

# Capital Markets Group Legal Alert

## ABI replacement guidance on directors' powers to allot shares: greater headroom for rights issues

In November 2008, the Rights Issues Review Group (“**Review Group**”) made various recommendations to the Chancellor in relation to reform of the rights issue process. One of these recommendations was for the Association of British Insurers (“**ABI**”) to review its guidance on the ceiling on allotments of shares in light of the Review Group’s recommendation that it be increased from one third to two thirds of an issuer’s share capital.

The ABI has now revised its guidance on directors’ power to allot share capital and disapply shareholders’ pre-emption rights in line with the Review Group’s recommendations. Under the replacement guidance, ABI members continue (as before) to regard as routine requests for authorisation to allot new shares in an amount of up to one third of the existing issued share capital. They will also now regard as routine requests to authorise the allotment of a further one third of the issuer’s existing issued share capital, provided that the additional headroom only applies to fully pre-emptive rights issues and the authorisation is valid for one year only. If such an additional authority is taken, and:

- the aggregate use of the authority exceeds one third of the nominal amount of the issued share capital; and
- the shares are issued in whole or in part by way of a fully pre-emptive rights issue where the proceeds exceed one third (or such lesser relevant proportion) of the pre-issue market capitalisation,

the ABI will expect all members of the board wishing to remain in office to stand for re-election at the next AGM following the decision to make the issue in question.

The ABI plans to review the guidance in three years and to monitor use of the additional headroom in the meantime.

For further information on the Review Group's key recommendations and some action points for issuers contemplating a rights issue in 2009, see our Capital Markets Group Legal Alert, Rights issues - on the road to reform?

If you have any questions or require specific advice on any matter discussed in this publication, please contact Stephanie Bates, Robert Hamill, Justine Usher or your regular contact at Mayer Brown.

**Stephanie Bates**

Partner, Co-Head, Capital Markets Group, London  
Tel: +44 (0)20 7782 8833

**Robert Hamill**

Partner, Co-Head, Capital Markets Group, London  
Tel: +44 (0)20 7782 8558

**Justine Usher**

Corporate Professional Support Lawyer  
Tel: +44 (0)20 7782 8517

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