

## At a glance: the new EU Prospectus Regulation – key changes for UK equity transactions

The new regime established by the Prospectus Regulation (EU 2017/1129) will come fully into force on 21 July 2019 and will impact on the marketing of offers of securities across the European Union, including the UK.

### Framework

- > The overarching principles can be found in the Regulation (Level 1).
- > Three Commission Delegated Regulations flesh out the detail (Level 2).<sup>1</sup>
- > New Level 3 Guidance, with existing guidance to be adapted and carried over.
- > Grandfathering provisions apply.

### What is familiar?

- > An approved prospectus is still required on an EU public offer and/or admission to trading.
- > The prospectus format will continue to comprise a summary, securities note and registration document. Content will continue to be formed from building blocks.
- > Scrutiny and approval required by a Competent Authority (“NCA”).
- > Obligation to supplement retained.

### Necessary information test

- > The prospectus must contain the “necessary information which is material to an investor” for making an informed assessment of the assets and liabilities, profits and losses, financial position, and prospects of the issuer, rights attaching to the securities and reasons for the issuance and its impact on the issuer. The new test recognises that the information in a prospectus may vary depending on the nature of the issuer, type of securities, and circumstances of the issuer.
- > An adapted test applies to the new alleviated regime for equity secondary issuances (see below).

### Risk factors

- > New, detailed requirements, supported by ESMA guidelines to NCAs.
- > Risk factors are required to be presented in a “limited number of categories” (a maximum of 10 for typical equity capital markets transactions), with the most material appearing first. A risk factor should only appear once, in the most appropriate category.
- > There must be a clear and direct link between the risk factor and the issuer/securities – expect generic risk factors to be challenged.
- > Issuers are required to assess the “materiality” of risk factors, with quantitative information included if appropriate. Risk factors may be ranked using a scale of low, medium or high. Mitigating language should be used sparingly and the significance of the remaining risk should be clear.
- > The materiality and specificity of each risk factor should be corroborated by the broader prospectus disclosure.

### The prospectus summary

- > The regime remains prescriptive, with rigid format requirements. The prohibitions on cross references to other parts of the prospectus and to incorporation by reference of other documentation are maintained.
- > The maximum length of the summary will, typically, be seven sides of A4.
- > The summary must include a brief description of the most material risk factors specific to the issuer, up to a maximum of 15 in total.
- > New requirements apply to the key financial information included in the summary.

## The new EU Prospectus Regime



### Alleviated secondary issuance regime

- > The regime is available to issuers admitted to trading on a regulated market/SME growth market for at least 18 months.
- > Reduced prospectus content requirements (notably an OFR is not required) are supported by a revised “necessary information” test.

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### Advertisements

- > Scope is broader, with the regime covering “communications” rather than “announcements.” An advertisement must still relate to a specific offer to the public or admission to trading and aim to specifically promote the potential subscription or acquisition of securities.
- > Enhanced requirements for retail advertisements and on prospectus identification.
- > NCAs in Member States where advertisements are disseminated (ie not the “home” State) now have powers to ensure that advertisements comply with the new rules.

### Exemptions

- > Amended/new exemptions already apply.
- > States may set a threshold enabling issuers to make a public offer up to €8m (over 12 months) without a prospectus. Selected thresholds vary. The default position if no threshold is selected is a threshold of €1m (over 12 months) (came into effect in July 2018).
- > Issuers may list less than 20% of existing securities in any 12-month period (came into effect in July 2017).
- > 20% cap on issues of convertible securities (came into effect in July 2017).

### Profit forecasts

- > An auditor’s report is no longer required if a profit forecast is included in the prospectus.

### Other key features

- > Frequent issuers may complete a universal registration document each year, allowing fast-track approval by the NCA if a prospectus is later required.
- > ESMA will oversee a new centralised storage mechanism.
- > Key information to be included in the prospectus, including the ISIN and LEI (unique codes identifying the class of securities and the issuer), must be machine-readable, including where metadata is used.
- > Amended OFR disclosure requirements – some alignment with the management report requirements of the Accounting Directive.
- > List of documents that may be incorporated by reference is expanded.
- > The “business overview” section must include disclosure relating to an issuer’s strategy and objectives.
- > A new simplified prospectus regime for certain SMEs.

<sup>1</sup> Final form expected after mid-June 2019.

For our latest legal updates, publications, seminars and curated collections (including on the new Prospectus regime) sign up to our [Client Knowledge Portal](#).

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