



**Chartered Secretaries**  
*Keeping good companies*

17 February 2000

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Dear Dr Ramsay

**Re: On-Line Corporation Project**

The Chartered Institute of Company Secretaries in Australia welcomes the opportunity to contribute to an issue of major importance such as this. The attached submission has been drafted by the Institute's Legislation Review Committee and other Institute members. The contributors are Company Secretaries of major listed companies and have substantial experience regarding this issue.

We might also draw attention to our concern that recent changes to the Corporations Law and ASX Listing Rules to cater for electronic communications reveal worrying gaps in knowledge and application of effective guidelines on authentication. Your current project is important in this regard.

Thank you for the opportunity to participate in this initiative. We would be pleased to discuss our submission with you at your discretion.

Yours sincerely

Ian Falconer  
Chairman, Legislation Review Committee

# **The Online Corporation: Electronic corporate communications**

## **Discussion paper December 1999**

### **Questionnaire**

#### **1. Electronic delivery**

##### **Requirements for signing**

Whilst recognising that the Electronic Transaction Act 1999 seeks to assist business in e-commerce by permitting electronic signatures, the Institute is of the view that for certain documents, actual written signature performs a significant role in demonstrating actual consent and acknowledgment by the signatory. We would include the following in this class:

- chairman's signature of minutes of a meeting
- directors' statement and report
- consent to act

In each case, the original forms part of the physical records of the company. Once these documents have been physically signed, we would regard their signature as sufficient authority to distribute related material with an electronic signature eg. signed consent to act and signed minutes of meeting of directors appointing a director should be sufficient authority to allow the company secretary to advise ASIC of the appointment by electronic means without a physical signature. We are concerned that the electronic transfer of minutes of a meeting coupled with an electronic signature and hard copy print-out could facilitate a fraud, which is less likely to occur under the current paper based, manually signed process.

##### **Requirements for personal or postal delivery**

The Institute is of the view that where a recipient has specifically nominated a fax number or an electronic address in preference to a postal address, proof of service to that address should be sufficient evidence of delivery eg copy of transmission report, acknowledgment of e-mail delivery.

We note however that whilst this may be practical for limited distributions eg to directors, it may not be practical for distributions to large numbers of shareholders. We also note that whilst significant effort is made by share registrars to follow up returned mail, including access to White Pages, a similar tracking process for undelivered fax or e-mail material does not appear to exist.

##### **Requirements for individual delivery**

We are of the view that the sender of material by postal or electronic mail has no responsibility for enquiring beyond the actual address provided by the intended recipient, other than perhaps a message along the lines of "To be opened by the addressee only".

##### **Disincentives to nominate an electronic address – privacy considerations**

We consider the responsibility for maintaining privacy of outward electronic messages rests with the recipient upon nominating the address to which the material is sent.

We suggest however that as a matter of good practice a company/entity receiving notification of an electronic address may wish to acknowledge the change, identifying the sort of material that would be sent to that address.

We consider that the restrictions currently placed on the use of addresses in a register under section 196 of the Corporations Law should apply to all addresses and not merely postal addresses. We recognise that control of electronic addresses, particularly e-mail addresses is somewhat less stringent or easy to police than postal addresses. Again this could be a factor that could be drawn to the attention of a person nominating an electronic address.

### **Deemed receipt of electronically delivered documents**

In the interests of consistency, we would support the provision of a rule regarding deemed receipt of electronically delivered documents. The period of next business day after it is sent appears to be a practical solution, recognising that computers and fax machines are not necessarily inspected on a regular basis each day.

We would not regard it necessary to amend the deeming provision overriding the deeming if the sender receives notice that the electronic message was undeliverable, provided the message was sent to the address nominated by the recipient. Likewise there should be no obligation on the sender to provide a paper version if the electronic message was not delivered, as the sender may not have an alternative address.

With regard to filtering of messages, it is the responsibility of the recipient to enquire about access or restriction to the nominated electronic address.

The approach adopted by the SEC appears to place deemed electronic delivery at a higher level than ordinary mail, requiring acknowledgment of receipt as a condition of delivery. Such a condition is not imposed on returned postal mail.

### **Notice of access to and consent to electronic delivery**

Again in the interests of consistency, we believe guidelines on the use of electronic delivery of company related documents would be of value to both issuers and investors. We suggest that these guidelines be drawn up in the light of both legal and practical comments made in response to this discussion paper.

We see value in permitting issuers to comply with delivery obligations by putting a document on its website, provided notice of its access is provided to investors individually. This would substantially reduce the material that would otherwise have to be attached to a message. We would include the following in material that could be made available on the website:

- annual report
- notice of AGM and supporting material

The availability of material on the website allows companies to provide more information to members, without the enormous costs of printing and distribution. It is then up to the recipient to choose whether to access the material or not, read it on the screen, print it or even pass it onto a third party. Our major reservation at making material available on the website, is that it be in such a form that it cannot be externally manipulated and re-inserted on the site without the company's knowledge.

We suggest that in advising investors that electronic addresses are acceptable, issuers should include details of the types of documents that may be sent to that address and of documents that will be accessible on the website. For this reason we believe a separate consent in respect of each issuer would be required, as issuers may differ as to their distribution policies and content. We do not believe it is necessary to require recipients to renew advice of their electronic address annually. Again it is the responsibility of the recipient to advise changes of address in whatever form. In this regard we recommend that issuers / registrars follow similar processes for confirming changes of electronic addresses as for changes of postal addresses.

