15 March 2011

Our ref: ICAEW Rep 30/11

Richard Grafen
Department for Business, Innovation and Skills
Business Environment Directorate
1 Victoria Street
London
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By email: richard.grafen@bis.gsi.gov.uk

Dear Richard

DRAFT COMPANIES (REPORTING REQUIREMENTS IN MERGERS AND DIVISIONS) REGULATIONS 2011

The ICAEW welcomes the opportunity to comment on the draft *Companies (Reporting Requirements in Mergers and Divisions) Regulations 2011* published by the Department for Business, Innovation and Skills in January 2011.

The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

We support the changes made by EU Directive 2009/109/EC ("the amending directive") to simplify the processes involved in the Third Company Law Directive on public company mergers, and the Sixth Company Law Directive dealing with divisions of public companies. These fall into three broad categories:

- Enabling companies to take advantage of new technology;
- Removing over-regulation; and
- Strengthening creditor protection to ensure the rights of creditors of merging or dividing companies are safeguarded. We agree that these safeguards are already catered for in UK legislation and so do not require any UK measures.

Regarding the detailed Member State options, we support the proposed overall UK approach of, where possible, taking advantage of options that reduce the administrative burden on merging or dividing companies. We include our more detailed comments below.

NEW TECHNOLOGY

Member state options

We support the UK proposal not to implement the options to require:

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- publication on a central website, rather than on the company's website, and
- publication of the terms of mergers and divisions to be continued for a period after the general meeting to which it relates.

We support the UK proposal to take advantage of the option to base the measures imposing consequences for disruption of the company's website on those relating to existing UK website requirements (ie those in paragraph 14(2) of Schedule 5 to the Companies Act 2006).

REMOVING OVER-REGULATION

Regarding the mandatory changes that will permit a company to dispense with the requirement to produce a supplementary accounting statement, we draw to your attention, for information, that the Amending Directive, and thus the draft UK Regulations that would implement changes to s910 and s925, permits substitution of consolidated-only information for otherwise required consolidated-and-company information (albeit that instances of Part 27 transactions involving companies within the DTR would be rare in practice).

We also consider that, in new sub-sections 910(5) and 925(4A), it would be more helpful to refer to half-yearly reports published in compliance with DTR 4.2.2 (rather than referring to s89A FSMA). This provision could be based on s497A CA06, which refers to statements made in compliance with DTRs 7.2.5 and 7.2.6.

We also note that, whilst half-yearly statements are reviewed by the auditor, they are not 'audited' as stated in paragraph 17 of the BIS explanatory paper.

<u>Member state options</u>

We support the UK proposal to take advantage of the options to waive the requirement for an experts' report:

- on non-cash consideration on formation of a new company if that new company was formed by a Third Directive merger or a Sixth Directive division, and
- on allotment of new shares for non-cash consideration if an experts' report is already being drawn up under implementation of the Third or Sixth directive in relation to the same operation.

We also support the UK proposal to take advantage of the options to provide an exemption from producing:

- a directors' explanatory report
- a supplementary accounting statement
- a report on material changes

if all members of the company unanimously so agree.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

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