

Oakwood Alert

Statements of Capital

February 2010

The Department for Business, Industry and Skills is proposing to change the requirements relating to statements of capital, in response to concerns raised by companies struggling to meet new requirements introduced by the Companies Act 2006. The principal recommendation is to remove the requirement for disclosure of share premium (paid and unpaid) attributable to *each share*, which is proving both problematic and time consuming for companies with complex share capital histories and structures.

Statements of Capital

Following changes introduced on 1 October 2009 by the Companies Act 2006, companies are now required to prepare and file a statement of capital in various circumstances, including whenever there is an alteration of share capital and on filing the annual return. The statement of capital must include:

- the total number of shares of the company
- the aggregate nominal value of those shares
- the amount paid up and the amount (if any) unpaid on each share
- in relation to each class of shares:
 - prescribed particulars of the rights attaching to those shares
 - the total number of shares of that class
 - the aggregate nominal value of the shares of that class.

Companies with more than one class of share, or with long and complex share capital histories, face certain practical difficulties in meeting these requirements.

Consultation on financial information required

The requirement to disclose the amounts paid up and unpaid on different classes of share are potentially onerous, particularly where shares have been issued at a premium. If a company has raised capital at different times, or has frequently allotted shares (for example, in connection with an employee share scheme), disclosing the amount paid up and the amount unpaid on a 'per share' basis could cause the statement of capital to run to many pages. The information provided, however, is arguably of limited value.

In addition, if a company's shares have been the subject of corporate actions, such as buy-backs, redemptions or share splits and consolidations, it may be impossible to identify the amount paid up on each share.

The Department for Business, Industry and Skills (**BIS**) has recognised the practical difficulties which such companies face and has issued a consultation document containing an overall recommendation that the requirement for share premium to be allocated between shares or between classes of share be removed. The consultation paper considers various options for changing the requirements with regard to each element of the statement of capital. To see the consultation document, please [click here](#).

Respondents to the consultation are generally expected to support the proposals. BIS is due to publish a response to the consultation by the end of March, outlining the relevant changes and how and when they will be implemented. We will keep you updated as to the outcome.

In the meantime, companies experiencing difficulties when completing the statement of capital may wish to refer to ICSA guidance, issued on 25 September 2009. The guidance suggests that companies

provide as much detail as possible and, where it is not possible to provide amounts paid or unpaid (including both nominal value and share premium) on a 'per share' basis, to "provide a pragmatic allocation of their share premium reserve between shares or classes of shares". To see the ICSA Guidance on Statement of Capital, please [click here](#).

Prescribed particulars of the rights attaching to shares

Companies with more than one class of shares and/or with complex share rights have also expressed concerns about the requirement to include particulars of the rights attaching to shares in the statement of capital. This requirement cannot be satisfied by including a cross-reference to the company's articles of association.

BIS has stated that it is aware of these concerns and a separate consultation process on this issue may be instigated in due course.

If you would like assistance in preparing a statement of capital or would like to talk through any of these issues in greater detail, please do give us a call:

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