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Companies Act 2006

2006 CHAPTER 46

PART 17

A COMPANY'S SHARE CAPITAL

CHAPTER 3

ALLOTMENT OF EQUITY SECURITIES: EXISTING SHAREHOLDERS' RIGHT OF PRE-EMPTION

VALID FROM 01/10/2009

Introductory

560 Meaning of “equity securities” and related expressions

(1) In this Chapter—

“equity securities” means—

- (a) ordinary shares in the company, or
- (b) rights to subscribe for, or to convert securities into, ordinary shares in the company;

“ordinary shares” means shares other than shares that as respects dividends and capital carry a right to participate only up to a specified amount in a distribution.

(2) References in this Chapter to the allotment of equity securities include—

- (a) the grant of a right to subscribe for, or to convert any securities into, ordinary shares in the company, and
- (b) the sale of ordinary shares in the company that immediately before the sale are held by the company as treasury shares.

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Existing shareholders' right of pre-emption

561 Existing shareholders' right of pre-emption

- (1) A company must not allot equity securities to a person on any terms unless—
 - (a) it has made an offer to each person who holds ordinary shares in the company to allot to him on the same or more favourable terms a proportion of those securities that is as nearly as practicable equal to the proportion in nominal value held by him of the ordinary share capital of the company, and
 - (b) the period during which any such offer may be accepted has expired or the company has received notice of the acceptance or refusal of every offer so made.
- (2) Securities that a company has offered to allot to a holder of ordinary shares may be allotted to him, or anyone in whose favour he has renounced his right to their allotment, without contravening subsection (1)(b).
- (3) If subsection (1) applies in relation to the grant of such a right, it does not apply in relation to the allotment of shares in pursuance of that right.
- (4) Shares held by the company as treasury shares are disregarded for the purposes of this section, so that—
 - (a) the company is not treated as a person who holds ordinary shares, and
 - (b) the shares are not treated as forming part of the ordinary share capital of the company.
- (5) This section is subject to—
 - (a) sections 564 to 566 (exceptions to pre-emption right),
 - (b) sections 567 and 568 (exclusion of rights of pre-emption),
 - (c) sections 569 to 573 (disapplication of pre-emption rights), and
 - (d) section 576 (saving for certain older pre-emption procedures).

562 Communication of pre-emption offers to shareholders

- (1) This section has effect as to the manner in which offers required by section 561 are to be made to holders of a company's shares.
- (2) The offer may be made in hard copy or electronic form.
- (3) If the holder—
 - (a) has no registered address in an EEA State and has not given to the company an address in an EEA State for the service of notices on him, or
 - (b) is the holder of a share warrant,
 the offer may be made by causing it, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Gazette.
- (4) The offer must state a period during which it may be accepted and the offer shall not be withdrawn before the end of that period.
- (5) The period must be a period of at least 21 days beginning—
 - (a) in the case of an offer made in hard copy form, with the date on which the offer is sent or supplied;

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- (b) in the case of an offer made in electronic form, with the date on which the offer is sent;
 - (c) in the case of an offer made by publication in the Gazette, with the date of publication.
- (6) The Secretary of State may by regulations made by statutory instrument—
- (a) reduce the period specified in subsection (5) (but not to less than 14 days), or
 - (b) increase that period.
- (7) A statutory instrument containing regulations made under subsection (6) is subject to affirmative resolution procedure.

Commencement Information

- II** S. 562 wholly in force at 1.10.2009; s. 562 not in force at Royal Assent, see s. 1300; s. 562 in force for specified purposes at 20.1.2007 by S.I. 2006/3428, **art. 3(3)** (subject to **art. 5, Sch. 1** and with **arts. 6, 8, Sch. 5**); s. 562 otherwise in force at 1.10.2009 by S.I. 2008/2860, **art. 3(k)** (with **arts. 5, 7, 8, Sch. 2**) (as amended by S.I. 2009/1802, **art. 18**)

VALID FROM 01/10/2009

563 Liability of company and officers in case of contravention

- (1) This section applies where there is a contravention of—
- section 561 (existing shareholders' right of pre-emption), or
 - section 562 (communication of pre-emption offers to shareholders).
- (2) The company and every officer of it who knowingly authorised or permitted the contravention are jointly and severally liable to compensate any person to whom an offer should have been made in accordance with those provisions for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (3) No proceedings to recover any such loss, damage, costs or expenses shall be commenced after the expiration of two years—
- (a) from the delivery to the registrar of companies of the return of allotment, or
 - (b) where equity securities other than shares are granted, from the date of the grant.

