The Pre-Emption Group Updates Guidance On Cashbox Placings

1 April 2020

Today the Pre-Emption Group ("PEG") announced its expectations with regard to issuers complying with the Pre-Emption Group Principles in light of the unparalleled economic situation caused by the coronavirus (COVID-19) pandemic. In order to help companies raise capital quickly in these difficult circumstances, PEG has recommended that, until 30 September 2020, investors should consider supporting non-pre-emptive issuances of up to 20% of a company's issued share capital, where an issuer:

- fully explains the particular circumstances surrounding the capital raise;
- consults with a representative sample of its major shareholders; and
- allocates the new shares with the involvement of company management on a basis that allows existing shareholders to subscribe for shares in proportion to their existing holdings.

PEG's updated guidance will undoubtedly provide some comfort to directors of listed companies that are seeking to raise urgent funds through a cashbox placing of shares of up to 20% of the company's existing issued share capital without the need to publish a prospectus.

A cashbox placing involves an accelerated non-pre-emptive offering of shares to institutional investors. The structure is intended to allow UK-incorporated issuers to make use of the exemption under the Companies Act 2006, which allows companies to issue shares on a non-pre-emptive basis for non-cash consideration – instead of paying cash directly to the issuer for the new shares, the underwriter uses the placing proceeds from investors to subscribe for preference shares in an SPV (typically a new Jersey-incorporated subsidiary of the issuer), which are then transferred to the issuer in consideration of the issue of new shares in the issuer to the investors.

The revised Pre-Emption Group Principles, which were published in March 2015, have discouraged issuers from raising funds by way of a cashbox placing when the number of shares issued on a non-pre-emptive basis is in excess of the company's existing shareholder authority for non-pre-emptive issues for cash (typically 5%, with an additional 5% for issues in connection with an acquisition or specified capital investment). Following the coming into effect of the new Prospectus Regulation in summer 2017, which introduced a new exemption from the obligation to publish a prospectus for an issue of up to 20% of the number of shares admitted to trading, the Pre-Emption Group confirmed that it did not intend to amend its Principles. Accordingly, whilst gaining the ability to make larger share issues without a prospectus, companies have respected the view expressed by PEG in summer 2017 and there have only been a handful of cashbox placings that have taken advantage of the exemption (most notably by TalkTalk in 2018 and by SSP which completed this week, both of which comprised an issue of 19.9% of the company's issued share capital).

We anticipate that this announcement from the Pre-Emption Group will encourage other issuers to look to make use of this structure in the coming weeks and months, although such companies will still want to think about how to engage with their existing shareholders in connection with any such offering.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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