

**COMPANIES ACT 2006: FINANCIAL
INFORMATION REQUIRED IN
STATEMENTS OF CAPITAL**

Summary of responses to
the consultation

MARCH 2010

URN 10/905

Contents:

1. Introduction	3
• Background	
• Statistical analysis of responses	
2. Summary of responses to the consultation questions	4
3. Next steps	11
Annex A – List of respondents	12
Annex B – Additional copies / Enquiries	13

1. Introduction

Background

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 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 acknowledging the problem, and undertaking to consider and consult on how to resolve it.
3. We published a consultation document in November 2009 seeking views on possible changes to the legislative requirements for financial information in the statement of capital.
4. The consultation document was published on the Department for Business, Innovation and Skills (BIS) website on 23 November. The consultation exercise ran for 8 weeks, closing on 11 January.
5. The consultation document was sent to a range of relevant stakeholder organisations, as well as to a list of over 800 people with an interest in company law.

Statistical analysis of responses

6. 47 responses were received to the consultation. A list of the respondents is provided at Annex A. Allocating the respondents to various categories, the number of responses received was as follows:
 - Accountancy professional bodies – 3
 - Legal professional bodies - 2
 - Company representative bodies – 4
 - Accountancy firms – 2
 - Legal firms – 5
 - Companies – 28, of which 20 are public and 8 private
 - Individuals – 3, of which 1 is a Barrister

2. Summary of responses to the consultation questions

Q1: Do you agree with the description of the problems in paragraphs 27-29 of the consultation document?

7. Of the 47 respondents, all but three explicitly agreed with the description of the problems in the consultation document. Of these three, one strongly implied agreement and indicated support for the proposals, one did not clearly state a view, and one respondent argued for complete abolition of the statement of capital.

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

8. Responses highlighted additional problems as follows:

- The view was expressed by three respondents that the information in the statement of capital is time consuming to produce and redundant as it already appears in a company's financial statements. Another respondent argued for complete abolition of the statement of capital on similar grounds.
- Two respondents suggested that Companies House should provide a single generic statement of capital form (or at least single forms for private and public companies respectively). This could then be attached to any of the other forms currently requiring a statement of capital, rather than embedding the statement of capital in these various forms. This would alleviate a significant volume of unnecessary duplicative work.
- One response highlighted the difficulty for old companies of obtaining the necessary information where shares have been allotted at different prices in the distant past.
- One respondent noted that it was possible under the Companies Act 1985 to use the share premium account to write off its expenses, and suggested that this now made it impossible to allocate the share premium per share for the shares currently in issue.
- One response suggested that the current requirements do not allow for the situation in which a company has recently cancelled its share premium account, which could result in readers of the statement being misinformed.
- Others suggested difficulties which arise where share premium is stated in a different currency from the currency of its share capital.

They suggested that it is presently impossible to state this information in the currency that it appears in the accounts.

- One respondent expressed the view that the current guidance issued by ICSA (The Institute of Chartered Secretaries and Administrators) on completing the statement of capital was sufficient remedy for the problems identified.
- One respondent suggested that the different forms which include a requirement to complete a statement of capital were inconsistent in providing a means to supply information about shares issued for a non-cash consideration.

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?

9. The majority of respondents (40) indicated that they agreed. Four respondents did not give a specific opinion. Three respondents disagreed with this conclusion to some extent, of which one suggested that listed companies are separately required to disclose share capital information on a monthly basis under Disclosure and Transparency Rules. Another registered the view that while public companies should be required to include this information, private companies should only be required to do so on formation and within their annual return.

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?

10. Some 37 respondents indicated that they agreed. Four respondents did not give a specific opinion. Four respondents were of the opinion that this information should be required for public companies for statements of capital relating to formation (in line with the requirements of the Second EU Company Law Directive)¹, but not for private companies, with some highlighting that private companies may not know in all circumstances the amount unpaid in relation to nominal value and share premium. Two respondents disagreed altogether.

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?

¹ Second EU Company Law Directive, 13 December 1976 (77/91/EEC) – (OJ L26, 31.1.1977, p.1)

11. While 21 respondents agreed, 22 disagreed that total paid up nominal value of issued shares should be included in other statements of capital. Some stated their reason for this view was that there may be difficulties for some companies in separating out the amount unpaid in relation to nominal value and share premium, while other questioned the benefit of doing so, including in the context of the Government's stated objective of reducing the administrative burdens of regulation for business. Two respondents had no objection to including this information, but did not see significant value in doing so. Two respondents did not give a specific opinion.

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?

