

**COMPANIES ACT 2006:
STATEMENTS OF CAPITAL**

Consultation on financial
information required

NOVEMBER 2009

URN 09/1488

COMPANIES ACT 2006: STATEMENTS OF CAPITAL

The last tranche of provisions of the Companies Act 2006 was commenced on 1 October 2009. Among the changes introduced then was a new “statement of capital” – a snapshot of a company’s share capital that must be produced at various stages in a company’s life-cycle, including each year in its annual return.

In the summer of 2009, it became clear that for certain companies, it could be difficult to comply with one of the requirements of the Act for financial information in the statement of capital. We published an FAQ on our website (at [Annex A](#)) acknowledging the problem, and undertaking to consider and consult on how to resolve it.

This consultation sets out proposals for amending the requirements that balance the interest of third parties in obtaining information with the cost to the company of supplying it.

We hope that you will let us know if our assessments of the availability and value of information are accurate, and give us your views on our proposed options for changes in the information to be required.

Issued: 23 November 2009

Respond by: 11 January 2010

Enquiries to: Richard Grafen
Department for Business, Innovation and Skills
Corporate Law and Governance Directorate
Bay 565
1 Victoria Street
London
SW1H 0ET
Telephone: 020 7215 5323
Fax: 020 7215 0235
Email: richard.grafen@bis.gsi.gov.uk

This consultation is relevant to companies and their advisers, and to those who use company information obtainable from Companies House.

Table of Contents

Chapter 1 – Summary	1
Chapter 2 – Introduction	3
Chapter 3 – What are the problems?	5
Chapter 4 – Analysis	7
Chapter 5 – What happens next?	13
Annex A – FAQ	14
Annex B – Impact assessment	15
Annex C – List of questions	24
Annex D – List of consultees	26
Annex E – The Consultation Code of Practice Criteria	27
Annex F – Companies Act 2006: List of sections requiring a statement of capital	28

Chapter 1 – Summary

1. The last tranche of provisions of the Companies Act 2006 was commenced on 1 October 2009. Among the changes introduced then was a new “statement of capital” – a snapshot of a company’s share capital that must be produced at various stages in a company’s life-cycle, including each year in its annual return.
2. In the summer of 2009, it became clear that the requirements of the Act for financial information in the statement of capital were causing concern: some companies might have to provide many pages of information of doubtful value, and for some companies there might not be a correct response to one aspect that required allocating share premiums between shares in issue. We published an FAQ on our website (at [Annex A](#)) acknowledging the problems, and undertaking to consider and consult on how to resolve them.
3. This consultation sets out the problems, and then considers what elements of financial information about share capital should be included in the statement of capital. This includes looking at the ease with which companies can provide pieces of information, and at the potential value of the information to third parties who might choose to obtain the statements of capital from Companies House so as to find out about the capital of a company.
4. The proposals at the end are for a minor change to the requirements as expressed in the Act. They should ensure that there is no need to disaggregate any information below the level of a class of shares, and for share premium they would at most require only a single aggregate figure for the company. We believe that these would resolve the problems, and provide a statement of capital that was not costly for companies to produce and that was of value to those with an interest in an up to date picture of a company’s capital.
5. We hope that you will let us know if our assessments of the availability and value of information are accurate, and give us your views on options for proposed changes to the information to be required.

Questions

6. The following are the questions raised in the text of this consultation document:

Q1. Do you agree with the description of the problems in paragraphs 27-29?

Q2. Do you have any further concerns about the financial information requirements in the statement of capital?

Q3. Do you agree with the conclusion that number of shares in total and in each class should be included in the statement of capital for all companies?

Q4. Do you agree with the conclusion that total paid up nominal value of issued shares should be required for statements of capital relating to formation for both public and private companies?

- Q5. Do you believe that the benefit to readers of including the total paid up nominal value of issued shares in other statements of capital would justify imposing on the company the cost of providing it?**
- Q6. Do you agree with the conclusion that amounts unpaid up on shares in each class should be included in the statement of capital for all companies?**
- Q7. Do you agree with the conclusion that the total nominal value of issued shares should continue to be required in the statement of capital for public companies?**
- Q8. Do you believe that the benefit to readers of including the total nominal value of issued shares in the statement of capital for private companies would justify imposing on the company the cost of providing it?**
- Q9. Do you believe that the benefit to readers of including the aggregate value of the share premium account in the statement of capital would justify imposing on the company the cost of providing it?**
- Q10. Overall, for the five items listed above, do you agree with our assessment of the value and costs of the information?**
- Q11. In addition to any comments you have made on the individual elements above, do you have any views on the minimum and maximum described, and on the choice of a point between them?**
- Q12. Do you agree that the statement of capital provided on formation of a new company should remain as it is?**
- Q13. Do you agree that – apart from on formation – the requirements in the statement of capital should be the same in all the different situations in which it is required? If not, what differences do you think there should be?**
- Q14. Do you believe that we should change all of the statements of capital at the same time, or that we should consider taking earlier opportunities to amend those for which powers are available?**
7. We are also interested in any further views or evidence you may have on the following:
- Q15. Do you have any comments on the Impact Assessment at Annex B?**

