

COMPANY LAW

February 2008

AMF (the French Financial Markets Authority) clarifies the terms governing increases in share capital through the free allocation of share subscription warrants.

Increases in share capital through the free allocation of share subscription warrants ("SSWs") to shareholders are often used in practice and are generally preferred to increases employing preferential subscription rights ("PSRs") since they enable shareholders to participate in share capital increases in the same circumstances as if they had PSRs, but with fewer constraints. Indeed, as well as the shorter centralisation timeframe, issues of SSWs are not governed by the provisions of Article R. 225-120 of the French Commercial Code which requires publication of details in the *BALO* (French mandatory legal announcements gazette) at least fourteen days before the subscription closing date. Issues of SSWs thus have the advantage of being able to be finalised more quickly.

The French Financial Markets Authority (the "AMF") noted that the circumstances under which SSW issuing operations are carried out vary very significantly. Certain issuers adopt resolutions regarding increases without PSRs whereas others use resolutions regarding share capital increases with PSRs. This led to the AMF clarifying the terms governing increases in share capital through the free allocation of SSWs (see position of AMF dated 4 December 2007). Deeming that issues of SSWs granted free of charge to all shareholders, which are subject to short exercise periods, are a substitute for share capital increases with PSRs, the AMF decided to apply the same legal regime to them.

Thus, as regards share capital increases effected through free allocations of SSWs, the AMF's decision produces the following consequences:

1. The exercise price of SSWs is set freely using one of two possible approaches: either before the transaction with a discount comparable to that for an issue with PSRs (and in which case unusually high discount proposals must be justified, as is the case for issues with PSRs), or at the end of the investment period, when the order book is closed (price close to stock market price).
2. The negotiation and exercise period at the known price must at least be equal to that which applies to PSR holders, in other words a period of five days.
3. The success of increases in share capital through the issue of short-period SSWs is conditioned upon subscription of at least 75% of the total share issue amount, which entails the necessity of centralising the exercise of SSWs in order to enable refunds to subscribers should a share issue be cancelled.
4. The requirement by the AMF in the past regarding a realisation guarantee in order to protect PSR holders has been relaxed since issuers now can choose whether or not to offer such a guarantee, provided that they supply explicit and appropriate information in offering notices. However, a guarantee (or a subscription undertaking) is still required should the issuer give a representation regarding working capital which is subject to reservations.

The position taken up by the AMF helps to standardise the terms governing increases by means of free allocations of SSWs by putting an end to the use by certain issuers of SSWs of capital-increase mechanisms which do not include PSRs.

AMF press release and position statement dated 4 December 2007.

http://www.amf-france.org/documents/general/8053_1.pdf
(in French)

AREAS OF LEGAL PRACTICE

• MERGERS & ACQUISITIONS

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• CAPITAL INVESTMENTS AND LBOS

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• COMPANY LAW

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• SECURITIES LAW

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• BANKING AND FINANCE

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• COMMERCIAL CONTRACTS / ECONOMIC LAW

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

• ADVERTISING / MARKETING

Advice and litigation work in advertising and marketing law (validation of advertising or promotional campaigns on all media and related litigation).

• LABOUR AND EMPLOYMENT LAW

Advice and litigation work in collective and individual disputes as well as in social security law and criminal labour law.

• INTERNATIONAL LITIGATION / ARBITRATION

Advice and litigation work covering all facets of business, company and securities law, as well as collective procedures and white-collar crime. Representation at all stages of the dispute, from pre-litigation to litigation before judicial or arbitral courts, protective measures and enforcement.

• REAL ESTATE LAW

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

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• COMPETITION LAW (FRENCH AND EU)

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Advice and representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

• NEW TECHNOLOGIES AND INTELLECTUAL PROPERTY LAW

Advice and litigation work, notably in IT matters (development and integration of software, licenses, assignments and other software-related contracts, facilities management, maintenance of IT systems and software, software infringement), in the field of new technologies (multimedia, Internet, e-commerce). Creation and hosting of websites, affiliation, partnership, online auctions, ASP licenses.

• INTELLECTUAL PROPERTY

Literary and artistic property rights & neighbouring rights. Distribution license, rights of performing artists, infringement litigation. Industrial property, trademark, patent and/or design and model applications, licenses and assignments, transfers of technology and/or know-how, trademark, patent and/or design and model litigation (infringement, opposition proceedings, etc.).

• AUDIOVISUAL AND MULTIMEDIA LAW

Advice and litigation work in connection with the production, publishing, co-production, distribution and licensing agreements, in France and abroad, of motion picture and/or audiovisual and/or multimedia works and related agreements. Navigation of audiovisual and motion picture regulations and assistance with financing.

• TELECOM

Legal advice and preparation of applications for telecom operator licenses, legal aspects of foreign investments in the telecom sector, link leasing (cable and fibre), co-leasing, leasing of capacity, service and/or capacity supply agreements and general terms of service and/or capacity supply, legal aspects and local loop unbundling.

• COLLECTIVE PROCEDURES

Alert, restructuring and reorganisation procedures, conciliation and ad hoc representation procedures. Court-ordered reorganisation, preparation of reorganisation plans, sale and recovery plans, liquidation. Representation and assistance of creditors, company officers (action to make good the shortfall in assets, extension procedures, etc.).

Wide network of foreign correspondents

The Firm has developed a wide network of foreign correspondents in most industrialised countries and in certain developing countries.

ISO 9001

The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

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