

ELECTRONIC SERVICE OF NOTICE TO SHAREHOLDERS AND DIRECTORS

FALL 2011

These days it seems as though almost all information is communicated or delivered electronically by email, facsimile, text message or similar means. Birthday cards, bank statements, photographs and even money can be delivered all with a click of a mouse. Gone are the days when people and corporations relied on the postal service to deliver letters, contracts and invoices by “snail mail.”

The convenience of electronic communication is extended to Alberta corporations, because Alberta corporations are permitted to serve a notice or document on their shareholders and directors by electronic means. Section 255(5) of the Alberta *Business Corporations Act* states:

255(5) A notice or document required to be sent or delivered under this section or section 256 or 257 may be sent by electronic means in accordance with the provisions of the *Electronic Transactions Act*.

Section 30 of the *Electronic Transactions Act* states:

30(1) Unless the sender and addressee otherwise agree, information or a record in electronic form is sent when it enters an information system outside the sender’s control or, if the sender and the addressee use the same information system, when it becomes capable of being retrieved and processed by the addressee.

(2) Information or a record in electronic form is presumed to be received by the addressee

- (a) if the addressee has designated or uses an information system for the purpose of receiving information or records of the type sent, when the information or record enters that information system and becomes capable of being retrieved and processed by the addressee, or
- (b) if the addressee has not designated or does not use an information system for the purpose of receiving information or records of the type sent, when the addressee becomes aware of the information or record

in the addressee’s information system and it becomes capable of being retrieved and processed by the addressee. [emphasis added]

Therefore, a notice or document that is sent to a shareholder or director from an Alberta corporation may be sent by email or facsimile if that respective shareholder or director has designated or uses that form of transmittal as a means by which to receive such documents. Furthermore, even where that respective shareholder or director has not designated that form of transmittal as a means by which to receive such documents, or has not used that form of transmittal to receive corporate documents in the past, the information is presumed to have been received by that respective shareholder or director when that respective shareholder or director is made aware of the transmission, and when the transmission can be retrieved by that respective shareholder or director.

However, it is important to note that s. 8 of the *Electronic Transactions Act* expressly states that a person is not required to accept information or a record in electronic form unless that person has provided consent.

Therefore, Alberta corporations that wish to send notices and documents to their shareholders and directors by electronic means should obtain an express opt-in from all of their shareholders and directors that both 1) confirms the shareholder/director’s agreement to receive notices and documents in electronic form and 2) designates the email address and facsimile number to which any such notices may be sent. This opt-in could be part of the share subscription agreement for each shareholder, and the consent or other document by which a person agrees to become a director or officer. New corporations should consider including provisions authorizing electronic communications in their unanimous shareholder agreements or in their bylaws, and existing corporations may wish to consider amending their bylaws to a similar effect. ▲

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