



COMPANY LAW MEMO 2009

Newsletter Issue 6

November 2009

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Welcome to the *Company Law Memo 2009* newsletter, highlighting important recent developments in company and insolvency law. You can also access comprehensive updates to specific paragraphs via our online updating service. We always welcome suggestions from readers, so please contact us if you have any comments.

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Companies House policy on informal corrections to the register

See CLM ¶4080

Since 1 October 2009 Companies House has had the power to informally correct any document filed which is incomplete or internally inconsistent (s 1075 CA 2006). It has announced that, initially, this power **will only be used** to correct certain forms submitted to it to register a charge (CLM ¶3979+). A full list of the relevant documents to which Companies House will initially apply this power is available on the Companies House website.

However, Companies House **will not use this power** to informally correct a document where:

- » the company name is incorrect on, or missing from, the charge document;
- » the charge document has not been signed; and/or
- » the charge document is otherwise incorrect or incomplete in any way.

Companies can give their consent to instructions being given under this power using the **notice of consent**, which can be downloaded from the Companies House website. On receiving this consent, Companies House will issue the company with a unique authorisation code, which must be used when giving any instructions to Companies House in response to an enquiry relating to an informal correction. Instructions must be given on a pro-forma document, which can also be downloaded from the Companies House website.

Once the document has been corrected, it is treated as having been properly delivered when the correction is made. Companies should therefore bear this in mind to ensure that the charge is properly registered within the 21-day time limit (CLM ¶4639).

Removal of 14-day concession for re-filing company accounts

See CLM ¶4279, ¶4281

Under CA 1985, if a company's **accounts** were **rejected** by Companies House, the company had 14 days' grace from the date of any rejection letter within which to amend the accounts and re-file them (s 706 CA 1985). This even applied in cases where accounts were filed (and rejected) in one penalty band, and later re-filed in a higher penalty band.

There is no equivalent provision under CA 2006 and therefore the 14-day concession for rejected accounts **ceased to apply on** 1 October 2009. Any accounts which are rejected and returned to the company for amendment will now incur the penalty relevant to the date on which the accounts are re-filed in an acceptable format (even if this takes them into a higher penalty band than the original filing).

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Proposals to simplify notices of auditors leaving office

See CLM ¶4339+

The Government has published a **consultation** paper seeking comments on several proposals for simplifying the arrangements for **notifying the shareholders, creditors, appropriate audit authorities and Companies House** when an auditor leaves his office. Currently, when an auditor ceases to hold office, for whatever reason, he is required to issue the company with a statement of any connected circumstances which he considers should be brought to the attention of the company's shareholders or creditors (or, if there are no such circumstances, a statement to that effect). Various notices must then be given, as summarised (for non-listed companies) in the table below.

	Statement giving circumstances	Statement that there are no circumstances
Company	<ul style="list-style-type: none"> - Notify Companies House (if the auditor resigns or is removed by ordinary resolution) - Notify the appropriate audit authority of the reasons for the auditor's departure, if it is before the end of his term of office (the statement can be used for this purpose) - Send a copy of the statement to shareholders and creditors (unless a court orders otherwise) 	<ul style="list-style-type: none"> - Notify Companies House (if the auditor resigns or is removed by ordinary resolution) - Notify the appropriate audit authority of the reasons for the auditor's departure, if it is before the end of his term of office
Auditor	<ul style="list-style-type: none"> - Send a copy of the statement to Companies House - Notify the appropriate audit authority of the reasons for departure, if it is before the end of his term of office (the statement must be used for this purpose) 	<ul style="list-style-type: none"> - Send a copy of the statement to Companies House - Notify the appropriate audit authority of the reasons for departure, if it is before the end of his term of office
Audit authority	<ul style="list-style-type: none"> - Notify the accounting authorities of the notices of auditor departure that it receives (the statement may also be provided) 	<ul style="list-style-type: none"> - Notify the accounting authorities of the notices of auditor departure that it receives

The system is complex and can result in the duplication of notices being given to the authorities and/or Companies House. The Government proposes to **streamline the requirements**, to make them easier to understand and to reduce the administrative burden, by:

- » removing the requirement for companies to notify Companies House when an auditor resigns or is removed by ordinary resolution;
- » removing the requirement to notify auditors' departures for certain specified reasons, which are of little regulatory interest;

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- » removing the requirement for the audit authorities to notify the accounting authorities of all notices received;
- » introducing a uniform format for statements;
- » clarifying the definitions used in the legislation; and
- » adjusting the requirements for notifications when auditors leave listed companies.