Chapter 2 – Introduction

Scope

8. This consultation seeks views about possible changes to the legislative requirements for the financial information in the statement of capital. As well as financial information, about the nominal value of shares and the amounts unpaid, the statement of capital also includes requirements for other information¹ including voting and dividend rights. We are aware that some companies have concerns about these requirements, and we are considering these. If necessary we shall consult on those separately.

Coverage

9. The UK Government is responsible for company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the Companies Act 2006 should apply to the whole of the United Kingdom. Consequently any changes to company law resulting from this consultation will also apply UK-wide.

How to respond

10. When responding, please state whether you are responding as an individual or representing the views of an organisation.

11. The questions raised in the document are listed at [Annex C](#). A consultation response form will also be available electronically at <http://www.berr.gov.uk/consultations/page53695.html>. We would prefer to receive your response by email to: companiesact2006@bis.gsi.gov.uk. But you can also respond by letter or fax to:

Statements of capital consultation
Department for Business, Innovation and Skills
Corporate Law and Governance Directorate
Bay 565
1 Victoria Street
London
SW1H 0ET
Fax: 020 7215 0235

12. A list of organisations consulted is in [Annex D](#). We are also sending it to an email list we maintain of around 800 people with an interest in company law. We would welcome suggestions of others who may wish to be involved in this consultation process.

¹ For most statements, the further information is set out in Companies (Shares and Share Capital) Order 2009 (SI 2009/388) – http://www.opsi.gov.uk/si/si2009/uksi_20090388_en_1

Timing

13. The consultation runs for the eight weeks from 23 November until 11 January. Ian Lucas, Minister for Business and Regulatory Reform, has agreed that we should keep this shorter than the standard twelve weeks because the current requirement is imposing an unnecessary burden on those who complete the statement of capital, and we would like to be in a position to correct it as soon as possible.

Additional copies

14. Additional copies of this consultation document may be made without seeking permission.

15. Printed copies of this consultation document may be obtained by post from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Telephone: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845-015 0030

On-line ordering: www.bis.gov.uk/publications

16. Electronic versions may be viewed on the BIS website at:

<http://www.berr.gov.uk/consultations/page53695.html>

Confidentiality and Data Protection

17. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

18. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

19. Questions about the policy issues raised in this consultation can be addressed to Richard Grafen, whose contact details are on the first page of this document.

20. A copy of the Code of Practice on Consultation is in [Annex E](#).

Chapter 3 — What are the problems?

Background

21. The Companies Act 2006 changed the law on the constitution of companies. Under the Companies Act 1985, a company's memorandum contained a figure for the company's authorised capital, and details of the shares taken by the original subscribers, and it was updated – sometimes by annotations or footnotes – when the company changed its capital. The 2006 Act dispensed with the concept of authorised capital, and it turned the memorandum into a document that was produced only for formation of the company and was not updated. All changes to a company's constitution are now made to the articles of association.

22. The 2006 Act therefore introduced the “statement of capital” as one of the documents submitted to form a company. Companies also have to submit an up-to-date statement of capital as part of their annual return, and they have to produce one on demand at the request of a member of the company. There are several further requirements for statements of capital through the Act, generally when the company does something to change its capital. A full list of sections of the Act that require a statement of capital is at [Annex F](#).

23. The requirements for the statement of capital are set out in similar terms in each of its 15 instances. The text of section 644(2) is as follows:

644 Registration of resolution and supporting documents

...

(2) The statement of capital must state with respect to the company's share capital as reduced by the resolution—

- (a) the total number of shares of the company,
- (b) the aggregate nominal value of those shares,
- (c) for each class of shares—
 - (i) prescribed particulars of the rights attached to the shares,
 - (ii) the total number of shares of that class, and
 - (iii) the aggregate nominal value of shares of that class, and
- (d) the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium).

