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## Share Plans

### Welcome amendments to the Prospectus Directive exemption for employee share plans will be in force by July 2011

We have previously reported on proposed amendments to the Prospectus Directive - in particular to the exemption from the requirement to publish a prospectus in relation to an offering made under an employee share scheme.

The draft text was agreed by the relevant European institutions at the end of June, and the amending Directive has now been published in the Official Journal of the European Union. This means it will take effect from 31 December 2010, and must be implemented by Member States within 18 months.

#### Background

The exemption from the requirement to publish a prospectus in relation to an offering made under an employee share scheme currently applies only to companies which are listed on a "regulated market". In the UK, this means that only companies with a listing on the main market of the London Stock Exchange can rely on the exemption. AIM, the PLUS-quoted market and the LSE's Professional Services Market are not regulated markets and the current exemption does not apply to companies listed on these markets, or to unlisted companies. At present therefore, this means that where no other exemption is available, these companies would have the onerous job of preparing a prospectus where they offer shares to employees (other than free shares or share options – this is most commonly an issue in relation to partnership shares under a SIP).

#### Summary of the changes

The amended exemption for offerings under employee share schemes will apply to all companies established in the EU (including AIM and unlisted companies) and to non-EU companies listed on a regulated market in the EU (or non-EU equivalent).

This change is to be welcomed and will assist AIM and other private companies in the UK offering partnership shares under a SIP, and similar arrangements in the UK and other member

#### Who to Contact

##### Judith Greaves

T: +44 (0) 113 294 5232

E: [judith.greaves@pinsentmasons.com](mailto:judith.greaves@pinsentmasons.com)

##### Lynette Jacobs

T: +44 (0) 161 250 0198

E: [lynette.jacobs@pinsentmasons.com](mailto:lynette.jacobs@pinsentmasons.com)

##### Rory Cray

T: +44 (0) 113 294 5179

E: [rory.cray@pinsentmasons.com](mailto:rory.cray@pinsentmasons.com)

states. Certain information will still have to be provided in these circumstances ("on the number and nature of the securities and the reasons for and details of the offer"), but the time and cost involved will be significantly less than for a full prospectus.

Other exemptions will also be amended – these remain potentially relevant for share plans offered by companies established outside the EU and which are not listed on a regulated market (or equivalent) – for example, unlisted US companies.

- the exemption for offers to fewer than 100 persons per member state will be extended to 150 persons;
- the limit on the exemption for offers with aggregate consideration of less than €2.5M will be increased to €5M.

The amending directive also clarifies that the exemption for offers of less than €100,000 in any 12 month period operates by reference to an aggregate value across the EU rather than on a state-by-state basis.

#### Next steps

Member States now have an 18 month period in which to implement the amendments. We will keep you updated with developments in the UK.

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T 0845 300 32 32

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