The consultation paper is available from BIS' website at:

<http://www.berr.gov.uk/consultations/page53696.html>. Responses are requested by 20 January 2010.

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EC consultation on IFRS for SMEs

See CLM ¶4360+

The European Commission is seeking the views of stakeholders on the new **International Accounting Standards for small and medium-sized companies** to assist in its ongoing review of the Fourth and Seventh Company Law Directives with the objective of reducing the administrative burden on SMEs (EC Directive 1978/660; EC Directive 1983/349). It is especially interested to receive comments from the users of accounts, such as business, banks and investors. The consultation paper and questionnaire are available to download from the European Commission's website:

http://ec.europa.eu/internal_market/consultations/2009/ifrs_for_sme_en.htm. Responses are requested by 12 March 2010.

The IFRS for SMEs are tailored to the needs of smaller businesses and can be used by any entity that does not have public accountability. They are available to download free of charge from the IASB's website:

<http://www.iasb.org/Current+Projects/IASB+Projects/Small+and+Medium-sized+Entities/Small+and+Medium-sized+Entities.htm>.

EC proposes changes to the Prospectus Directive

See CLM ¶4845+

Following the European Commission's consultation carried out earlier this year (see *CLM 2009 Newsletter Issue 1*), a draft Directive has now been published to implement the proposed amendments to the Prospectus Directive (EC Directive 2003/71). The changes suggested as part of the consultation have all been included in the proposed amendments, together with the following **additional amendments**:

- » increasing the validity period of a prospectus, a base prospectus and a registration document from 12 months to 24 months, provided that it is regularly supplemented, as required;
- » amendments in relation to both the content of a summary of the prospectus and the liability that attaches to it; and
- » amendments to the passport notification procedures, so that the competent authority of the home member state would notify the issuer of the certificate of approval in addition to, and at the same time as, the competent authority of the host member state.

The proposal now passes to the European Parliament and the EU Council of Ministers for consideration. It is available from the European Commission website at:

http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm.



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New sentencing guidelines for corporate manslaughter proposed

See CLM ¶7178, ¶7180

Companies found guilty of corporate manslaughter offences (and health and safety offences causing death) are likely to face high fines under **consultation** guidelines published by the Sentencing Guidelines Council (SGC) ("Corporate Manslaughter and Health and Safety Offences Causing Death - Consultation Guidelines", October 2009). The SGC has not followed the formulaic approach in relation to the level of fines to be imposed (using a percentage of a company's average annual turnover as a starting point), which was recommended by the Sentencing Advisory Panel.

Instead the SGC proposes that the **appropriate fine for:**

- » a corporate manslaughter offence would not normally be expected to be less than £500,000 and may be millions of pounds; and
- » a health and safety offence which is shown to have caused death would not normally be expected to be less than £100,000 and may be hundreds of thousands of pounds.

Fines will be increased to take into account factors which aggravate or increase the seriousness of the offence, or decreased to take into account mitigating factors.

In addition, the SGC proposes that the court should consider the **financial consequences** of a fine, including the means of the defendant. Fines should be punitive but must be capable of being paid, even if over a number of years (where appropriate). Although in very serious cases, the fact that a fine will put a company out of business will be considered to be an acceptable consequence.

The SGC is seeking views on these new guidelines by 5 January 2010. Full details of the proposed guidelines can be found on the SGC's website:

<http://www.sentencing-guidelines.gov.uk>.

