

Global Rewards Update: European Union – Consultation on Prospectus Directive exemption for share schemes

February 2015

Background

The European Union Prospectus Directive (EUPD) provides a specific exemption from the requirement to publish a prospectus for offers of securities by a company to its employees or those of its affiliates. This exemption is only available to EU companies (whether or not listed) or non-EU companies whose securities are listed on an EU regulated market or third-country market designated by the European Commission (the “Commission”) as equivalent to EU markets. Although the EUPD has provided for an exemption for third country ‘equivalent’ markets since 2010, none have yet been designated as such by the Commission. If the exemption is available, certain information regarding the offer must be provided to the employees in order to qualify for the exemption, but this is brief.

For companies that do not qualify for the employee offer exemption described above (or who do not want to provide the information required to rely on it), the offer may still be exempt from the requirement to publish a prospectus. An offer of securities with a consideration below €5,000,000 (across the whole of the EU) falls outside the scope of the EUPD. Similarly an offer to fewer than 150 persons (per member state) is exempted from the requirement to publish a prospectus.

Review of the Prospectus Directive – consultation open

The Commission has commenced a public consultation on all areas of the Prospectus Directive with responses due by 13 May 2015 at the latest.

The key points from a share plans perspective are:

Increasing the thresholds

The limits referred to above (i.e. €5,000,000 and 150 persons) were raised in 2010 (from their original levels of €2,500,000 and 100 persons respectively) and the consultation paper is seeking to assess whether the current thresholds remain appropriate. The consultation also seeks to address the issue of harmonisation as EU member states are currently free to set different rules (e.g. impose disclosure requirements) at a local level for offers below the €5,000,000 threshold.

Employee offer exemption (possible extension to private companies)

Currently a private company incorporated outside the EU would not qualify for the exemption. The consultation is designed to assess whether there is a need to extend the scope of the exemption to non-EU private companies and is asking for reasons and supporting evidence.

Deloitte view

The proposed extension of the exemption to cover non-EU private companies is welcome but we would not expect it to be of benefit to many companies. In our experience, most offers of shares to employees by private companies already fall within either or both of the €5,000,000 or 150 person limits.

In our view, it would be of greater benefit to companies if there was:

- No flexibility for member states to take individual positions for offers below the €5,000,000 threshold; and
- An acceleration of the process for determining which non-EU markets are equivalent to EU markets for the purposes of the employee offer exemption (unfortunately this is not within the scope of the consultation).

We intend to respond to the consultation so please do contact us if you would like to contribute to our response. The full consultation document can be found at http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at globalshareplans@deloitte.co.uk, and a global rewards consultant will contact you.

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