## **2. Electronic voting and company meetings**

### **Holding meetings**

Qq 28 &29. No, these matters are adequately dealt with by each company's Constitution. It is preferable that companies have this ability retained in their Constitution as each company will be unique in its requirements.

We believe it is appropriate to comment on the recent developments in transmitting company annual general meetings live on the internet and holding meetings across several venues.

We strongly believe that providing shareholders with the option to view annual general meetings live on the internet is beneficial to shareholders. An example of this type of service is the 1999 AGM internet transmission by Coles Myer Ltd last November which was viewed by approximately 1,200 people.

We are also strongly of the view that whilst it is possible to hold AGMs in multiple venues simultaneously, it is not practical to do this at this time as the technology available cannot guarantee that all venues will be connected at all times.

We feel that it is unfair on shareholders if they attend a venue in good faith to participate in the meeting and are unable to do so due to technical problems. This forces the Chairman to make a choice – continue the meeting and create shareholder relations issues or adjourn the meeting and incur many hundreds of thousands of dollars of costs. As the law currently stands, the Chairman would appear to be required to adjourn the meeting.

Q30. No, there should be no restriction. It should be left to the company to decide whether they hold meetings in this manner.

Q31. Not applicable.

### **Voting at meetings**

Q32. Yes. The law presently does not provide for this form of voting and therefore needs to be changed.

Q33. As the change is structural, the law needs to be changed. A company's constitution would consequently need to be changed.

Q34. No, there should be no restriction. It should be left to the company to decide.

Q35. Not applicable.

### **Proxies**

Qq36 - 41. The proposed changes to the Corporations Law regarding the signing of proxies should overcome any technical issues.

### **Resolutions and minutes**

Qq42 - 43 No. However, we believe that while minutes can be signed electronically they should not be held electronically as they can easily be printed from the final electronic version and held in hard copy. The problem with electronic format is that this can easily be changed at a later date.

Q44. Electronic signatures should be embodied in the Corporations Law, but the Federal Government's proposed new Electronic Transactions Bill may render this step unnecessary.

Q45. No, there should be no restriction. It should be left to the company to decide.

Q46. Not applicable.

## **3. Electronic lodgement**

### **Electronic lodgement and search facilities**

#### **Question 47**

As ASIC have had electronic lodgement available for some time, corporations are well used to this mode of reporting. As a consequence any cost and or benefit to current users would have been absorbed.

For those corporations not presently using this system and choosing to deal directly with ASIC there may be some additional I.T. systems cost to be incurred as well as staff training and legal costs in documenting the arrangements with ASIC. However most large public accountants and high volume lodgement firms provide this service at reasonable cost.

We do not believe there would not be any major savings or benefits to corporations arising from the mandating of electronic lodgement of documents.

#### **Question 48**

The answer this question is substantially as for question 47. The information posted on ASIC records is the same material that the investing public would have previously received albeit in a different format ie annual report etc and therefore would be of very little interest.

In general, it is fair to say that those users of the ASIC Database are not the investing public but professional firms requiring evidence of corporate standing.

Any move to mandatory electronic reporting would have neither a benefit nor cost to the investing or other members of the public.

### **Question 49**

To answer this question there would have some understanding to the basis of the question particularly as to whether is intended that the web site be in addition to the ASIC database or in substitution for that database.

If the thought behind the question was the former then there would be very little benefit as it would crowd the website with material that would be of little interest to investors or the public (refer Q48). It may make the website harder to get onto because of increased professional traffic, it may require additional computer storage, which would add to the maintaining of the website. The displaying of this information would/ may act as a distraction from getting the corporate message to the investing public.

If the latter point is behind the thinking of the questioner then it should not be considered as a viable proposition. The Law requires, as it should, a central repository of corporate information. This should remain unchanged.

### **Question 50**

Yes

### **Question 51**

No

### **Question 52**

As ASIC have had an electronic database for some years they have a very efficient cost recovery system that provides for both cost recovery and future development costs. If the fee structure is inadequate either higher lodgement or search fees should be levied on end users.

### **Question 53**

The move to mandating electronic lodgement should be complete within say five years. It should apply to all issuers with a requirement to be compliant by the end date with out any recognition of public or proprietary status of the corporation. It may well be found that a majority of proprietary companies already lodge electronically through their accountants.

Records should primarily be either in HTML or PDF formats or their future equivalents. At this time, the use of multimedia formats for documents that are essentially in written format would not be appropriate. However, if in the next few years it becomes evident that there is greater emphasis on multimedia formats for the presentation of documents such as prospectuses and Chairmans' addresses to Shareholders, then this form of media should be acceptable for the lodging, searching and downloading.

All information that is on the public record, such as the ASIC Database, should be available for searching and downloading. While this facility is presently available to the public, it is not well known. As a result the searching and retrieval is the domain of selected third party providers. As indicated earlier at Q. 52. ASIC has a very efficient method of charging for this service. Notwithstanding this, basic corporate information should remain available at no cost to the public as it is now.

## **The regulatory regime – authentication**

### **Question 54**

As presently operates each corporation has an individual unique identifier given by ASIC and this system works efficiently. It is not dissimilar to security systems that apply overseas. For the level of security necessary this method is more than adequate.

### **Question 55**

Yes in hard signed copy.

### **Question 56**

Until expiry of statute of limitations ie 7 years.

### **Question 57**

Yes, as a back up copy only.