Insolvency consolidation and modernisation project moves forward

See ¶7365

The Insolvency Service has issued an update on its consolidation and modernisation project. Some additional detail of **proposed changes** has been included in this update:

- » as part of the proposals to facilitate electronic communication (including remote attendance at meetings and the use of websites to provide information to creditors), provision will be made for the authentication of documents provided electronically;
- » creditors are to have more options as to the basis on which they can fix insolvency practitioners' remuneration;
- » where a company enters administration, creditors will be able to approve pre-appointment fees and expenses retrospectively as a cost of the administration;
- » the format of *Gazette* notices and other advertisements is to be standardised to make it easier for the readers of such publicity to obtain the information they need; and
- » the occasions on which documents in insolvency proceedings will have to be filed at court will be reduced.

Some of these changes are to be introduced next year, when a Legislative Reform Order (see *CLM 2009 Newsletter Issue 3*) and associated changes to the Rules will be introduced. The Insolvency Service has recently published a draft of the amendments to the Rules for the first time (not for consultation, although it is inviting stakeholders to draw any drafting errors to its attention) (draft Insolvency (Amendment) (No. 3) Rules 2009). The **draft amendment Rules** are still a work in progress, and therefore are subject to change.

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The draft amendment Rules are intended to work with the Legislative Reform Order to:

- » **implement the new procedures** of remote attendance at meetings and the ability for insolvency practitioners to post information during insolvency proceedings on websites;
- » **remove the unnecessary burdens** of the requirements to hold annual meetings in CVL and MVL, report to court at various intervals during CVA and for the liquidator to obtain sanction for some acts; and
- » **remove inconsistencies** between the Insolvency Act and the Rules by allowing things that have to be provided in writing to be in electronic form and replacing the use of affidavits with statements of truth.

The amendment Rules also **modernise** the Rules more generally, for example by updating the language used (e.g. replacing “ex parte” with “without notice to any other party”, and “leave” with “permission” in the context of seeking the court’s consent for something). They also seek to **harmonise** procedures, for example by setting out standard contents for *Gazette* and non-*Gazette* notices (the latter being a simplified version of the former) and allowing resolutions at meetings during liquidation to be adopted in writing, as they can be during administration.

These amendment Rules will therefore be a significant stepping stone towards the new version of the Rules that is anticipated to be implemented in April 2011. Readers will be kept informed of the precise changes via the online updates for the next edition of *Company Law Memo* (due to be published in January 2010). A copy of the draft amendment Rules can be found on the Insolvency Service’s website:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/consolidation/updateNov09.htm>.

A **revised** version of the **draft Legislative Reform Order** has been laid before Parliament. This version includes the requirement for the liquidator in a voluntary liquidation to provide progress reports to creditors and shareholders instead of holding annual meetings. Originally, it was intended to include this requirement in the amendment Rules, but Parliament felt that it was a sufficiently important safeguard for creditors and shareholders to be included in the primary legislation. Otherwise, as far as corporate insolvency is concerned, the draft Legislative Reform Order remains the same. A copy of the revised draft can be found on the Insolvency Service’s website:

<http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/insolvencylaw.htm>.

Verdict on consultation on measures to encourage company rescue

The Government has issued its **response** to the consultation paper on proposals to encourage company rescue (reported on in *CLM 2009 Newsletter Issue 4*). The paper put forward proposals to extend the availability of the pre-CVA moratorium to all companies (rather than confining it to small companies, as at present) and to introduce measures to encourage lenders to extend finance to companies in CVA and administration.

The respondents broadly supported the aim of the proposals, provided that any legislative changes that are made do not extend the life of companies that are not in fact viable. Some respondents pointed out the importance of processes that companies can use outside of the formal insolvency procedures in order to restructure, which avoid the inevitable stigma of insolvency.

The proposal to extend the availability of the **pre-CVA moratorium** was broadly supported. There were differing views as to how long it should last and concerns over the nominee’s role during the moratorium (e.g. whether it was sufficient for him to simply monitor the moratorium, and what his exposure to liability would be). Some respondents suggested that the secured creditors should be consulted first. Others wanted the exercise of contractual termination rights to be included in the moratorium. The Government intends to consult on this proposal in more detail, in order to take the issue further.



