

# BUSINESS ALERT

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## **ELECTRONIC TRANSMISSIONS FOR CORPORATIONS**

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California corporations, limited liability companies and partnerships have the ability to use expedited forms of electronic communications and electronic data storage in corporate governance activities.

SB 1306, which amends various Sections of the California Corporations Code, expands the definition of the meaning of a "writing." A "writing" now includes electronic transmissions. A California corporation (and its shareholders, directors and officers) will have the ability to use electronic communications to send notices to and receive notices from directors and shareholders, to convene director and shareholder meetings and to solicit and receive written consents. Corporations will be able to maintain corporate records, such as minute books and bylaws, in an electronic form without retaining hard copies.

The requirements include obtaining consent from the recipient to the use of such electronic transmissions and taking reasonable measures to verify that the sender is the shareholder or director purporting to send the transmission and that the electronic transmission creates a record that can be converted into a clearly legible tangible form, such as a printed document.

Notices posted on websites also require the corporation to designate such a website for the purpose of corporate communications and accompany each posting with a separate notice to the intended recipients. If consent is not obtained, notices shall continue to be given personally, by first-class mail or as otherwise permitted under the code.

Directors have the flexibility to attend board meetings through video or telephone conference. A director is considered present through the use of such technology if all of the participants are able to hear one another. The new law expands the forums for holding meetings so that directors will be allowed to participate in board meetings through other electronic means, which do not require the board members to hear one another.

Under the new law, however, with respect to those shareholders who consent to the use of the electronic forum, meetings of shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication.

Before a corporation can conduct such a meeting, the corporation must adopt a reasonable measures of enabling shareholders to have the opportunity to participate and vote on matters submitted to the shareholders. Also procedures must be in place to establish the authenticity of the attending shareholders and to record the participation of such shareholders.

In deciding whether the use of the new forms of electronic communications are right for your company, consider that, although only corporations are addressed in this article, the new law applies to for-profit, nonprofit and special-purpose corporations and to partnerships and limited liability companies.

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*Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This article is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this article.*