

Pre-Emption Group

Template resolutions for the disapplication of pre-emption rights complying with the Pre-Emption Group's Statement of Principles

The Pre-Emption Group's Statement of Principles allow the annual disapplication of pre-emption rights to include:

- five per cent of issued ordinary share capital to be issued on an unrestricted basis; and
- an additional five per cent of issued ordinary share capital to be used for "an acquisition or specified capital investment".

After considering the results of the 2015 monitoring exercise and investor representatives' views on best practice, the Pre-Emption Group has decided to assist companies by publishing template disapplication resolutions.

The template provides for companies to propose separate resolutions to authorise companies to:

- disapply pre-emption rights on up to five per cent of the issued share capital; and
- disapply pre-emption rights for an additional five per cent for transactions which the board determines to be an acquisition or other capital investment as defined by the Statement of Principles.

Investors consider that the additional five per cent disapplication authority included in the template resolutions should only be proposed when appropriate for the individual company's circumstance.

When an additional five per cent disapplication authority is used, companies should disclose, in the announcement regarding the issue, the circumstances that have led to its use and describe the consultation process undertaken. In addition, the Statement of Principles provides that companies are expected, where they have undertaken a placing using the disapplication of pre-emption rights, to publish in the next annual report:

- the actual level of discount achieved;
- the net proceeds raised;
- how those net proceeds were used; and
- the percentage increase in issued share capital due to non-pre-emptive issuance for cash over the three-year period preceding the issue.

The Pre-Emption Group advises that companies which do not comply with the letter and spirit of the Statement of Principles are likely to find their shareholders less inclined to approve subsequent requests for disapplication. Where companies seek authority to disapply pre-emption rights in respect of the additional five per cent they are

encouraged to use the template resolutions at their next meeting, but the Pre-Emption Group would expect companies to use the template resolutions for meetings held after 1 August 2016.

The template resolutions set out below illustrate an approach which investors consider to be good practice. While the template resolutions are drafted for UK-incorporated companies, the Statement of Principles apply to companies with premium listings incorporated outside the UK, so those companies should adopt the resolutions in an appropriate form. The Pre-Emption Group recommends companies use the template when putting forward resolutions to disapply pre-emption rights. However, companies are responsible for ensuring that the resolutions that they propose are effective to achieve their purpose.

Template Resolutions

1. That if [*resolution granting authority to allot shares*] is passed, the Board be authorised to allot equity securities (as defined in the Companies Act 2006) for cash under the authority given by that resolution and/or to sell ordinary shares held by the Company as treasury shares for cash as if section 561 of the Companies Act 2006 did not apply to any such allotment or sale, such authority to be limited:
 - (A) [*allotments for rights issues and other pre-emptive issues*]; and
 - (B) to the allotment of equity securities or sale of treasury shares (otherwise than under paragraph (A) above) up to a nominal amount of £[●] [*NOTE: This amount to be not more than 5 per cent of the issued ordinary share capital (excluding treasury shares) of the Company as at the latest practicable date prior to publication of the notice of meeting*],such authority to expire at the end of the next AGM of the Company (or, if earlier, at the close of business on [●] 20[●] [*NOTE: This date to be the date which is fifteen months after the date of the meeting*] but, in each case, prior to its expiry the Company may make offers, and enter into agreements, which would, or might, require equity securities to be allotted (and treasury shares to be sold) after the authority expires and the Board may allot equity securities (and sell treasury shares) under any such offer or agreement as if the authority had not expired.
2. That if [*resolution granting authority to allot shares*] is passed, the Board be authorised in addition to any authority granted under [*first disapplication resolution*] to allot equity securities (as defined in the Companies Act 2006) for cash under the authority given by that resolution and/or to sell ordinary shares held by the Company as treasury shares for cash as if section 561 of the Companies Act 2006 did not apply to any such allotment or sale, such authority to be:
 - (A) limited to the allotment of equity securities or sale of treasury shares up to a nominal amount of £[●] [*NOTE: This amount to be not more than 5*

per cent of the issued ordinary share capital (excluding treasury shares) of the Company as at the latest practicable date prior to publication of the notice of meeting]; and

- (B) used only for the purposes of financing (or refinancing, if the authority is to be used within six months after the original transaction) a transaction which the Board of the Company determines to be an acquisition or other capital investment of a kind contemplated by the Statement of Principles on Disapplying Pre-Emption Rights most recently published by the Pre-Emption Group prior to the date of this notice,

such authority to expire at the end of the next AGM of the Company (or, if earlier, at the close of business on [●] 20[●] [*NOTE: This date to be the date which is fifteen months after the date of the meeting*] but, in each case, prior to its expiry the Company may make offers, and enter into agreements, which would, or might, require equity securities to be allotted (and treasury shares to be sold) after the authority expires and the Board may allot equity securities (and sell treasury shares) under any such offer or agreement as if the authority had not expired.