

Insights

UK PRE-EMPTION GROUP STATEMENT

TEMPORARY RELAXATIONS TO ITS STATEMENT OF PRINCIPLES TO HELP COMPANIES RAISE EQUITY CAPITAL IN THESE DIFFICULT TIMES

2 April 2020

Further relaxations for raising capital

As we discussed in our [previous article](#) on cash box placings, whilst the market is now looking to employ this structure where necessary, the Pre-emption Group has historically not approved of the use of cash box structures to avoid pre-emption rights and has regarded a cash box transaction as being, in substance, an issuance of equity securities for cash and subject to the limits set out in the Pre-emption Group Statement of Principles.

These limits are set at (i) no more than 5% of the issued share capital to be allotted non-pre-emptively for cash for general corporate purposes and (ii) an additional 5% of the issued share capital for specified acquisitions or investments.

Temporary changes

Recognising that in the current circumstances companies may need to raise capital to maintain their solvency, the Pre-emption Group has published a [statement](#) supporting issuances by companies of up to 20% of their issued share capital on a temporary basis. This would permit Main Market issuers to raise up to 20% of their existing share capital without the need for a prospectus and without contravening the Pre-emption Group Guidelines.

If this additional flexibility is sought:

- the particular circumstances of the company should be fully explained, including how they are supporting their stakeholders;
- proper consultation with a representative sample of the company's major shareholders should be undertaken;
- as far as possible, the issue should be made on a soft pre-emptive basis; and
- company management should be involved in the allocation process.

This additional flexibility will be in place on a temporary basis until 30th September 2020.

Main Market issuers should however remember that under the Listing Rules a placing cannot be priced at a discount of more than 10% to the relevant shares' middle market price unless the terms of the offer have been approved by shareholders or it is an issue for cash under a pre-existing general disapplication authority (such as the 5% authority typically granted annually at the AGM).

Because AIM is not a regulated market, the 20% restriction after which a prospectus must be published does not apply to AIM issuers. An AIM issuer is therefore able to exploit the whole of any unused allotment authority granted at its AGM, which is typically set at a third of its share capital. The AIM Rules also impose no limit on the discount at which any equity fundraising can be undertaken.

Where companies issue up to 20 per cent of their capital relying on this exemption, they would be expected to disclose in their annual report the consultation undertaken prior to the issuance and the efforts made to respect pre-emptive rights, given the time available.

RELATED CAPABILITIES

- Corporate
- Financial Services Corporate & Regulatory Team
- M&A & Corporate Finance
- Securities & Corporate Governance

MEET THE TEAM



Nicholas Myatt

Co-Author, London

nicholas.myatt@bclplaw.com

[+44 \(0\) 20 3400 4767](tel:+442034004767)



Tessa Hastie

Co-Author, London

tessa.hastie@bclplaw.com

[+44 \(0\) 20 3400 4516](tel:+442034004516)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.