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FINANCIAL MARKETS CONDUCT ACT 2013
EMPLOYEE SHARE OPTION SCHEME EXCLUSION UNDER THE DISCLOSURE REGIME

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INTRODUCTION

The Financial Markets Conduct Act 2013 (**FMCA**) overhauled the rules relating to securities and financial markets and introduced a new regime for offers of financial products. Understanding the new disclosure requirements is important for businesses offering investments and raising capital.

Set out below is an overview of the "employee share purchase scheme" exclusion. It is important to note that even if an offer is made in reliance on an exclusion, the FMCA may still impose short-form disclosure, warning statements or other requirements on the offeror.

Please click here to see further information about the FMCA disclosure requirements and other FMCA disclosure exclusions.

BENEFITS OF OFFERING AN EMPLOYEE SHARE SCHEME

The availability of this exclusion makes it easier for a company to implement an employee share purchase scheme and businesses should consider taking advantage of these new rules to incentivise and retain key employees.

Benefits of employee share purchase schemes include:

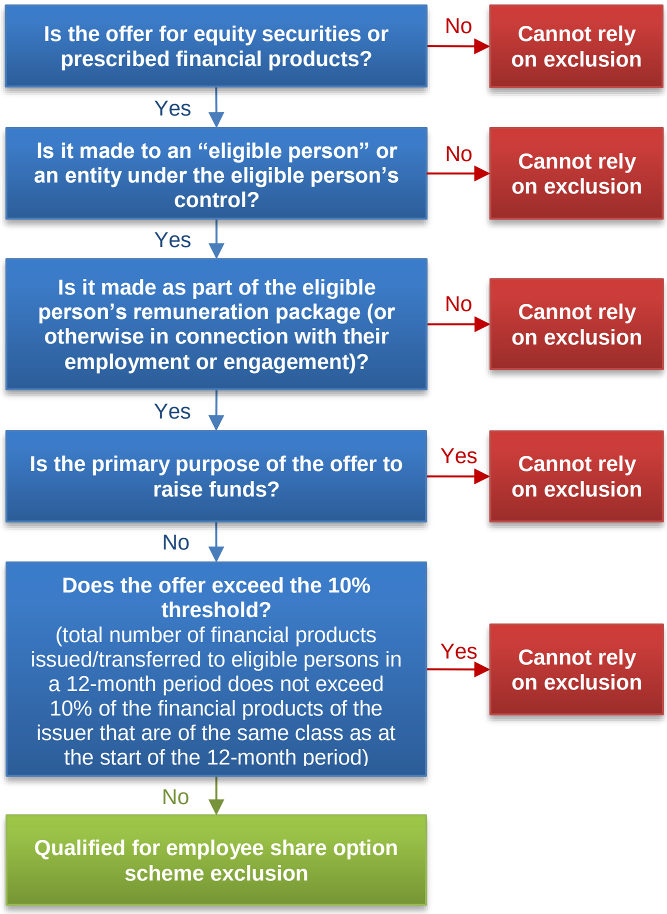
- attracting and retaining key staff members;
- implementing a succession plan; and
- rewarding employee performance without impacting on the company cash flow or working capital position.

EMPLOYEE SHARE PURCHASE SCHEME EXCLUSION

Disclosure under the FMCA is not required if an offer for financial products is made under a qualifying employee share purchase scheme. An employee share purchase scheme is essentially any arrangement under which employees or directors may acquire shares issued by the business.

An *eligible person* is an employee or director of the offeror or any of its subsidiaries and includes other persons who are providing personal services principally to the offeror or any of its subsidiaries (such as contractors). The exclusion also extends to any entity under the eligible person's control.

The flow chart below shows the conditions required for an offer to qualify for the exclusion:



REMAINING OBLIGATIONS

Offerors who rely on the employee share purchase scheme exclusion will still need to provide the following documents to the investor:

- **Warning statement:** A prominent prescribed warning about the nature of the offer and the implications of this exclusion, including that the eligible person has fewer legal protections for their investment.
- **Scheme description:** A document that contains a description of the employee share purchase scheme and its terms and conditions.
- **Financial information:** A copy of the offeror's latest annual report and/or the relevant financial statements (or statement that the employee has the right to receive financial information on request free of charge).
- **Fair dealing:** The 'fair dealing' provisions of the FMCA that prohibit misleading or deceptive conduct and representations that are false, misleading, or unsubstantiated, will still apply to offers under employee share purchase schemes.

Disclaimer
This article is a general summary of complex laws and regulations that contain severe sanctions for breach. Specific advice should be obtained in relation to proposed marketing, offering or selling of financial products.