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However, the Government will not be taking the **rescue finance** proposals forward for the time being. Some respondents queried whether these measures were necessary at all, although others expressed the view that improving access to rescue finance would be useful. The potential impact of these proposals on the behaviour of lenders towards businesses in general, not just those in insolvency, was seen by some respondents as a problem.

A copy of the consultation paper and responses can be found on the Insolvency Service's website:

http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm.

Cross-Border Insolvency Regulations 2006 under review

See CLM ¶7377

The Cross-Border Insolvency Regulations 2006 (SI 2006/1030) were brought into force in April 2006 to improve cross-border co-operation in insolvency proceedings and make sure that creditors and debtors are dealt with fairly in insolvencies with a foreign element. They are based on the United Nations Commission on International Trade Law's Model Law on the subject, and equivalent regimes have been introduced all over the world. The Insolvency Service has launched a review of the regulations to find out whether, in practitioners' experiences so far, the regulations are achieving their objective of **improving cross-border co-operation** and **protecting creditors and debtors** involved in insolvencies with a foreign element. The questions are broad, inviting practitioners to comment on how well the regulations are working, whether there are any impediments to using it and what their experience of it has been like in practice. A copy of the questionnaire can be found on the Insolvency Service's website: <http://www.insolvency.gov.uk/index.htm>. Responses are invited by 31 December.

OFT study the insolvency services marketplace

The OFT has launched a study of how insolvency work is carried out throughout the UK, investigating the structure of the market and issues such as the appointment of insolvency practitioners. It will particularly look at whether there is any unfairness in the system, such as higher fees for some creditors. Its initial investigations are expected to last for most of 2010.

New guidance on SIP 16

See CLM ¶8904+

The Insolvency Service has issued guidance to insolvency practitioners to assist them with, and to improve, compliance with Statement of Insolvency Practice (SIP) 16 "Pre-packaged sales in administration". This sets out the basic principles and essential procedures with which administrators engaged in pre-pack sales must comply (see *CLM 2009 Newsletter Issue 1*). The guidance has been produced in consultation with the Recognised Professional Bodies in the light of the Insolvency Service's continuing review of information disclosed under SIP 16 during the course of 2009.

The guidance **focuses on** the level of information that should be provided and confirms that a short response to the bullet point disclosure requirements listed in paragraph 9 of SIP 16 will not, alone, provide the detailed explanation and justification required. It gives **further direction on**:

- » the provision of background information about the trading activities and financial difficulties of the company;
- » the timing of the information being provided to creditors. In most cases the information should be sent to creditors within a few days of the administrator's appointment or on completion of the sale;



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- » the disclosure of the source of the administrator's initial introduction to the company and/or its directors, along with the extent of his involvement prior to appointment;
- » giving details of the nature of any marketing activities carried out, or an explanation as to why it was decided not to carry out any marketing; and
- » the information that should be provided regarding valuations, details of the assets involved in the transaction and the consideration for it.

The guidance can be found on the Insolvency Service's website (para 14, Chapter 1 *Dear IP*) at: <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/dearip/dearipmill/chapter1.htm>.

The Insolvency Service published a report on its first six months' **monitoring of compliance** with SIP 16 in July 2009 (see *CLM 2009 Newsletter Issue 4*). The Insolvency Service's monitoring of SIP 16 information is continuing and a further report is expected to be published in the New Year.

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Private examination of third parties in insolvency proceedings

See CLM ¶8172+

Cowlshaw and another v O&D Building Contractors Limited [2009] EWHC 2445 (Ch)

The **court's power** of private examination is wide and can include any person the court thinks is capable of providing information regarding the company's promotion, formation, business, dealings, affairs and property (s 236 IA 1986). This can include third parties (i.e. persons who are not officers or employees of the company), whether or not they have a contractual relationship with the company. The fact that the company does not own and would not otherwise be entitled to the information requested (except in the context of disclosure in litigation) does not prevent an order being granted, but it is a factor for the court to take into account to ensure that any order is not unfair, particularly where it will affect third parties.