24. The Companies House forms that collect the financial information required have five columns as follows:

- Class of shares (E.g. Ordinary/Preference etc.)
- Amount paid up on each share [footnote: Including both the nominal value and any share premium]
- Amount (if any) unpaid on each share [footnote: Including both the nominal value and any share premium]

- Number of shares [footnote: Total number of issued shares in this class]
- Aggregate nominal value [footnote: Number of shares issued multiplied by nominal value of each share]

25. Two concerns have been raised with us about the financial requirements – ie everything apart from the “prescribed particulars of the rights attached to the shares” (which has been changed to “voting rights” in the case of the annual return in section 856). Both concerns about financial information turn on the requirement in subparagraph (2)(d) for “the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium)”.

26. As noted above, we are aware of the separate concerns about the way in which rights attached to shares have to be described in the statement of capital. Although that is beyond the scope of the present consultation, we are working on it actively and if necessary will consult on it shortly.

The problems

27. The first concern is one that creates a burden for some companies that have allotted shares at different prices. The Act and the form appear to require that information about shares issued for different amounts is listed separately as they both require “the amount paid up ... on each share”. For many companies that have raised capital at different times, this will mean including several lines in the form for the same class of shares. For some companies that allot shares frequently, for example in connection with employee share schemes, complying with the requirement would mean many pages of information.

28. So far as we can see, there is no value to readers of the information in having all allotments at different prices listed separately. Indeed for a reader who may be interested in eg the total number of shares in a class or the total amount not paid up on all shares, the useful information is much more difficult to separate out.

29. The second problem will potentially apply to any company that has done more than simply issue shares. If a company has for example bought back shares, cancelled shares or consolidated shares, then there may be no correct answer to the question of the amount paid up on each share. In the statement of capital on formation, there will be no problem, and recording the amount paid up on each share will give potentially useful information to third parties about the total amount of capital, including share premium, that the subscribers have contributed. A company with a history, however, will know what the total amount paid for all its shares is, including the share premium, but it may not be able to allocate that in a sensible way between the shares currently in issue.

Q1. Do you agree with the description of the problems in paragraphs 27-29?

Q2. Do you have any further concerns about the financial information requirements in the statement of capital?

Chapter 4 – Analysis

30. In the light of the two problems explained in the previous chapter, we have reviewed all of the financial information included at present in the statement of capital, and for each element considered the following questions:

- What value will the information be to readers, either members or creditors or other third parties?
- To what extent is the information readily available for a company, or what cost might be involved in providing it?
- Is there any requirement for this information in the Second Company Law Directive²?

31. In respect of public companies, some but not all of the information in the current statement of capital is required by the Second EU Company Law Directive. Much of the Directive is aimed at providing a harmonised level of creditor protection throughout the EU through rules on capital maintenance. As its preamble says:

Whereas Community provisions should be adopted for maintaining the capital, which constitutes the creditors' security, in particular by prohibiting any reduction thereof by distribution to shareholders where the latter are not entitled to it and by imposing limits on the company's right to acquire its own shares.

32. One of the potential reasons that people might want to look at the statement of capital will therefore be as creditors or potential creditors to check what the level of capital in a company is. This may well be the case for some creditors from other European countries. In the UK, however, our impression is that most people believe the level of capital not to be a very useful measure of security for creditors.

33. The current requirement includes the amount of unpaid share premium. We believe that it is possible for a company to have uncalled-up share premium, although on new allotments in public companies the premium must be paid up in full. But we do not believe that it is common for companies to issue shares at a premium without requiring payment of all premium immediately. Indeed we do not know if it ever happens in practice.

34. The following section sets out our views on the value and cost of the information, as well as any relevant Second Directive requirements. These are based on our own knowledge and some informal consultation with practitioners. We want to know if you agree with these views.

Number of shares

Value to readers

35. Shareholders have an interest in knowing the current number of shares in a company, including by class. It will enable a shareholder to calculate what

² Second Council Directive, of 13 December 1976 (77/91/EEC) - (OJ L 26, 31.1.1977, p. 1)

proportion of the shares they own – for voting or dividend rights. Prospective members may also be interested for the same reason.

36. The number of shares is of no obvious value to creditors and third parties.

Availability

37. The number of shares in issue for each class should be readily available to a company.

Second Directive

38. The Second Directive, in Articles 3(b) and 3(e), requires the number of shares to be disclosed at least once a year, and the number also needs to be shown for each class of shares.

Conclusion

39. We propose to maintain the requirement for number of shares in total and in each class for all companies.

Q3. Do you agree with the conclusion that number of shares in total and in each class should be included in the statement of capital for all companies?

Total paid up nominal value of issued shares

Value to readers

40. The total amount paid up on issued shares is of potential importance to creditors as it represents the part of the undistributable capital of the company. As noted above there are differing views on the value of this figure to creditors.

