

Equity Incentives and the Prospectus Directive

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Equity Incentives and the Prospectus Directive

- Global securities laws
- Compliance requirements
- Introduction to the Prospectus Directive
- Types of offer and their effects
- Case Study

Overview of Global Securities Laws

- Why regulate securities offers?
- Key facts and circumstances
 - Type of share plan
 - Number of offerees
 - Employee status
 - Value of offer
 - Corporate structure

Compliance Requirements

- **Initial compliance**
 - Registration
 - Approval
- **Ongoing compliance**
 - Notification
 - Filings

Prospectus Directive

- **Purpose**
 - Harmonisation of prospectus requirements
- **Implementation**
- **Problems**
 - Selection of home member state
 - No general exemption for share plans
 - Lack of clarity
 - Different interpretations in different countries



Effect of Directive

- Offer of transferable securities to the public
 - Prospectus approved by competent authority in Home Member State
 - Published in each/member state of offer
- Some offers outside Directive
- Some offers within Directive but exempt

Home Member State

- Regulatory authority for approval of prospectuses
- If incorporated in EU, generally
 - Country of registered office
- If incorporated outside EU
 - Selection by conduct
 - Irrevocable
- Also applies to Transparency Directive

Home Member State - non-EU issuer

- **Selection**
 - **First public [intention to] offer**
 - **Admission to trading**
- **Timing of selection**
 - **1 January 2004 to 30 June 2005**
 - Public offer under local law and
 - Public offer under Prospectus Directive
 - **From 1 July 2005**
 - Public offer under Prospectus Directive
- **Simultaneous offer**
 - **Issuer choice**

Offers outside the Directive

- Cash-settled rights
- Securities not “transferable” (negotiable on the capital market)
 - Options
 - FSA (UKLA) statement
 - Private companies
 - But take care
- Offers with consideration <€2.5m
 - Aggregate over 12 months
 - Throughout EU
 - Meaning of “consideration”
 - Free shares
 - Restricted shares

Offers outside the Directive – effect

- Do not trigger home member state selection
- Do not trigger prospectus requirement
- But underlying local law may still apply
 - France
 - Italy
 - Portugal

Exempt offers

- Offers to <100 persons per member state
 - Not aggregated, at least in UK
- Offers by EU-listed employers or their affiliates
 - Summary information to employees
 - Interpretation issues
 - Employer unlisted, affiliate listed
 - *These* securities or *any* securities
 - Regulated market
 - Some markets (e.g. AIM) are not
- Offer with total consideration < EUR 100,000
 - Aggregate over 12 months
 - Throughout EU
 - Meaning of “consideration”

Exempt offers - effect

- Do trigger home member state selection for non-EU issuers
- No prospectus requirement
- No need to consider local law

Case Study

- **US company**
 - NASDAQ-listed
 - Employees in four European jurisdictions
 - Options
 - Restricted stock awards
 - All-employee stock purchase plan
- Quarterly offering period under ESPP
- About to reach €2.5m threshold
 - Previous offers outside Directive
- Want UK home member state
 - Timing of first offer

Case Study - 2

- Prospectus required for ESPP
- Format
 - One part
 - Three parts
 - Registration document
 - Securities note
 - Summary note
- Content
 - General disclosure
 - Specific disclosure
 - 10-K as basis
- 12 month validity
 - Is listing an alternative?

The way forward

- Amend Directive
- Interpretative guidance
 - Regulators
 - CESR
 - Commission
- Country-by-country approach

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