The joint administrators of two companies, JT Ltd and WE Ltd, applied to court for the private examination of O&DBC Ltd, which was engaged by JT Ltd as building contractor for the development of a property owned by WE Ltd. The partly built property was the only significant asset of the two companies in administration, and the administrators wished to consider whether they should attempt to complete the development themselves, or sell the property in its partly completed state. They contended that in order to obtain advice on valuation and reach this decision they needed to see various documents held by O&DBC Ltd in relation to the property, including planning approvals, build contracts, drawings and specifications, guarantees and warranties, and health and safety documentation.

The High Court held that the fact that O&DBC Ltd was a third party (i.e. not an officer or employee of JT Ltd or WE Ltd) did not preclude the application for private examination. However, in exercising its discretion, the court ordered O&DBC Ltd to provide the administrators with some, but not all, of the categories of documents requested in order to ensure that the order was not unfair. This was because some of the information requested was available to the administrators from other sources (for example, copies of the planning applications and approvals could be obtained from the local authority) and some would effect O&DBC Ltd's property and other rights in relation to the documents requested, particularly copyright. Secondly, the court wished to ensure that the administrators were not able to obtain valuable information which could be said to be taking unfair advantage of O&DBC Ltd's work without paying for it.

Purpose of an administration can result in the different treatment of creditors

See CLM ¶8711, ¶9015

BLV Realty Organization Ltd and another v Batten and others [2009] EWHC 2994 (Ch)

ZIIHI (a BVI registered company) was incorporated as a special purpose vehicle to undertake the redevelopment of a property. BLV Ltd was a contractor of ZIIHI and entered into an agreement with it to provide general management and co-ordination of the redevelopment (including the management and co-ordination of other contractors). The redevelopment was over budget and fell behind schedule and ZIIHI defaulted under its bank's facility. The financial pressures on ZIIHI also meant that it had been unable to pay certain invoices of BLV Ltd, which had caused BVL Ltd to threaten (as an unsecured creditor) to petition for ZIIHI's winding up. To prevent the presentation of the winding up petition ZIIHI's bank applied to court for the appointment of administrators instead, in the hope that it could recover its debt if ZIIHI continued its business by completing the redevelopment of the property with a view to selling the redeveloped units. The administrators confirmed that the objective of the administration was the achievement of a better result for ZIIHI's **creditors as a whole** than

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would be likely if it immediately entered liquidation (because it was not considered feasible to rescue it as a going concern). The administrators terminated ZIIIHI's agreement with BVL Ltd, as they considered that BVL Ltd had committed breaches under the agreement and had lost the confidence of the other contractors. BVL Ltd applied for the court's intervention on the ground that the administrators were acting or had acted so as unfairly to harm its interests as a creditor in the alleged wrongful termination of its agreement with ZIIIHI.

The High Court confirmed that administration is a form of class remedy. The obligation of the administrators is to perform their functions in the interests of "the creditors as a whole", which does not mean that the obligation must be performed in the same way for each creditor. For example, as was the case here, the administrators could switch service providers if they thought that a particular service could be provided more cheaply or to a higher standard than was currently being done by a creditor with a continuing contract necessary to the company's ongoing trading, if this would have a beneficial result to the creditors as a whole. The interests of the creditors as a whole prevail over the particular interest of an individual creditor: and that might result in different treatment. What the administrators decided to do about it was a matter of commercial judgment. In addition, the court considered that BVL Ltd's true complaint was not that its interests as a creditor had been harmed, but that its interests as a contractor after the date of the administration had been treated less favourably than other contractors, because the other contractors had been kept on whereas BLV Ltd had not. Therefore it was unable to apply for the court's intervention in any event.

