



A refresher on the Prospectus Regime and MAR

Insights - 05/10/2023

The European Union legislative regimes created by the Prospectus Regulation (Regulation 2017/1129/EU) (**Prospectus Regulation**) and the Market Abuse Regulation (Regulation 596/2014) (**MAR**) should be borne in mind by companies investing or conducting business in European Union (**EU**) countries, to include Ireland. This can often arise in the context of employee share incentive plans or schemes whereby a US parent proposes to offer Irish based employees to take part in its share/option scheme.

Prospectus Regulation

The starting principle of the Prospectus Regulation is that an EU-approved prospectus will be required where securities are offered to the public or admitted to trading on an EU regulated market. However, various exemptions from this requirement can apply. Therefore, whenever securities are being offered to the public, or listed, in the EU, care is required to either fall within an exemption or to publish an appropriate prospectus.

In the context of employee share schemes, generally schemes are structured in such a way as to fall into one of the exemptions from the requirement to publish a prospectus. Some of the most common exemptions include:

'Small Exemptions'

Either (i) where the offer is to less than 150 persons per EU member state or (ii) the total consideration for all offers (aggregated over a 12 month period) in the EU is less than €1,000,000 per EU member state;

Non-Transferable Securities

Ensuring that the securities offered to employees are strictly non-transferable; and

Employee Share Scheme Exemption

Falling within the specific exemption within the Prospectus Regulation for securities offered to existing or former directors or employees by their employer or affiliated undertaking provided that a bespoke 'employee information document' is made available.

Market Abuse Regulation (MAR)

MAR was introduced to establish a more uniform and stronger framework against market abuse within the EU in order to preserve market integrity. It applies to issuers of securities, including debt securities, on multilateral systems within the EU. Therefore, where an entity has any securities listed within an EU market, to include bonds and debt listings, MAR arises for consideration.

MAR creates a framework in respect of processes, procedures and prohibitions relating to the use and abuse of 'inside information' within an issuer. Inside information is defined as information of a precise nature which has not been made public, relating, directly or indirectly, to the particular issuer or instruments, and which, if made public, would be likely to have a significant effect on the price of those instruments.

The types of MAR considerations that can arise in the context of employee share schemes include:

- **Disclosure/Notification Requirements** - on persons discharging managerial responsibilities (PDMRs) and persons closely associated with them (PCAs) when they acquire interests / partake in transactions involving the issuer over a de-minimus level of €5,000;
- **Closed Period Restrictions** - dealing restrictions on PDMRs during closed periods (periods before the announcement of year-end or interim results);
- **Related Issuer Obligations**- the issuer also has related obligations in respect of the above (eg preparing lists of PDMRs and PCAs); and
- **Criminal Regime**- remaining conscious of compliance with the criminal aspects of the regime (e.g. insider dealing / unlawful disclosure of inside information etc).

Conclusion

When offering Irish or EU based employees to take part in an employee share scheme, it will be important to consider compliance with the Prospectus Regulation and MAR. This will be in addition to other relevant considerations including tax and employment.

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