Availability

41. The total amount paid up on its issued shares should be readily available to a company, by class or in aggregate.

Second Directive

42. The paid up element of the total nominal value of issued shares is required by the Second Directive, in Article 3(g). It is required only at incorporation, or when being authorised to trade as a plc.

Conclusion

43. We need to keep the requirement for total paid up nominal value of shares for public companies on incorporation. We also believe that the amount actually paid up on formation may be of interest to those dealing with new private companies, and we are inclined to keep the formation statements of capital consistent in this respect.

44. For statements of capital in the annual return or on changes of capital, there is no Second Directive requirement, and we would be interested in views on whether the benefit of including this element to those who may wish to read the statements of capital justifies imposing on the company the cost of including it.

Q4. Do you agree with the conclusion that total paid up nominal value of issued shares should be required for statements of capital relating to formation for both public and private companies?

Q5. Do you believe that the benefit to readers of including the total paid up nominal value of issued shares in other statements of capital would justify imposing on the company the cost of providing it?

Amounts unpaid up

Value to readers

45. The amounts unpaid up are potentially important to shareholders and to creditors as they constitute money that is still due to the company without its issuing new shares.

Availability

46. The company should have readily available the amounts that have not been paid up on shares, both in aggregate and by class.

Second Directive

47. There is no requirement in the Second Directive for this to be separated out.

Conclusion

48. We propose to maintain the requirement for the amounts unpaid up on shares in each class for all companies.

Q6. Do you agree with the conclusion that amounts unpaid up on shares in each class should be included in the statement of capital for all companies?

Nominal value of issued shares (including paid up and unpaid)

Value to readers

49. The value to readers of the nominal value of issued shares, including both paid and unpaid, is so that creditors will know what one component of the undistributable capital of a company will be once the shares are fully paid up. As noted above there are differing views on the value of this figure to creditors.

Availability

50. The total nominal value of shares in issue is readily available to the company. Once they have the number of shares in issue for a class, the total nominal value is simply the product of this and the nominal value of a share.

Second Directive

51. The total nominal value of shares is required by the Second Directive, in Articles 2(c) and 3(b); and the total nominal value of shares in each class is required by Article 3(e).

52. There is also a potential First Directive³ requirement, which applies also to private companies. Article 2(1)(e) of that directive requires disclosure of

“at least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital,

³ First Directive codified at 16 September 2009 (2009/101/EC) – (OJ L258, 1.10.2009, p11)

unless any increase in the capital subscribed necessitates an amendment of the statutes”.

This probably has no application in the UK, as since commencement of the Companies Act 2006 we no longer have “authorised capital”. In any case, the amount of capital subscribed is disclosed each year in the annual accounts, so that there is no directive requirement for us to include total nominal value of shares in the statement of capital for private companies.

Conclusion

53. We need to maintain the requirement for the total nominal value of issued shares (including both paid up and unpaid) in the statement of capital for public companies because it is required by the Second Directive, both in aggregate and for each class of shares.

54. In relation to private companies, we would be interested in your view on whether the benefits of including this element to those who may wish to read the statements of capital justifies the cost to the company of including it.

Q7. Do you agree with the conclusion that the total nominal value of issued shares should continue to be required in the statement of capital for public companies?

Q8. Do you believe that the benefit to readers of including the total nominal value of issued shares in the statement of capital for private companies would justify imposing on the company the cost of providing it?

Paid up share premiums

Value to readers

55. The aggregate value of the share premium account may be of interest to creditors as together with the paid up element of the total nominal value of issued shares they typically constitute the two main elements of the undistributable capital of the company. As noted above, there are differing views on the significance of this number for creditors.

Availability

56. As noted above on page 6, even a company with perfect records of all share transactions may not be able to allocate its share premium to the shares currently in issue, or to a class of shares. The only statement of capital for which it would be easy to provide this information would be the one supplied on formation.

57. We would, however, expect every company to know from time to time what its aggregate share premium is. It is calculated each year for the annual accounts. We believe that most companies would find it easy to produce an accurate figure quickly at any time.

Second Directive

58. No requirement in Second Directive.

Conclusion

59. We believe that we should dispense with the requirement that share premiums should be shown by class of shares. This is the root of one of the main problems identified above, as it is not always possible to attribute the total paid up share premium between the shares currently in issue.

60. We would be interested in your view on whether the benefits of including paid up share premiums to those who may wish to read the statements of capital justify imposing on the company the cost of including it.

Q9. Do you believe that the benefit to readers of including the aggregate value of the share premium account in the statement of capital would justify imposing on the company the cost of providing it?

Q10. Overall, for the five items listed above, do you agree with our assessment of the value and costs of the information?