In addition, BVL Ltd unsuccessfully argued that in continuing to trade the company's business, the administrators had changed the objective of the administration to that of realising ZIIIHI's property to distribute the proceeds to one or more of its secured creditors (i.e. the bank) because the unsecured creditors stood to get nothing. The High Court did not accept this argument. It held that administrators can properly pursue the objective of achieving a better result for the company's creditors as a whole than if the company were immediately wound up, even if they anticipate at that time that there is unlikely to be any distribution for the company's unsecured creditors. In this case, trading the business (rather than simply realising the assets in their present state) represented the best chance of maximising recoveries by realising the best value for what had already been done to the property, which was good for the creditors as a whole (or at least avoided unnecessary harm to the creditors as a whole).

Administrators of Lehman Bros seek court's directions on status of post-administration cash

See CLM ¶9014+

Re Lehman Brothers International (Europe) (in administration), Lomas and others v RAB Market Cycles (Master) Fund Limited and another [2009] EWHC 2545 (Ch)

The administrators of Lehman Brothers International (Europe) (LBIE) applied to court for directions on how they should treat certain **cash attributable to client securities** held by LBIE as custodian, subject to a charge in LBIE's favour, received after LBIE entered into administration.

The issue was whether the cash should be:

- » treated as trust money, segregated and paid to the beneficial owners of the relevant securities from which it derived; or
- » added to the general assets of LBIE available (subject to prior claims) for distribution to its unsecured creditors, including for that purpose the beneficial owners of the relevant securities.

The sums involved were substantial, several £billion, and the administrators sought the court's confirmation that their view that the cash should be treated as **trust money** and paid to the relevant beneficial owners as expenses of the administration was correct. The High Court



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agreed that the cash should be treated as trust money (subject always to LBIE's charge), confirming that a mere suspension of a beneficiary's right to demand the return of trust property, brought about by the trustee's insolvency, does not of itself count against the continuing existence of the trust. In due course, the trust property, once identified, should be returned to qualifying beneficiaries or, in the event of a shortfall, shared out between them. Accordingly, it was unnecessary for the administrators to consider whether payments of equivalent amounts should be paid out as administration expenses; as the cash was client money, it had been segregated and should simply be paid out as such.

The administrators have now announced proposals for approval by LBIE's creditors that would allow the administrators to return the cash held by LBIE on trust to the beneficial owners of the relevant securities.

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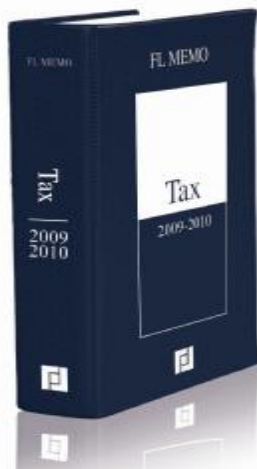


Tax Memo 2009-2010 - helping to solve your tax problems

PUBLISHED IN OCTOBER

Tax Memo 2009-2010 has been fully revised and updated to reflect law and practice as at the date of Royal Assent to the Finance Act 2009, and includes commentary on the:

- New benchmark system for employee subsistence expenses
- Restriction of tax relief available on pension contributions made by higher earners and the special annual allowance
- Abolition of the commissioners' system for tax cases and introduction of the new tribunals
- Implementation of the new harmonised system for tax penalties
- Changes to cross-border services for VAT (from January 2010)
- New VAT partial exemption changes (effective April 2009).



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Company and business names

See CLM ¶254

An updated version has been published of the regulations that set out which **words and phrases** in a company name **need consent** of the secretary of state and, in some cases, another body (SI 2009/2615). They apply as of 1 October 2009, and replace the previous regulations (SI 1981/1685). The list of sensitive words and phrases is largely the same, although it has been updated. For example, “apothecary” and “district nurse” have been removed, while “child support” and “data protection” have been added. The new regulations also take account of situations in which the location of the company’s registered office makes a difference to the body from which permission needs to be obtained because of devolved responsibility in that area.

Separate new regulations set out which government department should be approached for consent to use a name that suggests a connection with different public authorities (SI 2009/2982). For example, if the name implies that the company is connected to the Law Commission, consent to use the name should be sought from the Ministry of Justice. These regulations apply as of 10 November 2009.