VALID FROM 01/10/2009

Exceptions to right of pre-emption

564 Exception to pre-emption right: bonus shares

Section 561(1) (existing shareholders' right of pre-emption) does not apply in relation to the allotment of bonus shares.

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565 Exception to pre-emption right: issue for non-cash consideration

Section 561(1) (existing shareholders' right of pre-emption) does not apply to a particular allotment of equity securities if these are, or are to be, wholly or partly paid up otherwise than in cash.

566 Exception to pre-emption right: securities held under employees' share scheme

Section 561 (existing shareholders' right of pre-emption) does not apply to the allotment of securities that would, apart from any renunciation or assignment of the right to their allotment, be held under an employees' share scheme.

VALID FROM 01/10/2009

Exclusion of right of pre-emption

567 Exclusion of requirements by private companies

- (1) All or any of the requirements of—
 - (a) section 561 (existing shareholders' right of pre-emption), or
 - (b) section 562 (communication of pre-emption offers to shareholders)
 may be excluded by provision contained in the articles of a private company.
- (2) They may be excluded—
 - (a) generally in relation to the allotment by the company of equity securities, or
 - (b) in relation to allotments of a particular description.
- (3) Any requirement or authorisation contained in the articles of a private company that is inconsistent with either of those sections is treated for the purposes of this section as a provision excluding that section.
- (4) A provision to which section 568 applies (exclusion of pre-emption right: corresponding right conferred by articles) is not to be treated as inconsistent with section 561.

568 Exclusion of pre-emption right: articles conferring corresponding right

- (1) The provisions of this section apply where, in a case in which section 561 (existing shareholders' right of pre-emption) would otherwise apply—
 - (a) a company's articles contain provision (“pre-emption provision”) prohibiting the company from allotting ordinary shares of a particular class unless it has complied with the condition that it makes such an offer as is described in section 561(1) to each person who holds ordinary shares of that class, and
 - (b) in accordance with that provision—
 - (i) the company makes an offer to allot shares to such a holder, and
 - (ii) he or anyone in whose favour he has renounced his right to their allotment accepts the offer.

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- (2) In that case, section 561 does not apply to the allotment of those shares and the company may allot them accordingly.
- (3) The provisions of section 562 (communication of pre-emption offers to shareholders) apply in relation to offers made in pursuance of the pre-emption provision of the company's articles.

This is subject to section 567 (exclusion of requirements by private companies).
- (4) If there is a contravention of the pre-emption provision of the company's articles, the company, and every officer of it who knowingly authorised or permitted the contravention, are jointly and severally liable to compensate any person to whom an offer should have been made under the provision for any loss, damage, costs or expenses which the person has sustained or incurred by reason of the contravention.
- (5) No proceedings to recover any such loss, damage, costs or expenses may be commenced after the expiration of two years—
 - (a) from the delivery to the registrar of companies of the return of allotment, or
 - (b) where equity securities other than shares are granted, from the date of the grant.

VALID FROM 01/10/2009

Disapplication of pre-emption rights

569 Disapplication of pre-emption rights: private company with only one class of shares

- (1) The directors of a private company that has only one class of shares may be given power by the articles, or by a special resolution of the company, to allot equity securities of that class as if section 561 (existing shareholders' right of pre-emption)—
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.

570 Disapplication of pre-emption rights: directors acting under general authorisation

- (1) Where the directors of a company are generally authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), they may be given power by the articles, or by a special resolution of the company, to allot equity securities pursuant to that authorisation as if section 561 (existing shareholders' right of pre-emption)—
 - (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.

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- (2) Where the directors make an allotment under this section, the provisions of this Chapter have effect accordingly.
- (3) The power conferred by this section ceases to have effect when the authorisation to which it relates—
- (a) is revoked, or
 - (b) would (if not renewed) expire.

But if the authorisation is renewed the power may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that the power conferred by this section has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the power enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

571 Disapplication of pre-emption rights by special resolution

- (1) Where the directors of a company are authorised for the purposes of section 551 (power of directors to allot shares etc: authorisation by company), whether generally or otherwise, the company may by special resolution resolve that section 561 (existing shareholders' right of pre-emption)—
- (a) does not apply to a specified allotment of equity securities to be made pursuant to that authorisation, or
 - (b) applies to such an allotment with such modifications as may be specified in the resolution.