Overall conclusion and options

61. On the basis of the above analysis, we believe that *as a minimum* we should require from all companies, both for each class of shares and in total:

- The number of shares
- The amount not paid up on the shares

And that for public companies *as a minimum* we should also require both for each class of shares and in total:

- The total nominal value paid up on shares

62. Depending on the responses to the consultation we would propose to add in other elements, so that the maximum – if there was a consensus that for all of the information identified the benefits outweighed the costs – would be to require, for all companies, both for each class of shares and in total:

- The number of shares
- The amount not paid up on the shares
- The total nominal value paid up on shares
- The total nominal value of shares (paid up or not)

And as an aggregate figure for the whole company:

- The value of the share premium account

63. Either the minimum or maximum option – or any in between – will remove the requirement for share premium to be allocated between shares or between classes, and so we believe will resolve both of the problems identified in chapter 3.

64. As well as considering whether each individual item of information is of value, there may be some advantage to third parties in the statement of capital bringing together a small package of information that gives readers a picture of a company's share capital at a moment in time.

Q11. In addition to any comments you may have made on the individual elements above, do you have any views on the overall package of information in the statement of capital, at the minimum and maximum described, or at a point between them?

65. In drawing up the analysis, we have mainly considered the requirement for a statement of capital in the annual report. We believe that the existing requirement for the statement of capital on formation is appropriate, as all of the information is not only available but has just been created by the promoters of and subscribers to the company.

Q12. Do you agree that the statement of capital provided on formation of a new company should remain as it is?

66. Apart from formation, we believe that the pros and cons of including the various elements will be much the same for all the instances in which a statement of capital is required. And that unless there is reason for variation, there is a minor benefit from consistency across different instances. But we would be interested in your views on this.

Q13. Do you agree that – apart from on formation – the requirements in the statement of capital should be the same in all the different situations in which it is required? If not, what differences do you think there should be?

Chapter 5 — What happens next?

67. We shall consider all responses to this consultation carefully, and we shall publish a response within six weeks of the closing date, summarising the responses received and explaining how we intend to proceed.

68. If as we expect there is a consensus that change is necessary, and if we believe that we can identify a revised requirement for the statement of capital that would give a good balance of cost and benefit, then we shall need to consider the way to implement it.

69. For many of the 15 instances of the statement of capital, including the annual return, the Companies Act 2006 contains a power for the Secretary of State to amend the relevant sections of the Act by statutory instrument. But for a number of others, including the allotment of shares, there is no such power.

70. To amend those provisions for which there is no delegated power, the options are either to wait for a suitable Bill into which we can insert the amendments, or possibly to use a Legislative Reform Order, if the proposals can satisfy the criteria of the Legislative and Regulatory Reform Act 2006. Either of these routes will take longer than making a statutory instrument under the Companies Act.

71. We are interested in views on whether we should consider amending the annual return requirement and the other nine for which we have powers on their own, or whether we should aim to change all of the instances at the same time, even if this may mean that the available changes are delayed significantly.

Q14. Do you believe that we should change all of the statements of capital at the same time, or that we should consider taking earlier opportunities to amend those for which powers are available?

Text of FAQ published on BIS website⁴ from September 2009

How can I fill in the statement of capital (eg in my annual return) if I cannot identify the premium on individual shares?

The statement of capital requirement in the Companies Act 2006 is intended to provide a snapshot of a company's capital structure. A statement of capital is required each year in the annual return, and whenever a company changes its capital.

We are aware that one of the details required to be included in the statement of capital can cause problems for certain companies that have a complex history of allotting shares and managing their capital structure. In particular, we understand that in certain circumstances it may not be possible or meaningful for a company to identify the amount of premium paid up on each share.

We are working with the Institute of Chartered Secretaries and Administrators (ICSA), who first drew this to our attention, and with other stakeholders to seek a resolution of this problem.

In the meantime, we hope that companies with complex capital histories will do what they can to provide numbers in their statements of capital that provide a pragmatic allocation of their share premium reserve between shares or classes of shares. ICSA has published guidance on this ([read the guidance](#)), explaining the problem and outlining a recommended approach.

When completing a statement of capital, in the annual return form or elsewhere, it is important that a company does not leave blank the field for the amount paid up on each share, or the form will be rejected by Companies House's system.

⁴ At <http://www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/faq%20Act%202006/page42969.html>

Annex B – Impact assessment

Summary: Intervention & Options

Department /Agency: Department for Business, Innovation and Skills	TITLE: COMPANIES ACT 2006: STATEMENTS OF CAPITAL CONSULTATION ON FINANCIAL INFORMATION REQUIRED	
Stage: Consultation	Version: 1	Date: 18 November 2009
Related Publications:		

Available to download or view at: www.berr.gov.uk/consultations/index.html

Contact for enquiries: Richard Grafen

Telephone: 020 7215 5323

What is the problem under consideration? Why is government intervention necessary?