Registered office

See CLM ¶482, ¶570

BIS has issued a consultation paper seeking views as to whether a new statutory procedure should be introduced to combat the problem of **companies registering bogus registered office addresses**. Although not a widespread issue (Companies House receives around 18 complaints a month), it causes inconvenience and distress to those individuals or businesses whose addresses are registered incorrectly, for example by affecting their credit rating.

There is already a procedure in the Companies Act 2006 for removing fraudulent or inaccurate material from the register (ss 1095, 1096 CA 2006; see CLM ¶4080), but BIS is of the opinion that this does not cover this situation. Therefore, it proposes to introduce a **new procedure** whereby the occupier of the premises could object to the use of his address by giving notice to Companies House. The company would then be informed of the objection and given a chance to change the address, agree with the occupier to keep using the address or challenge the objection by applying to court. If the company cannot keep using the address but does not change it, a note will be added to the register at Companies House that documents must be served on the company by placing a notice in the *Gazette*. The company may be ultimately struck off if it persists in refusing to change its registered office.

A copy of the consultation paper can be found on BIS’ website: <http://www.berr.gov.uk/consultations/open-consultations/index.html>. Responses are invited by 19 January 2010.



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Shares and share capital

See CLM ¶526, ¶915, ¶1484, ¶1509

BIS has issued a consultation on proposed changes to the **contents of the statement of capital** that companies are required to file at Companies House at various times. For a list of the contents at present, see CLM ¶915. The requirement to provide information on the amount paid up and the amount unpaid on each share, whether in respect of its nominal value or its premium, causes certain companies **problems** because:

- » it may require them to include a long list of information, for example where they have allotted shares at different prices, or issued shares frequently (e.g. under an employee share scheme); and
- » they may not be able to give an accurate answer as to how much is paid up on each share, for example where a company has a long history during which it has bought back, cancelled or consolidated shares.

More generally, there are doubts about how useful figures as to how much is paid up and unpaid are to creditors because the value of a company's share capital often bears little resemblance to its actual worth (see CLM ¶725+).

BIS proposes that the absolute minimum disclosure requirement on the statement of capital should include:

- » the number of shares in total and in each class. This enables shareholders to ascertain the proportion of the shares they own, and therefore their share of the voting or dividend rights. It is also a requirement of the Second Company Law Directive (EC Directive 77/91);
- » the amount unpaid on the shares. This tells shareholders and creditors how much is owed to the company without it issuing new shares; and
- » for public companies, the total nominal value paid up on shares. This is necessary to show that the company meets its minimum paying-up requirements (see CLM ¶1137).

In addition, companies may be required to provide the following information:

- » the total nominal value paid up on shares;
- » the total nominal value of shares (paid up or not); and/or
- » the value of the share premium account (as an aggregate figure for the whole company).

This would address some companies' difficulties in providing information on a per-share basis about the amounts paid up and unpaid in respect of the nominal value and premium.

The proposals **do not apply** to the statement of capital required on formation, as all of the relevant information will be available to those completing the form.

The consultation is open until 11 January 2010. A copy can be found at: <http://www.berr.gov.uk/consultations/open-consultations/index.html>.

Response to consultation on disclosure of directors' loans

See CLM ¶2897

The Government has published its response to the recent consultation on the issue of the disclosure of directors' loans in company accounts (see *CLM 2009 Newsletter Issue 5*). It has reported unanimous support for the proposed short-term solution of amending only the provision relating to **banking companies** and the **holding companies of credit institutions** (s 413(8) CA 2006) to require these companies to disclose only aggregate figures with no breakdown for individual directors, as was the position under CA 1985. To make this change, the Companies Act 2006 (Amendment of Section 413) Regulations 2009 (SI 2009/3022) will come into force on 23 December 2009, applying to financial years ending on or after that date.

If the Government wishes to propose any **further amendments** to the new Companies Act to clarify the meaning of section 413 and/or to extend its scope it will carry out a further consultation.

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