

RESPONSE BY VOGT & RESNICK, LLP TO
QUESTIONS FOR THE M & A PRACTICE GROUP

1. Share Capital

a. Please provide a step by step description of the procedure for the issuance of share capital for cash consideration in a private company.

- ♣ **Review the company's articles of incorporation for authority to authorize the issuance of shares to the intended shareholder.**
- ♣ **Review the company's bylaws for authority to authorize the issuance of shares to the intended shareholder.**
- ♣ **Confirm the company has sufficient shares authorized for the proposed share issuance transaction.**
- ♣ **Confirm the proposed share issuance transaction complies with the California Corporations Code.**
- ♣ **Obtain single share certificate book for the company containing certificates, pre-printed, for the issuance of shares.**
- ♣ **Prepare share certificate with date, name of shareholder and number of shares.**
- ♣ **Add any restrictions on transfer of the shares pursuant to the company's articles of incorporation, bylaws or shareholder's agreement on the back of the share certificate.**
- ♣ **Share certificate shall be personally signed by corporate officers authorized to sign and corporate seal may be affixed.**
- ♣ **Upon receipt of consideration for the shares, the share certificate is delivered to the shareholder.**
- ♣ **The issuance of shares to the shareholder is recorded in the company's stock ledger.**
- ♣ **The company shall state by resolution its approval transaction, with originals kept in the company's minute book.**

b. Please provide a step by step description of the procedure for the transfer of share capital for cash consideration in a private company.

- ♣ **Review the company's articles of incorporation for any restrictions on the transfer of share capital.**
- ♣ **Review the company's bylaws for any restrictions on the transfer of share capital.**
- ♣ **Review any shareholders agreements executed between the company's shareholders which may restrict the transfer of share capital, such as**
 - **Options for purchase of shares subject of the proposed transfer are granted to other shareholders or the company.**
 - **Obligation to purchase by the corporation or other shareholders for the purchase the shares subject to the proposed transfer.**
- ♣ **If any of the above documents contain restrictions on transfer, the proposed shareholder may seek to review and analyze whether the restrictions are reasonable in accordance with the jurisdictions current law.**
- ♣ **If the transfer is allowed pursuant to the above, then the company shall transfer the shares to the new shareholder in accordance with the issuance requirements under section (a) above.**

c. Please provide a description of how the above procedures differ if the consideration for the issuance or transfer is other than cash.

- ♣ **Review and confirm that the proposed non-cash consideration is in a form authorized by the California Corporations Code, i.e., labor performed, debt or securities, tangible or intangible property, promissory notes.**
- ♣ **A third-party appraisal or valuation of the non-cash consideration may be necessary or advisable to support the board's acceptance of the value of the consideration.**
- ♣ **The company's board of directors shall state by resolution its determination of the fair market value, in monetary terms, of the non-cash consideration.**

2. Corporate Governance

a. Please describe the operative corporate governance law in your jurisdiction.

- ♣ **California Corporations Code**

b. Please provide a web link, if any exists, to the corporate governance law in your jurisdiction (for example in England the link is found on the London Stock Exchange website).

- ♣ www.ss.ca.gov/business/business.htm

3. Financial Assistance

In an acquisition of share capital, please describe the restrictions, if any, on the acquirer's use of the target's assets to fund or provide security for the funding of the acquisition.

- ♣ **Generally, shareholders may pledge, hypothecate or encumber their shares as security for any debt, as long as the secured creditor agrees:**
 - **Written notice of default shall be given to the company**
 - **Company shall have the right to cure any default**
 - **If company does not cure the default, other shareholders shall have the right to cure the default.**

4. Economic Reports

Please provide a web link to a banking institution which provides periodic economic information about your jurisdiction.

- ♣ www.dof.ca.gov
- ♣ www.bea.doc.gov