



Global Rewards Update

European Union Prospectus Requirements – A Relaxation of Restrictions Imposed on the Employee Share Scheme Exemption

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Key Points to Know

On 16 May 2017, the Council of the European Union announced that it had adopted without debate the proposed EU Prospectus Regulation (the "Regulation"), which the European Parliament had resolved to adopt in the previous month. The Regulation is intended to repeal and replace the

existing legislation, which includes the EU Prospectus Directive (“EUPD”).

The Regulation aims to ensure investor protection and market efficiency by harmonising the prospectus disclosure requirements for offers of securities to the public and admission of securities to trading on regulated markets within the European Economic Area (“EEA”). The Regulation will also have global share scheme implications for non-EEA companies with EEA-based employees, as it will include a broadening of the scope of the employee share schemes exemption from the requirement to publish a prospectus.

Unlike the EUPD, the Regulation will be legally binding and directly applicable across the EU without any implementing legislation by EU Member States. The Regulation will come into effect 24 months after its entry into force, which is expected in mid-2017.

Overview

The Regulation, like the EUPD, will set out the circumstances in which a company must publish a prospectus in connection with a public offer of its securities, the information that the prospectus must contain and the timing and format of publication.

Although primarily aimed at harmonising the prospectus disclosure requirements for offers of securities to the public and the admission of securities to trading on regulated markets within the EEA, the Regulation will also include a significant legislative change for non-EEA companies wishing to operate employee share schemes in the EEA.

Under the existing EUPD offers of shares under an employee share scheme may amount to a public offer of securities requiring a prospectus (although certain de minimis exemptions may apply). Companies with a registered office in the EEA or with securities listed on an EEA regulated market are, however, able to rely on a specific exemption for offers to existing and former employees and directors. In order to rely

on this exemption, the company is required to make an employee information document available to the relevant employees. In practice, this obligation can be satisfied by including the relevant information in the normal share scheme documentation sent to participants.

In an effort to align the interests of relevant stakeholders in the success of a business, the Regulation will ensure 'equal access' to employee share schemes for employees by allowing global companies (regardless of whether or not they are based within the EEA) to rely on an employee share schemes exemption. As is the case under the EUPD, companies must make an information document available to employees in order to rely on the exemption.

The extension of the scope of the employee share schemes exemption means that a major barrier previously faced by global companies looking to provide equity-based incentives to EEA-based employees will be removed.

While the UK remains a full member of the EU and EEA, the UK will continue to be subject to EU legislation, including the Regulation when it comes into force. The extent to which EU legislation will continue to apply post-Brexit is uncertain and will depend on the negotiated terms of Brexit. If the UK ceases to be a member of the EEA, UK companies operating employee share schemes elsewhere in Europe will also benefit from the broadening of the scope of the employee share schemes exemption.

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Deloitte's view

The Regulation is a welcome update for global companies operating employee share schemes, as it will remove a major barrier previously faced by companies based outside the EEA which were looking to provide equity-based incentives to directors and employees within the EEA. The Regulation will

be legally binding and directly applicable across the EU without the need for any implementing legislation by the EU Member States. We will continue to monitor the Regulation and the EU Parliament regarding the Regulation's entry into force.

Contacts

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at globalshareplans@deloitte.co.uk, and an adviser will contact you.

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