

## Changes to the EU Prospectus Directive

A directive amending the Prospectus Directive was published in the Official Journal of the European Union on 11 December 2010. The amendments take effect from 31 December 2010. The amendments will be of interest to all companies operating employee share schemes in the EU and also to those contemplating small fundraisings. In particular, the amendments are most likely to benefit companies which are either unquoted or traded on AIM (or any other exchange which is not a regulated market) who wish to operate substantial employee share purchase plans across the EU.

### Extension of Prospectus Directive Share Schemes Exemption

The Prospectus Directive already includes an exemption from the obligation to publish a prospectus for offers of shares to employees and directors. However, that exemption at present only applies to offers by companies with securities already traded on an EU regulated market (as a result, excluding AIM companies and unquoted companies from the benefit of the exemption).

The effect of the amending directive is to extend the employee share scheme exemption to: (i) all companies with their head office or registered office in the EU; (ii) all companies with their securities traded on a regulated market in the EU; and (iii) non-EU companies with securities traded on a market outside the EU if the supervisory regime of that market has been formally declared by the European Commission to be equivalent to the EU supervisory regime for regulated markets.

### Amendments to General Exemptions in Prospectus Directive

The amending directive also makes some significant amendments to the general exemptions from the requirement to produce a prospectus contained in the Prospectus Directive.

The 100 person (per member state) and €2.5 million thresholds which companies currently had to fall below in order to escape the scope of the Prospectus Directive are increased to 150 persons (per member state) and €5 million respectively.

The amending directive also clarifies that the €100,000 lower limit for offers subject to the Prospectus Directive and the newly increased €5 million limit apply to aggregate consideration across the EU as a whole.

### Implementation

Potential issuers should be aware that EU member states have until 1 July 2012 to enact the amending directive into their domestic law so there is potential for temporary divergence in the prospectus regime across the EU as member states enact the directive (which could lead to problems if an issuer wishes to operate share plans in a number of member states).

### Comment

These changes are welcome indeed, providing a pragmatic set of solutions to a number of areas which have caused some real difficulties since the Directive came into force.

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## Practice group contacts

For more information, please contact one of the attorneys listed, or the Dechert lawyer with whom you regularly work. Visit us at [www.dechert.com/corporateandsecurities](http://www.dechert.com/corporateandsecurities).

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