# Remuneration and Incentive Arrangements Under UK Law

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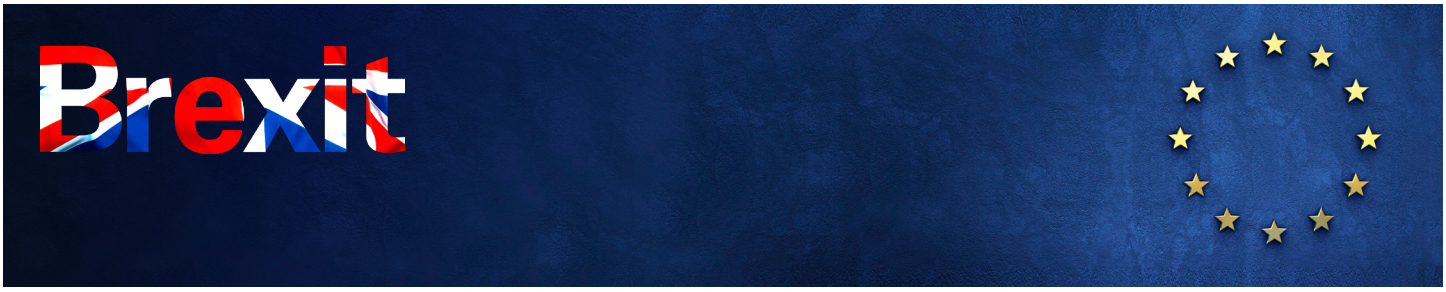
03 / 02 / 21

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UK employee and executive share plan and remuneration arrangements were subject to a number of different European Union laws and regulations, which ceased to apply on 31 December 2020. Some areas of ongoing uncertainty and potential divergence remain (for example, as to data protection rules and the regulation of remuneration in the financial services sector). (See "Navigable Challenges for Private Funds.") But the UK's replication under UK law of many of the relevant rules (for example, the EU Prospectus Regulation and the EU Market Abuse Regulation) has meant that administration of remuneration and incentive arrangements will continue largely unaffected, at least in the short to medium term.

## Takeaways

- Administration of remuneration and incentive arrangements will continue largely unaffected for now.
- Companies which operate their share plans internationally can rely on the same substantive exemptions under the EU and UK's Prospectus Regulation regimes from the requirement to publish a prospectus.
- The UK Market Abuse Regulation replicates the EU regime, including as to the notification and disclosure requirements of certain transactions.
- Regulation of financial services sector remuneration will play into the wider debate as to potential benefits of equivalence against independent regulation and divergence from EU rules.

In the securities laws context, companies which operate their share plans in EU jurisdictions typically rely on either: (1) the fact that the offer of nontransferable or free share awards is outside the scope of the EU Prospectus Regulation, or (2) an exemption under the regulation from the requirement to publish a prospectus (usually the "employee share schemes" exemption, the exemption relating to number of persons or the exemption relating to the value of the offer). That regime and the relevant exemptions have been replicated under UK law and will therefore remain available to companies operating their plans in the UK or the EU. In relation to offers of nontransferable or free share awards, we can expect the UK Financial Conduct Authority (FCA) to maintain the view that these types of awards are, as they were under EU regime, outside the scope of the UK regime. Since the need for a prospectus in connection with the grant or award of shares under a share plan is usually avoided, the absence of any agreement between the UK and the EU on passporting does not present an immediate issue in this context.

Participation by directors and senior managers of listed companies (PDMRs) in share incentive arrangements involves dealing and disclosure rules previously governed by the EU Market Abuse Regulation. The UK Market Abuse Regulation replicates the EU regime, including as to the requirements for notification to the regulator and disclosure


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to the market of transactions by PDMRs and their closely associated persons. The content and format of the notifications and disclosures also remain the same. It is commonly acknowledged that the scope of the dealing prohibitions under the EU Market Abuse Regulation, and the narrow exemptions allowed for the operation of employee share plans, did not fit well with the typical operation of UK share incentive arrangements in practice and did not provide the same clarity as previously existed under the UK Model Code (formerly part of the UK Listing Rules, and which was repealed in 2016 when the EU Market Abuse Regulation came into force). It may be that in time, the UK develops its own set of exemptions to the UK market abuse regime or the FCA offers more specific guidance to facilitate the normal operation of share incentive arrangements in compliance with the UK regime.

On reporting requirements, listed company remuneration reporting rules are largely derived from UK law under the UK Companies Act. The EU Shareholder Rights Directive II, implemented in the UK in 2019, made only minimal changes to the existing regime. Reporting and disclosure requirements relating to remuneration and executive pay will continue unchanged.

Data protection rules, including in relation to use of employee data to administer participation in share plans, have been a concern more generally, given uncertainty of the UK's position as a third country following 31 December 2020. The Trade and Cooperation Agreement (TCA) and the temporary "bridge" period means that data sharing between the EEA and the UK can continue on the current basis for up to six months, during which time it is hoped that the EC's draft decision on the UK's adequacy will be formally adopted, thereby allowing data transfers between the EEA and the UK to take place unrestricted. (See "A Temporary Solution for Data Protection and Digital Trade.")

The impact of Brexit on the regulation of remuneration in financial services entities continues to be a matter of debate. UK regulation of the quantum and structure of remuneration in this sector — to address excessive risk-taking — predated the EU rules. In implementing regulations under the relevant EU directives, UK regulators have in some cases "gold-plated" the EU requirements, which suggests there may not be particular pressure for change. However, there are certain EU remuneration rules which the UK has challenged (for example, the bonus cap) or on which it has taken a different approach (for example, in relation to use of proportionality in the application of the rules). Regulation of financial services sector remuneration will play into the wider debate in this area as the UK weighs the potential benefits of obtaining equivalence decisions for particular financial sectors against those of independent regulation and divergence from EU rules. (See "Level Playing Field Obligations: Insurance Policy or Tinderbox for Future Trade Disputes?")