



DIRECTORS' POWERS TO ALLOT SHARE CAPITAL AND DISAPPLY SHAREHOLDERS' PRE-EMPTION RIGHTS

The requirement on companies to obtain shareholder authorisation of powers both for the general allotment of new shares and any disapplication of pre-emption rights is embodied in law. This guidance sets out the expectations of institutional investors in this regard. Model resolutions, updated to reflect changes consequent on implementation of the Companies Act 2006, are included in Annex 1.

This guidance, which replaces that previously issued by the ABI, addresses the particular recommendation of the 'Rights Issue Review Group' that the overall allotment headroom that shareholders should normally be invited to approve be increased from one-third to two-thirds of an issuer's issued share capital. The ABI Investment Committee recognises, in particular, the case for ensuring that the routine S.551 headroom should allow for capital raising when made by way of a fully pre-emptive rights issue within an overall value headroom of one third by reference to the company's prevailing market value rather than the quantity of shares issued.

The guidance will be reviewed after three years of operation. In the meantime the ABI will monitor the use by companies of the additional headroom.

S.551 General Power to Allot

ABI Members will regard as routine a request for authorisation to allot new shares in an amount of up to one third of the existing issued share capital¹.

In addition they will regard as routine requests to authorise the allotment of a further one third. Such additional headroom shall be applied to fully pre-emptive rights issues only and the authorisation shall be valid for one year only.

Where an additional authority of this kind is taken and where

- the aggregate actual usage of the authority exceeds one third as regards nominal amount and also,
- in the case of issuance being in whole or part by way of a fully pre-emptive rights issue, monetary proceeds exceed one third (or such lesser relevant proportion) of the pre-issue market capitalisation,

¹ It is emphasised that this recommended level is not an absolute limit on the amount of share capital the directors may allot: it will merely require the board to return to shareholders if the company proposes significantly to increase the amount of issued share capital.

ABI Members will expect that all members of the Board wishing to remain in office will stand for re-election at the next Annual General Meeting of the company following the decision to make the issue in question.

S.570 General Power to Disapply Pre-emption Rights

The terms of the resolution to disapply pre-emption rights are designed to accord with the provisions of the Pre-Emption Group's Statement of Principles with regard to routine disapplications. It will assist shareholders if, when seeking such authorisations, companies take the opportunity to confirm their intention to adhere to the provisions in the Principles regarding cumulative usage of authorities within a rolling 3-year period where the Principles provide that usage in excess of 7.5% should not take place without prior consultation with shareholders.

ANNEX 1

The attached example resolutions are intended to assist companies and their advisers in understanding the limitations which ABI Members have indicated they would expect to see placed on the directors' authority to allot share capital under S.551 of the Companies Act 2006 and the general authority to disapply shareholders' pre-emption rights under S.570.

Resolution 1 (S.551 General Power to Allot)

The figure inserted at 'A' in each of (i) and (ii) should be an amount not exceeding one-third of the issued Ordinary share capital².

To the one-third figure can be added amounts for which the company requires further additional powers under Section 551. For example, further powers may be required to allot shares in respect of deferred consideration.

If the resolution contains a figure greater than one-third of the issued Ordinary share capital (by reference to the total issued Ordinary share capital as disclosed in accordance with the Listing Rules) it is important to explain clearly in the supporting documents the basis on which the figure is calculated, including the nature of any amounts which have been specifically added to the basic one-third figure.

Resolution 2 (Section 570 General Power to Disapply Pre-emption Rights)

The figure inserted at 'B' should not be more than 5% of the issued Ordinary share capital of the company. If the resolution contains a figure greater than five per cent of the issued Ordinary share capital (by reference to the total issued Ordinary share capital as disclosed in accordance with the Listing Rules), it is important to explain clearly in the supporting documents the basis on which the figure is calculated.

Ordinary Resolution

1(i) THAT the board be and it is hereby generally and unconditionally authorised pursuant to section 551 of the Companies Act 2006 to allot shares in the company and to grant rights to subscribe for or to convert any security into shares in the company up to an aggregate nominal amount of £...A... provided that this authority shall expire on*..... save that the company may before such expiry make an offer or agreement which would or might require shares to be allotted or rights to subscribe for or convert securities into shares to be granted after such expiry and the board may allot shares or grant rights to subscribe for or convert securities into shares in pursuance of such an offer or agreement as if the authority conferred hereby had not expired,

and further,

² However, to the extent that the S.551 authority sought for general purposes is less than one third, the S.551 authority reserved for rights issues only may be increased commensurately to provide a rights issue headroom of up to two thirds by reference to the nominal value of the share capital being issued compared to that outstanding.

- (ii) **THAT** the board be and it is hereby generally and unconditionally authorised to exercise all powers of the company to allot equity securities (within the meaning of Section 560 of the said Act) in connection with a rights issue in favour of Ordinary shareholders where the equity securities respectively attributable to the interests of all Ordinary shareholders are proportionate (as nearly as may be) to the respective numbers of Ordinary shares held by them up to an aggregate nominal amount of £...A... provided that this authority shall expire on the date of the next annual general meeting of the company after the passing of this resolution save that the company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the board may allot equity securities in pursuance of such an offer or agreement as if the authority conferred hereby had not expired.

* Where an authority is sought in respect of both (i) and (ii) the date of expiry specified should be the date of the next annual general meeting. Where an authority is sought in respect of (i) only, a period up to 5 years is acceptable

Special Resolution

2 THAT subject to the passing of the previous resolution the board be and it is hereby empowered pursuant to Section 570 of the Companies Act 2006 to allot equity securities (within the meaning of Section 560 of the said Act) for cash pursuant to the authority conferred by the previous resolution as if sub-section (1) of Section 561 of the said Act did not apply to any such allotment provided that this power shall be limited

- (i) to the allotment of equity securities in connection with a rights issue in favour of Ordinary shareholders where the equity securities respectively attributable to the interests of all Ordinary shareholders are proportionate (as nearly as may be) to the respective numbers of Ordinary shares held by them and,
- (ii) to the allotment (otherwise than pursuant to sub-paragraph (i) above) of equity securities up to an aggregate nominal value of £...B...

and shall expire {on the date of the next annual general meeting of the company after the passing of this resolution } save that the company may before such expiry make an offer or agreement which would or might require equity securities to be allotted after such expiry and the board may allot equity securities in pursuance of such an offer or agreement as if the power conferred hereby had not expired.

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