Companies are required to produce a statement of capital at incorporation, annually and on other occasions to help creditors and other interested parties to assess the financial position of the company.

The current position with regard to the statement of capital is causing confusion for some companies and imposing unnecessary administrative burdens on others.

What are the policy objectives and the intended effects?

The main objective of further changes to the statement of capital should therefore be to provide clarity and sufficient information to meet the needs of creditors and others without imposing significant costs on companies.

What policy options have been considered? Please justify any preferred option.

1. Do nothing.
2. Reduce to an absolute minimum the information to be supplied by companies, especially private companies.
3. Remove the requirement for all companies to report on paid up share premium by class of share.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We would monitor compliance via the expected reduction in queries and complaints to Companies House

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:

Ian Lucas Date: 23 November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Minimise the information requirements to be included in the statement of capital.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition)	Yrs		
	£			
	Average Annual Cost (excluding one-off)			
	£ 0		Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups' Some loss of information for creditors and third parties in respect of total nominal value of shares and share premium.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	
	One-off	Yrs		
	£ 0			
	Average Annual Benefit			
	£ 0		Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups' Reduced admin burden costs of supplying information to Registrar on total nominal value of shares and share premium. Greater legal certainty for some companies.				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?					
On what date will the policy be implemented?					Not known
Which organisation(s) will enforce the policy?					Companies House
What is the total annual cost of enforcement for these organisations?					£
Does enforcement comply with Hampton principles?					Yes
Will implementation go beyond minimum EU requirements?					No
What is the value of the proposed offsetting measure per year?					£
What is the value of changes in greenhouse gas emissions?					£
Will the proposal have a significant impact on competition?					No
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£	Decrease	£	Net Impact £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Policy Option: 3	Description: Remove requirement for statement of capital to show share premium by class of share.
-------------------------	--

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 0		Total Cost (PV)
Other key non-monetised costs by 'main affected groups' Some loss of information for creditors and third parties in respect of share premium.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0		
	Average Annual Benefit		
	£ 0		Total Benefit (PV)
Other key non-monetised benefits by 'main affected groups' Reduced costs to companies of supplying information to Registrar on share premium.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?				
On what date will the policy be implemented?	Not known			
Which organisation(s) will enforce the policy?	Companies House			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£	Decrease	£
		Net Impact	
		£	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Companies Act 2006: Statements of Capital – Consultation on financial information required.

PROPOSAL

In the summer of 2009, it became clear that for certain companies, it could be difficult to comply with one of the requirements of the Companies Act 2006 for financial information in the statement of capital. The consultation which this IA accompanies sets out proposals for amending the statement of capital requirements that balance the interest of third parties in obtaining information with the cost to the company of supplying it. There are a number of proposals put forward in the consultation document but these are mainly minor changes to the requirements as expressed in the Act.

OBJECTIVE

The objective of the proposals is to remove the current uncertainty that exists for some companies in respect of the new provisions for the statement of capital introduced by the Companies Act 2006, and to reduce the administrative burden for other companies in relation to the amount and nature of information reported.

BACKGROUND

The Companies Act 2006 changed the law on the constitution of companies. Under the Companies Act 1985, a company's memorandum contained a figure for the company's authorised capital, and details of the shares taken by the original subscribers, and it was updated – sometimes by annotations or footnotes – when the company changed its capital. The 2006 Act dispensed with the concept of authorised capital, and it turned the memorandum into a document that was produced only for formation of the company and was not updated. All changes to a company's constitution are now made to the articles of association.

The 2006 Act therefore introduced the "statement of capital" as one of the documents submitted to form a company. Companies also have to submit an up-to-date statement of capital as part of their annual return, and they have to produce one on demand at the request of a member of the company. There are several further requirements for statements of capital through the Act, generally when the company does something to change its capital.

The Companies House forms that collect the financial information required have five columns as follows:

- Class of shares (E.g. Ordinary/Preference etc.)
- Amount paid up on each share [footnote: Including both the nominal value and any share premium]
- Amount (if any) unpaid on each share [footnote: Including both the nominal value and any share premium]
- Number of shares [footnote: Total number of issued shares in this class]
- Aggregate nominal value [footnote: Number of shares issued multiplied by nominal value of each share]

Two concerns have been raised with us about the financial requirements. Both concerns about financial information turn on the requirement in the Act for “the amount paid up and the amount (if any) unpaid on each share (whether on account of the nominal value of the share or by way of premium)”.

