

March 2005

New rules for share issues

Any company looking to raise finance by offering its shares should be aware of the new Prospectus Directive which is due to be implemented across the EU from 1 July 2005.

When is a prospectus required?

A prospectus in the form set by the Directive is required when an offer of securities is made to the public in any country in the EU and/or when securities are admitted to trading on a regulated market in the EU.

An offer to the public

The definition of an 'offer to the public' is very broad and the Treasury is worried that it is ambiguous. Companies need to note that they may have to issue a prospectus if there is an offer to the public even if the shares or other securities to be issued are not to be admitted to trading on any regulated market.

Effect on AIM and Ofex companies?

AIM and Ofex are side-stepping the main impact of the Prospectus Directive by not being regulated markets (AIM changed its status to avoid this and other Brussels' legislation late last year as discussed in *Update November 2004*). This means that even if shares are to be admitted to trading on AIM or Ofex but there is no 'offer to the public' a prospectus will not be required.

When is an offer not a 'public offer'?

Under the Directive an offer to fewer than 100 persons in each member state is exempt from the obligation to

publish a prospectus. Alternatively an offer of less than 2.5m (about £1.7m) is also outside the scope of the Directive. Another exemption is that a member state may choose to authorise natural persons and SMEs as 'qualified investors'. If member states exercise this option, offers of securities addressed solely to such persons are exempt from the obligation to publish a prospectus. The Treasury intends to take up the option to introduce such a qualified investor regime.

Are the changes significant?

The threshold of 2.5m (£1.7m) above which the Directive will apply is much higher than the current equivalent of £100,000. The Treasury is reviewing/ seeking views on whether 2.5m is an appropriate level and, if not, what form of additional UK prospectus regime should apply below that threshold. Another significant issue is the impact the Directive will have on rights issues and open offers. A company that has more than 100 shareholders wishing to raise capital may be tempted to do so using a targeted placing rather than on a pre-emptive basis to its existing shareholders, an outcome that seems at odds with the 'stakeholder' culture. It will be interesting to see how things develop.

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