

CorporateBites

Updating you on company and commercial issues



Welcome to the inaugural edition of *Corporate Bites*, our new e-briefing programme containing a mixture of legal and non-legal briefings to keep you up to date with issues affecting companies, directors and shareholders. As well as the briefings, each month we'll bring you an interesting "shortcut". This could be directing you to useful guidance (as is the case this month), commenting on "hot topics" or simply flagging up future issues likely to demand your attention.

At Mills & Reeve, we're firm believers in working with you to continually improve our service. To this end, we're especially keen to receive your feedback on this (our first) issue and the new style of briefing. Do therefore contact [Ben Turner](#) or your usual Mills & Reeve contact if you have any feedback.

In this issue:

- [Rights issues just got easier](#)
- [Coke Cola - not quite the real thing?](#)
- [Why now may be a good time to grant share options](#)
- [Help for SMEs - is it enough?](#)
- [Shortcut - practical guidance for directors](#)

Rights issues just got easier

The ABI, which represents some of the UK's biggest investors, has provided companies with additional flexibility to raise new funds from existing shareholders by relaxing the rules on issuing shares on a pre-emptive basis.

Under the new guidelines, institutional investors will be encouraged to vote in favour of resolutions that give directors authority to undertake a rights issue of up to two-thirds of the company's market capitalisation without asking existing shareholders for approval. The previous limit was one-third.

These changes have been introduced largely as a result of the collapse of the banking sector over recent months. It is argued that, had the banks been able to raise additional capital from their existing shareholders in a more timely manner, then some of the impact on their share prices could have been contained. It is for these reasons that the ABI has sought to give companies greater flexibility to raise capital from their existing shareholders.

Editor



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For further information,
contact [Stephen Hamilton](#).

It is worth noting that any company that takes advantage of the new guidelines will need to put its board up for re-election the following year in the interests of ensuring that directors remain accountable to shareholders for taking the decision to raise significant funds in this way.

The measures were discussed and agreed by the Rights Issue Review Group, which was set up by the Treasury and made its recommendations at the end of November.

Coke Cola - not quite the real thing?

The Company Names Adjudicator has made its first orders under section 69 Companies Act 2006 (which came into force on 1 October 2008) requiring companies to change their name.

The new legislation is aimed at preventing opportunistic or speculative company name registrations by third parties wishing to trade on another company's branding success or to extract money from the brand owner.

The Coca Cola Company brought one of the first applications against a new company registered in February 2008 with the name Coke Cola Limited. Coke Cola was ordered to change its name within prescribed time limits and, if it fails to do so, the adjudicator will choose and enforce a new name for it. Similarly, in applications brought by Zurich Insurance Company, companies called Zurich Financial Special Risk Limited and Zurich Risk Transfer Limited have been ordered to change their names within one month.

The process will provide an additional avenue of attack, in addition to possible actions for breach of trade marks and passing off, for companies seeking to protect their brand and goodwill. In the longer term, this could prove to be a speedier and more cost effective means of resolving such problems.



For further information, contact **Mary Prentice**.

Why now may be a good time to grant share options

The market downturn only increases the need for directors to find ways to reduce costs but keep employees incentivised. Granting an option while share values are low has obvious advantages - there is no significant cost to the company in making the grant, lower share values translate into greater potential gains and there are increased tax savings for the individuals concerned.

A share option is effectively a right to purchase shares in the future (normally at a predetermined price). The right to exercise the option can be subject to the satisfaction of performance conditions, for example, staying with the company for a number of years. Exercise of an option is often conditional on achieving an exit.

What are the main advantages of share options in the current financial climate?

- They can be considered as an alternative to a cash bonus.
- They reward loyalty and therefore help you to retain valued staff.



For further information, contact **Deborah Clark**.

- Having a stake in the future of the business aligns the interests of employees with those of shareholders.
- Employees will share in any increases in the value of the business.
- Share options can be very tax efficient. There is no tax or national insurance to pay on grant and, if certain conditions can be met, exercise of the options can also be tax free, leaving only capital gains tax to be paid on the sale of the shares.

Help for SMEs - is it enough?

Under pressure from all sides, the Government recently unveiled three schemes to address the liquidity needs of SMEs and kick-start banks into lending to their SME customers again. The schemes are:

- a £10 billion working capital scheme;
- a £1.3 billion enterprise guarantee scheme; and
- a £75 million enterprise fund.

Working capital scheme

The Government will, subject to EU State aid clearance, underwrite up to 50 per cent of new and existing loans to businesses with an annual turnover up to £500 million (which means all but the largest 350 UK companies). By guaranteeing the loans and therefore shouldering the risk, the package should, in theory, free up extra capital for the banks to pass onto other corporate borrowers.

Enterprise finance guarantee scheme

This scheme is aimed at smaller, medium-risk companies in sectors seen as vital to rebuilding the economy that have an annual turnover of up to £25 million and are looking for loans of up to £1 million over a period of up to ten years. The scheme is available through the banks and means that the Government will guarantee up to 75 per cent of the loans (whether these are new loans, refinancings or conversions or part or all of an existing overdraft facility) thus freeing up working capital and increasing liquidity. To date, approximately £40 million has been offered under this scheme.

Capital for enterprise fund

This £75 million fund will allow heavily-indebted companies to swap their debt for equity where more traditional forms of finance have been exhausted. £50 million will come from the Government and the remainder from banks.

The measures have received a lukewarm response - the general consensus is that they represent a step in the right direction but are not the panacea that had been trailed by the Government. Clearly more still needs to be done to help SMEs!

If you want to know whether you are eligible for any of the schemes, click [here](#).



For further information, contact [Ben Turner](#).

Shortcut - practical guidance for directors

ICAEW has recently published helpful guidance setting out good practice for directors in relation to their financial and accounting responsibilities as well as an overview of more general duties and responsibilities.

The guidance can be found [here](#).



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