if an email address is available, or by letter, whenever a shareholder document appears on its website.

Poll results – section 341

A traded company must publish information on its website relating to a poll taken at a general meeting. This information includes text of the resolutions, number of votes cast, proportion of the issued share capital represented by the votes, and number of votes cast for and against and number of abstentions.

Information about appointment of an independent assessor – section 351

Where an independent assessor has been appointed by a traded company to report on a poll certain information on the assessor's identity and the resolutions to which his appointment relates must be made available on the company's website.

Annual report and accounts – section 430

A quoted company must ensure that its annual report and accounts are made available on its website as soon as reasonably practicable and must remain available until the next report and accounts are made available. However most companies chose to keep their report and accounts available on the website for at least five years.

Publication of audit concerns – section 527

Shareholders (reaching a certain threshold) of a quoted company may require the company to publish on a website a statement setting out any matter relating to the audit of the company's accounts that are to be laid before the next accounts meeting or any circumstances connected with an auditor of the company ceasing to hold office since the previous accounts meeting

WEBSITE COMMUNICATION

COMPANIES (SHAREHOLDERS' RIGHTS) REGULATIONS 2009

(Companies Act sections 311A and 319A)

Information to be published on a website before a general meeting.

A traded company must publish the following information on a website before a general meeting:

- matters set out in its notice of meeting;
- total number of shares in the company and shares in each class in respect of which shareholders are entitled to exercise voting rights at the meeting; and
- totals of voting rights that members are entitled to exercise at the meeting in respect of shares of each class.

This information must be available on the website for 2 years from date of publication.

Members' statements, resolutions and matters of business

Shareholders' statements, resolutions and matters of business received by a traded company after the first date on which the notice is published must be posted to the company's website as soon as reasonably practicable.

Questions and answers

A traded company need not provide an answer to a shareholder question at a general meeting if an answer has already been given in the form of an answer to a question on the company's website. This is likely to lead to companies providing a comprehensive set of Q&As on its website particularly in relation to sensitive or controversial issues.

FSA'S UK CORPORATE GOVERNANCE CODE

Main market companies subject to the Financial Services Authority's UK Corporate Governance Code (the **Code**) are required to disclose as soon as reasonably practicable on a website the following information in respect of proxy votes (except where the resolution was taken on a poll):

- number of shares in respect of which proxy appointments were validly laid;
- number of votes for the resolution;
- number of votes against the resolution; and
- number of shares in respect of which the vote was withheld.

In addition guidance to the Code suggests that the following information, which has to be made available under the Code, may be done so by placing it on the company's website:

- terms of reference of the nomination, remuneration and audit committees;
- terms and conditions of appointment of non-executive directors; and
- where performance evaluation has been externally facilitated, a statement of whether the facilitator has any other connection with the company; and
- where remuneration consultants are appointed, a statement of whether they have any other connection with the company.

DISCLOSURE AND TRANSPARENCY RULES (DTR)

Chapter 7 of the Disclosure and Transparency Rules sets out requirements for listed companies to produce corporate governance statements. In terms of location the corporate governance statement may be set out by means of reference in its directors' report to where such document is publicly available on the company's website instead of being produced as a separate report or as part of the directors' report.

WEBSITE COMMUNICATION

DTR2.3 requires inside information announced to the market via a regulatory information service (**RIS**) to be made available on the company's website (if it has one) by close of the business day following the day of the announcement. The company must make sure that inside information notified to a RIS is made before, or at the same time as, publication of the information on its website. These announcements must be kept on a company's website for a year following publication.

The requirement for a company to publish inside information on its website will mean that items such as interim management statements will need to be posted to the company's website. In practice most companies will publish all announcements made to the market on its website.

DTR4.2.2 requires companies to make public a half yearly financial report no later than two months after the end of the period to which the report relates. This in effect means that the report must be announced to the market and posted to the company's website. As there is no longer a requirement to post copies of the half yearly report to shareholders the main point of access will be via the company's website.

CITY CODE ON TAKEOVERS AND MERGERS (THE TAKEOVER CODE)

The Takeover Code was amended in March 2009 to enable electronic forms of communication including publication on a website, to be used to send documents, announcements and other information to shareholders. Rule 19.8 of the Takeover Code provides that if a document, announcement or other information required to be sent will be treated as sent if it is:

- sent in hard copy;
- sent in electronic form; or
- published on a website, provided that a website notification is sent to the relevant person no later than the date the information is published on the website. The Takeover Code specifies the information that must (and must not) appear in the website notification.

The Takeover Code also envisages that the website will be the single point of reference for all information published in connection with an offer and copies of certain documents, announcements and information issued during the course of an offer must be published on a website. Any document or information published on the website must be in 'read-only' format so that it cannot be altered.

AIM RULES

Rule 26 requires that AIM companies must maintain a website on which a variety of information must be available. This includes items such as names and biographical details of the directors, constitutional documents, most recent annual report, all notifications made in the past 12 months and details of its nominated adviser.

PROVISION OF SERVICES

The Provision of Services Regulations 2009 require companies providing business and consumer services to make available certain information including terms and conditions, geographic address, details of any trade registration etc. Companies must also make available contact details of where recipients can make a complaint and information about dispute resolution must be given if the company is subject to a code of conduct or is a member of a trade or professional association that has a non-judicial dispute resolution procedure. The legislation specifies four ways that the information can be made available. One of these is by making it easily accessible electronically by, for example, providing an exact address of where the information can be found on a publicly available website.

PRISM PERSPECTIVE

The mandatory use of company websites for particular disclosures has grown up piecemeal through legislation and regulation. This has led to inconsistencies. For example the Companies Act 2006 requires quoted companies to publish their report and accounts on a website. The Disclosure and Transparency Rules only require information to be published on a company's website if it has one. In contrast companies subject to AIM rules must have a website on which certain information is published. There are also inconsistencies in the length of time that documents have to be available – report and accounts only have to be available until the next report and accounts are available, whereas matters set out in a notice of meeting must be available on a website for two years.

THE FUTURE

It is almost certain that the drive to making information easily accessible to shareholders, stakeholders and other interested parties will continue to be met by companies making full use of their websites. This is likely to be supported by legislation. There has been much recent debate in particular about how to make company reporting clearer and more focused. With the growth in length of disclosures, report and accounts have expanded often at the expense of clarity and loss of key messages. The Financial Reporting Council in particular has been heading a campaign to streamline reporting and is working with the Government on its proposals to simplify narrative reporting. In its recent publication 'Cutting the Clutter', it calls for regulatory change to enable explanatory information and standing data that doesn't change from year to year in a company's accounts to be published on a website rather than having to include this in a printed document. It appears that the Government may well legislate to allow this to happen. In the Government's publication 'Plan for Growth' (*BIS: April 2011*) it sets out its intention to "...simplify the reporting framework to enable quoted companies to provide clear and relevant information to investors about strategy, performance and risk in a simpler and more concise report, with supporting information provided on a company's website".

USEFUL SOURCES

Companies Act 2006
Companies (Shareholders' Rights) Regulations 2009
Disclosure and Transparency Rules
UK Corporate Governance Code
City Code on Takeovers and Mergers
AIM Rules
Investor Relations Society Best Practice Website Guidelines - www.ir-soc.org.uk
Cutting the Clutter: FRC April 2011
Plan for Growth: HM Treasury BIS

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