The first concern is one that creates a burden for some companies that have allotted shares at different prices. The Act and the form appear to require that information about shares issued for different amounts is listed separately as they both require “the amount paid up ... on each share”. For many companies that have raised capital at different times, this will mean including several lines in the form for the same class of shares. For some companies that allot shares frequently, for example in connection with employee share schemes, complying with the requirement would mean many pages of information.

So far as we can see, there is no value to readers of the information in having all allotments at different prices listed separately. Indeed for a reader who may be interested in eg the total number of shares in a class or the total amount not paid up on all shares, the useful information is much more difficult to separate out.

The second problem will potentially apply to any company that has done more than simply issue shares. If a company has for example bought back shares, cancelled shares or consolidated shares, then it may find it difficult to define the amount paid up on each share. In the statement of capital on formation, there will be no problem, and recording the amount paid up on each share will give potentially useful information to third parties about the total amount of capital, including share premium, that the subscribers have contributed. A company with a history, however, will know what the total amount paid for all its shares is, including the share premium, but it may not be able to allocate that in a sensible way between the shares currently in issue.

In respect of public companies, some but not all of the information in the current statement of capital is required by the Second EU Company Law Directive. Much of the Directive is aimed at providing a harmonised level of creditor protection throughout the EU through rules on capital maintenance. One of the potential reasons that people might want to look at the statement of capital will therefore be as creditors or potential creditors to check what the level of capital in a company is. This may well be the case for some creditors from other European countries. In the UK, however, our impression is that most people believe the level of capital not to be a very useful measure of security for creditors.

Options for implementing

OPTION 1: Do Nothing

We could choose to leave the current situation as it is and see how the position develops but we know that this is already causing some companies difficulties in terms of the volume of information which they have to provide to meet their statutory requirements and for other companies a great deal of uncertainty over what material to supply.

OPTION 2: Minimise information requirements in the statement of capital

COSTS AND BENEFITS

Having looked again at the five types of information required in the statements of capital (other than that provided on incorporation) one option would be to provide only information that is required by the EU 2nd Company Law Directive and/or would be of most use to creditors and other third party users of such information. The table below sets out the requirements in more detail.

There would be small annual savings for all companies relative to the current regime (a population of approximately 2.5 million) in not having to supply some information in relation to their capital position on their annual statement of capital. The savings are likely to be greatest for private companies (where the proposed information requirements would be lower) and for larger companies who are likely to submit statements of capital on a more frequent basis. We do not have an estimate of the likely cost saving per company but with such a large population affected even a small annual saving is likely to generate significant aggregate benefits.

There would though be a corresponding loss of information to creditors and other third parties that rely on information filed at Companies House on the capital position of companies.

Option 3: Remove only the requirement for statement of capital to show share premium by class of share

COSTS AND BENEFITS

The current requirement to show paid up share premium by class of share can cause significant difficulties for any company (other than at formation) which has done more than simply issue shares (see para. 9 above). This difficulty can be avoided if the share premium is only required to be shown in aggregate on the statement of capital rather than by class of share. Providing the company's share premium in aggregate, along with the other information available on the proposed statement of capital, is we believe sufficient to meet the information needs of creditors and other third parties. This represents a more modest proposal which would address the major concern for companies with the current regime whilst preserving most of the existing information that shareholders might value. To some extent this position would exceed that required by the EU 2nd Company Law directive.

Those companies most likely to be affected by this change are large and possibly medium companies with more than straightforward share capital arrangements. We estimate that in the UK population of around 2.5 million companies there are approximately 60,000 large and medium companies. We do not currently have an estimate of the likely cost saving per company.

Table 1: Summary of Financial Information to be supplied under options 1& 2

Financial Information	Current Position	Option 2:	Option 3:
Number of shares	Aggregate & by class of share	Unchanged	Unchanged
Nominal value paid	Aggregate & by class of share	Unchanged	Unchanged
Amounts unpaid up	Aggregate & by class of share	Public only	Unchanged (ie Public & Private)
Nominal value paid and unpaid	Aggregate & by class of share	Remove	Unchanged
Share premium paid up	Aggregate & by class of share	Remove	Aggregate only

RISKS

There is a risk that doing nothing to correct the problems identified above would lead to some companies being non-compliant with the requirements of the Companies Act 2006 and that others companies would supply large amounts of information for the public register which was of little value to creditors and others, would undermine the perceived effectiveness of the statement of capital.

WHO WILL BE AFFECTED?

All companies have to complete a statement of capital. Under option 2 all companies will be affected when preparing their annual statement of capital and any other statement which they have to submit other than on formation. Under option 3 all companies are potentially affected but the main impact will be on certain large and perhaps some medium companies.