12. The majority of respondents (30) agreed that amounts unpaid up on shares in each class should be included in the statement of capital for all companies, or had no objection to such a requirement. Six respondents did not give a specific opinion. 11 disagreed that this information should be included. Some observed that this should not be applied to listed companies which can only have paid up capital. Others were of the view that with the advent of model articles, private companies might also be less likely to have issued partly paid shares. It was also suggested that it would be sufficient to include information on amounts unpaid up on shares in aggregate and that breaking this information down by class of share was unnecessary burdensome for 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?

13. Some 37 respondents agreed. One respondent raised no objections from their own perspective – but noted that other companies might find this information difficult to supply. Three respondents disagreed that this information should be included. Six respondents did not give a specific opinion. A number of took the view that it is superfluous to require disclosure of this item in addition to figures are included for total paid up and unpaid up nominal value of issued shares.

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?

14. Most respondents (30) agreed with this assertion. Three respondents were not clear as to the benefit but believed the cost was negligible.

One respondent believed that there was some benefit but was not clear whether it justified the costs. A further respondent suggested that the total nominal value of issued shares should be included in the statement of capital for private companies only on formation and in their annual returns. Five respondents did not give a specific opinion. Seven respondents disagreed outright with this information being included, with one arguing that it is superfluous to require disclosure of this item in addition to figures are included for total paid up and unpaid up nominal value of issued shares, and that this information could be derived from that.

15. Two respondents suggested that although the concept of authorised share capital has effectively been abolished by the Companies Act 2006 some companies may continue to mention authorised share capital in their articles, and that the requirements of the First EU Company Law Directive² may therefore still require this information to be disclosed.

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?

16. A minority of respondents (14) believed inclusion of the aggregate value of the share premium account in the statement of capital was justified. One respondent suggested that inclusion of this information was useful when seeking information on smaller companies with limited balance sheet information filed in the annual return. Another respondent argued that it should be possible to provide information on the share premium account in more than one currency. One respondent proposed that information relating to a company's Capital Redemption Reserve should also be included on statements of capital.
17. Some 32 respondents did not support inclusion of this information. A variety of reasons were given for this position. Many respondents argued that this information is already available in annual accounts, and in biannual financial reports of listed public companies, and that updating this frequency is sufficient. Other respondents questioned the value of this information to creditors or shareholders and noted that there was little demand for its disclosure. Others commented on the difficulties facing groups of companies who might hold share premium information separately and would incur a significant burden in aggregating this information. Furthermore it was noted that larger companies, particularly with significant employee share ownership schemes, would incur a significant burden given the high frequency of share allotments. Where reporting was required on such a frequent

² First EU Company Law Directive, codified at 16 September 2009 (2009/101/EC) – (OJ L258, 1.10.2009, p11)

basis there would also be administrative burdens and difficulties for companies seeking to reconcile these statements with the reporting of such information in annual returns and annual accounts. One respondent argued that the split of share premium between classes of shares was not a problem – but rather that problems arise from the need to attribute it to each allotment of shares of each class and the requirement to state this information in pounds sterling when some shares have been acquired in other currencies.

18. One respondent suggested regularising the approach already being taken by some companies where provision of share premium information is difficult – namely to average the value of the share premium account across each issues share, and where possible down to each class of share.

19. One respondent argued that although this information was of limited value it was content for it to be included, although there would be additional costs for companies making very frequent share allocations.

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

20. Respondents typically cross referenced or repeated their previous answers. The summary of responses set out above therefore represents the range of views about the assessment made 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?

21. Some 21 respondents did not comment. Five respondents preferred the proposed maximum requirements and nine advocated the minimum. Of the remaining 13 respondents:

- six argued in favour of retaining the current requirements or including more information than the maximum proposed, suggesting for example the inclusion of unpaid share premium in aggregate and / or split by class of share; and
- seven suggested information requirements in between the minimum and maximum proposed.

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

22. Some 27 respondents agreed that the statement of capital provided on formation of a new company should remain as it is. Nine respondents disagreed and a further 11 did not state a clear

preference. One respondent expressed the view that while the additional information would be readily available for the statement of capital on formation its value may not justify different requirements.

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?

23. Most respondents (37) agreed that the statement of capital should be the same in all circumstances except on formation. Four of these respondents argued for the same requirements in all cases, while seven suggested that if there was to be variation, the additional information requirements should be limited to the statement of capital in the annual return. Six respondents did not give a specific view. The remaining three respondents suggested that there should be variation between the requirements for public and private companies, but that otherwise the requirements should be standardised.

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?