- (2) Where such a resolution is passed the provisions of this Chapter have effect accordingly.

- (3) A special resolution under this section ceases to have effect when the authorisation to which it relates—
- (a) is revoked, or
 - (b) would (if not renewed) expire.

But if the authorisation is renewed the resolution may also be renewed, for a period not longer than that for which the authorisation is renewed, by a special resolution of the company.

- (4) Notwithstanding that any such resolution has expired, the directors may allot equity securities in pursuance of an offer or agreement previously made by the company if the resolution enabled the company to make an offer or agreement that would or might require equity securities to be allotted after it expired.

- (5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless—
- (a) it is recommended by the directors, and
 - (b) the directors have complied with the following provisions.

- (6) Before such a resolution is proposed, the directors must make a written statement setting out—
- (a) their reasons for making the recommendation,

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- (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
 - (c) the directors' justification of that amount.
- (7) The directors' statement must—
- (a) if the resolution is proposed as a written resolution, be sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;
 - (b) if the resolution is proposed at a general meeting, be circulated to the members entitled to notice of the meeting with that notice.

572 Liability for false statement in directors' statement

- (1) This section applies in relation to a directors' statement under section 571 (special resolution disapplying pre-emption rights) that is sent, submitted or circulated under subsection (7) of that section.
- (2) A person who knowingly or recklessly authorises or permits the inclusion of any matter that is misleading, false or deceptive in a material particular in such a statement commits an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).

573 Disapplication of pre-emption rights: sale of treasury shares

- (1) This section applies in relation to a sale of shares that is an allotment of equity securities by virtue of section 560(2)(b) (sale of shares held by company as treasury shares).
- (2) The directors of a company may be given power by the articles, or by a special resolution of the company, to allot equity securities as if section 561 (existing shareholders' right of pre-emption)—
- (a) did not apply to the allotment, or
 - (b) applied to the allotment with such modifications as the directors may determine.
- (3) The provisions of section 570(2) and (4) apply in that case as they apply to a case within subsection (1) of that section.
- (4) The company may by special resolution resolve that section 561—
- (a) shall not apply to a specified allotment of securities, or
 - (b) shall apply to the allotment with such modifications as may be specified in the resolution.

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- (5) The provisions of section 571(2) and (4) to (7) apply in that case as they apply to a case within subsection (1) of that section.

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Supplementary

574 References to holder of shares in relation to offer

- (1) In this Chapter, in relation to an offer to allot securities required by—
- (a) section 561 (existing shareholders' right of pre-emption), or
 - (b) any provision to which section 568 applies (articles conferring corresponding right),
- a reference (however expressed) to the holder of shares of any description is to whoever was the holder of shares of that description at the close of business on a date to be specified in the offer.
- (2) The specified date must fall within the period of 28 days immediately before the date of the offer.

575 Saving for other restrictions on offer or allotment

- (1) The provisions of this Chapter are without prejudice to any other enactment by virtue of which a company is prohibited (whether generally or in specified circumstances) from offering or allotting equity securities to any person.
- (2) Where a company cannot by virtue of such an enactment offer or allot equity securities to a holder of ordinary shares of the company, those shares are disregarded for the purposes of section 561 (existing shareholders' right of pre-emption), so that—
- (a) the person is not treated as a person who holds ordinary shares, and
 - (b) the shares are not treated as forming part of the ordinary share capital of the company.

576 Saving for certain older pre-emption requirements

- (1) In the case of a public company the provisions of this Chapter do not apply to an allotment of equity securities that are subject to a pre-emption requirement in relation to which section 96(1) of the Companies Act 1985 (c. 6) or Article 106(1) of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) applied immediately before the commencement of this Chapter.
- (2) In the case of a private company a pre-emption requirement to which section 96(3) of the Companies Act 1985 or Article 106(3) of the Companies (Northern Ireland) Order 1986 applied immediately before the commencement of this Chapter shall have effect, so long as the company remains a private company, as if it were contained in the company's articles.
- (3) A pre-emption requirement to which section 96(4) of the Companies Act 1985 or Article 106(4) of the Companies (Northern Ireland) Order 1986 applied immediately

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before the commencement of this section shall be treated for the purposes of this Chapter as if it were contained in the company's articles.

577 Provisions about pre-emption not applicable to shares taken on formation

The provisions of this Chapter have no application in relation to the taking of shares by the subscribers to the memorandum on the formation of the company.

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