

## **Government Response and Summary of Comments Received**

### **The Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009**

#### **Introduction**

1. The Department (then BERR) published draft regulations on its website for comment from 13 March till 17 April 2009. The issues covered in the regulations have been the subject of previous consultations:

- Reducing the Rights issue subscription period – the Rights Issue Review Group (RIRG) undertook market consultation involving 50 organisations during the autumn of 2008<sup>1</sup>.
- The Creditor Protection and Acquisition of Shares regulations implement provisions in Directive 2006/68 covering creditor protection and acquisition of shares and were subject to consultation in March 2005<sup>2</sup> and February 2007<sup>3</sup>.

#### **Consultation**

2. Draft Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009 were published on the Department's website for comment during March 2009, and an email alert was sent to over 700 individuals and organisations. The response received to the draft regulations is consistent the outcome of past consultations in that there was a small response with the majority of respondents in favour of implementing the provisions set out in the draft regulations

3. There were seven respondents in total. Most respondents were supportive or had no comment on the provisions in the regulations. One respondent raised concerns about the reduction of the rights issue subscription period and another about the acquisition of shares provisions. A summary of the responses under each heading is set out below.

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<sup>1</sup> A copy of the report is available from: [http://www.hm-treasury.gov.uk/d/pbr08\\_rightsissue\\_3050.pdf](http://www.hm-treasury.gov.uk/d/pbr08_rightsissue_3050.pdf)

<sup>2</sup> European Company Law and Corporate Governance: <http://www.berr.gov.uk/consultations/page14583.html>

<sup>3</sup> The consultation on the implementation of the Companies Act 2006 can be found together, with the government response at: <http://www.berr.gov.uk/consultations/page37980.html>

## Summary of responses

3. **Reducing the Rights issue subscription period:** Of the seven responses received concerning the Rights issue subscription period, five were supportive and one offered no comment/concerns and one respondent indicated concerns that the proposal to reduce the subscription period would erode shareholder rights. Whilst the period of time available to existing shareholders will be reduced to 14 days – the introduction of electronic communications since the introduction of the 21 day period of notice should help to offset the shorter timescale. It should also be recognised that if statutory pre-emptive rights issues are considered to take too long exposing companies to risk of market volatility companies will choose to use other methods to raise capital – especially when needed quickly e.g. placing.

4. One respondent suggested we should go for a 10 working day subscription period in line with the period set by the FSA for a rights issue subscription period. The rights issues subscription period set by the FSA is for non statutory rights issues e.g. issues where shareholders have agreed to disapply some or all of their pre-emption rights. The 14 calendar day subscription period is set by the EU in the Second Company Law Directive as the minimum subscription period for statutory pre-emptive rights issues. Companies wishing a shorter period can seek shareholder agreement to do so.

5. **Creditor Protection:** Of the seven responses received, five were fully supportive, and two expressed no comment. The provisions in these regulations have already been implemented by amendment of the Companies Act 1985.

6. **Acquisition of shares:** Of the seven responses received, five were supportive, one offered no comment and one respondent expressed serious concerns about proposals to raise the cap on companies holding their own shares.

7. Whilst the respondent with concerns agreed that the facility to purchase shares offered companies some short term flexibility when managing capital, they believed the current 10% limit provided ample scope for the exercise of such flexibility and that to raise the cap would increase the potential for companies to evade safeguards. They did not agree purchase of and resale of existing shares provided an alternative to rights issues and also raised concerns that the implementation of relevant provisions of the 2006 Companies Act later would lead to uncertainty regarding the way in which safeguards will work in future.

## Government Response

8. We note the concerns that have been raised in response to the publication of the draft regulations. However these provisions do not change existing safeguards. Companies are still required to comply with the insider dealing regime under the Criminal Justice Act, the market abuse regime under the Financial Services and Markets Act 2000 (FSMA), and requirements under the Listing Rules. Shareholders'

rights are retained and their agreement will continue to be required for the purchase of the company's own shares either on a general basis in the company articles or on a specific basis at a general meeting. Any subsequent resale of shares held would have to be offered to existing shareholders on a pre-emptive basis first unless they voted otherwise. **On balance, we believe that as a matter of better regulation we should not maintain an arbitrary limit on holdings of treasury shares when there is no compelling reason to do so and will proceed with the regulations on this basis.**