24. Some 29 responses favoured changes being made at the earliest opportunity, while 12 favoured all changes being made at the same time. The remaining six respondents did not give a specific view. Eight responses suggested that changes to the annual return were a priority. One respondent highlighted the importance of guidance from Companies House if changes were not made simultaneously.

Q15: Do you have any comments on the Impact Assessment at Annex B?

25. There were 11 comments on the Impact Assessment. One made clear the view that “do nothing” was not a viable option, while another noted that the existing requirements were not merely costly but impossible to comply with for some companies. Five respondents favoured option 3 as presented in the Impact Assessment (removing the requirement for all companies to report on paid up share premium by class of share), while another favoured removing requirements to report on share premium altogether. Two stated support for option 2 (minimising the information requirements). One respondent suggested surveying different companies to develop quantitative analysis of the costs and benefits.

Other comments and suggestions:

26. A number of responses suggested that there were inconsistencies between different Companies House forms in the way information was requested for the statement of capital, and noted that forms needed to provide sufficient space to include all the requested information. Form SH01 was identified in particular.
27. One respondent took the view that the flexibility allowed within certain Companies House forms undermined the certainty which the statement of capital is designed to bring about. This response included a detailed analysis of areas where the respondent believes Companies House forms are insufficiently clear as to what is required by the Companies Act 2006.
28. One respondent suggested that there were wider, significant problems with the treatment of share premium for legal and accounting purposes.
29. One respondent suggested that the problems described in the consultation could be overcome by allowing a company to restate its statement of capital at any point by passing an ordinary resolution.
30. One respondent raised a separate concern about the impact of the Companies Act 2006 in respect of the removal of shareholders' name and address information on a company's annual return and form SH01.

Information on the rights attached to shares in statements of capital:

31. The consultation document noted separate concerns about the way in which rights attached to shares have to be described in the statement of capital. It made clear that this was outside the scope of the consultation but that the Government is also considering this issue.
32. Eight respondents commented on this issue, all taking the view that the requirement to state this information with each statement of capital was of little value, as up to date information should already be available in the company's articles and relevant resolutions. Several noted that for companies with complex share structures it was not possible to provide all the necessary information within the limits of Companies House electronic forms meaning that companies were incurring the additional cost and inconvenience of paper filing. Others highlighted the risk that frequent updates on share rights information in statements of capital might lead to misleading inconsistencies with a company's articles.
33. It was suggested that the requirement to include information on share rights in the statement of capital should be removed altogether

– or companies should be permitted to minimise the administrative cost of compliance by referencing their articles or those specific resolutions already containing this information.

3. Next Steps

The Government is very grateful to all those who contributed to the consultation. It is now considering the best way forward in the light of the responses. Should it be appropriate to legislate, it would be necessary to identify a suitable legislative vehicle in the next Parliament. The Government will set out its intentions in due course.

Annex A

List of respondents to the consultation (in alphabetical order):

Addleshaw Goddard LLP
ACCA (The Association of Chartered Certified Accountants)
Artaius Company Services Ltd
Akzo Nobel Group
BAE Systems plc
Balfour Beatty
Barclays Bank
BDO LLP
British Airways plc
Capita Company Secretarial Services
CBI (The Confederation of British Industry)
Computershare
DLA Piper UK LLP
Equifax plc
Equitini
Experian
Mr Andy Hamer
GlaxoSmithKline plc
Mr James Goldblatt
Henmans LLP
HSBC
ICAEW (The Institute of Chartered Accountants in England and Wales)
ICAS (The Institute of Chartered Accountants of Scotland)
ICSA (The Institute of Chartered Secretaries and Administrators)
ICSA Registrars Group
ICSA (4 members responding jointly)
INEOS
Jardine Lloyd Thomson Group
Jordans Ltd
Kier Group plc
KPMG
The Law Society
Manches LLP
MSP Secretaries
Nexen Energy Services International Ltd
Oakwood Corporate Services
Osborne Clarke
Phoenix Admin Services Ltd
Mr. James Potts
Prudential plc
RSA Group
The Scottish Law Society
Smith and Nephew
Standard Chartered
Tesco
Tricor Aldbridge
Vodafone Group plc

Annex B

Additional copies

This summary of responses is available electronically at www.bis.gov.uk/consultations

You may make copies of this document without seeking permission.

Other versions of this document can be made available on request in Braille, other languages, large fonts and other formats.

The same contact details can be used to obtain copies of the original consultation paper (URN 09/1488)

Enquiries

In case of enquiries please contact:

Alastair Cowie
Company Law Policy – Corporate Law and Governance
Department for Business, Innovation and Skills
Bay 405
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 0258
Fax: 020 7215 0235
Email: alastair.cowie@bis.gsi.gov.uk