EQUALITY IMPACT TESTS

We have considered the three mandatory impact tests (gender, race, disability) and the recommended option is unlikely to have any discriminatory effects

SMALL FIRMS IMPACT TEST

The proposals affect all companies but the burden being reduced is likely to be greatest for medium and large companies, though the majority of companies within the population are small and will benefit accordingly.

ENFORCEMENT AND SANCTIONS

Companies House monitor and enforce the filing of statements of capital.

CONSULTATION

We have discussed the problems with the statement of capital with the Institute of Chartered Secretaries and Administrators, who raised them with us, and with other members of our Advisory Group on the Implementation of the Companies Act.

A major purpose of the current consultation is to seek views on the costs to companies and the benefits to readers of the various items of information in question.

COMPETITION ASSESSMENT

We do not believe there will be any competition effects as a result of these proposals which aim to maintain the information available to creditors and other third parties whilst minimising the costs to companies.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Y	N
Small Firms Impact Test	Y	N
Legal Aid	N/A	N
Sustainable Development	N/A	N
Carbon Assessment	N/A	N
Other Environment	N/A	N
Health Impact Assessment	N/A	N
Race Equality	Y	N
Disability Equality	Y	N
Gender Equality	Y	N
Human Rights	N/A	N
Rural Proofing	N/A	N

Annex C — List of questions

Q1. Do you agree with the description of the problems in paragraphs 27-29?

Q2. Do you have any further concerns about the financial information requirements in the statement of capital?

Q3. Do you agree with the conclusion that number of shares in total and in each class should be included in the statement of capital for all companies?

Q4. Do you agree with the conclusion that total paid up nominal value of issued shares should be required for statements of capital relating to formation for both public and private companies?

Q5. Do you believe that the benefit to readers of including the total paid up nominal value of issued shares in other statements of capital would justify imposing on the company the cost of providing it?

Q6. Do you agree with the conclusion that amounts unpaid up on shares in each class should be included in the statement of capital for all companies?

Q7. Do you agree with the conclusion that the total nominal value of issued shares should continue to be required in the statement of capital for public companies?

Q8. Do you believe that the benefit to readers of including the total nominal value of issued shares in the statement of capital for private companies would justify imposing on the company the cost of providing it?

Q9. Do you believe that the benefit to readers of including the aggregate value of the share premium account in the statement of capital would justify imposing on the company the cost of providing it?

- Q10. Overall, for the five items listed above, do you agree with our assessment of the value and costs of the information?**
- Q11. In addition to any comments you have made on the individual elements above, do you have any views on the minimum and maximum described, and on the choice of a point between them?**
- Q12. Do you agree that the statement of capital provided on formation of a new company should remain as it is?**
- Q13. Do you agree that – apart from on formation – the requirements in the statement of capital should be the same in all the different situations in which it is required? If not, what differences do you think there should be?**
- Q14. Do you believe that we should change all of the statements of capital at the same time, or that we should consider taking earlier opportunities to amend those for which powers are available?**
- Q15. Do you have any comments on the Impact Assessment at Annex B?**

Annex D – List of consultees

This consultation document will be sent to those on the following list. We shall also draw it to the attention of the approximately 800 interested parties who have chosen to be on the circulation list of the Corporate Law and Governance Directorate of the Department for Business, Innovation and Skills.

Association of British Insurers
Confederation of British Industry
DLA Piper
Federation of Small Businesses
Forum of Private Business
Freshfields
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Institute of Chartered Secretaries and Administrators
Institute of Directors
Investment Management Association
Linklaters
Lovells
National Association of Pension Funds
Northern Ireland Committee of Irish Congress of Trade Unions
Slaughter and May
Trades Union Congress
UK Shareholders' Association

Annex E – The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone: 020 7215 0412

or e-mail to: Babatunde.Idowu@BIS.gsi.gov.uk

Annex F – Companies Act 2006: List of sections requiring a statement of capital

Part	section	Reason
2	10	Company formation
3	32	On demand by member
7	108	Re-registration from unlimited company to limited
17	555	Allotment of shares
17	619	Consolidation of shares
17	621	Conversion of stock into shares
17	625	Redenomination of shares
17	627	Redenomination leading to a reduction in capital
17	644	Capital reduction with solvency statement
17	649	Capital reduction through court process
18	663	Cancellation of shares
18	689	Redemption of shares
18	708	Immediate cancellation of own shares
18	730	Cancellation of own shares held in treasury
24	856	Annual return

Department for Business, Innovation and Skills
www.bis.gov.uk
First published November 2009 © Crown Copyright
URN 09/1488