Briefing

Corporate

March 2015

Public Companies: Cancellation schemes of arrangement not available on takeovers

Takeovers of public companies cannot use cancellation schemes of arrangement. New regulations which came into force on 4 March 2015 prohibit a company from reducing its share capital as part of a scheme of arrangement where the purpose of the scheme is to acquire all the shares of the company.

The prohibition does not affect takeovers where an announcement concerning a firm intention to make an offer has been made before 4 March 2015. So existing public transactions which are structured as cancellation schemes of arrangement can proceed on that basis.

Transfer schemes of arrangement are not affected by this change. Under a transfer scheme of arrangement stamp duty is chargeable unless the transfer scheme involves shares admitted to trading on a recognised growth market (which includes eligible securities on AIM, the High Growth Segment of the Main Market and the ISDX Growth Market).

Background

The new regulations reflect the Chancellor's 2014 Autumn Statement which made it clear that the government would bring forward regulations in early 2015 to prevent the use of cancellation schemes of arrangement for company takeovers.

The change is designed to increase stamp duty receipts from UK takeovers as cancellation schemes avoided the stamp duty charge as no shares were transferred to the bidder.

Schemes

Under a **"cancellation scheme"** all of the shares in the target company not already owned by the bidder were cancelled by way of a reduction of capital. The reserve arising on the cancellation was capitalised and applied in paying up new shares in the target company which were issued by the target company to the bidder. The bidder then paid cash or issued shares/other securities to the shareholders of the target company in accordance with the provisions of the scheme.

Cancellation schemes will still be available where the transaction amounts to a restructuring which inserts a new holding company into the group structure.

By contrast a **"transfer scheme"** does not involve any reduction of capital or issue of new shares to the bidder. Instead all the shares in the target company which are not already owned by the bidder are transferred to the bidder. The bidder pays cash or issues shares/other securities to the shareholders in accordance with the provisions of the scheme.

Under a transfer scheme of arrangement stamp duty is chargeable unless the transfer scheme involves shares issued by a company which has been admitted to a recognised growth market (which includes AIM, the High Growth Segment of the Main Market and the ISDX Growth Market).

continued

Further information

The details of the changes can be found in the Companies Act 2006 (Amendment of Part 17) Regulations 2015.

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