

THE NEW PROSPECTUS REGULATION, A GLANCE AT NEW RULES

On 14 June 2017, the European Union (the “EU”) has adopted a new prospectus regulation as part of its Capital Markets Union Action Plan (the “**New Regulation**”), and as a ruling, it applies directly and consistently throughout the EU. The aim of the Capital Market Union is primarily to help businesses tap into more diverse sources of capital from anywhere within the EU, make market work more efficiently and offer investors additional opportunities to enhance growth and create jobs.

The first prospectus directive was adopted in 2003 (2003/71/EC), in order to lay down harmonized principles and rules on the prospectus to be drawn up, approved and published when securities are offered to the public or admitted to trading on a regulated market, and revised in 2009. The New Regulation repeals and replaces the existing directive.

A prospectus is a legal document that companies issue to potential investors, containing detailed information about the company’s business, finances and shareholding structure. It is therefore an essential source of information for investors and one of the key tools for companies wishing to raise capital across the EU securities markets.

The aim of the New Regulation is to ensure investor protection and market efficiency, while facilitating access to EU financial markets for companies, particularly for small and medium-sized enterprises, (“**SME’s**”). The New Regulation will enter into force on 20 July 2017, though the most relevant provisions will apply only from 21 July 2019.

New Prospectus Exemptions Effective On 20 July 2017

The New Regulation has introduced some new exemptions to the requirements for publishing a prospectus when securities are admitted to trading on a regulated market. From 20 July 2017, the following exemptions have effect:

- issuers are now able to increase the number of their securities admitted to trading without the need for a prospectus, provided that the new securities are of the same class and represent less than 20% of the issuer’s securities already admitted to trading on the same regulated market, calculated over a 12 month period (doubling the current 10% threshold);
- where shares result from the conversion or exchange of other securities or from the exercise of rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, the exemption from the requirement to publish a prospectus is now limited to certain circumstances provided that the resulting shares represent, less than 20% of the number of shares of the same class already admitted to trading on the same market, over a of 12 months period.

Additionally, as from 21 July 2018, the exemption from the requirement to publish a prospectus will also apply to any offer of securities to the public in the EU, with a total consideration of less than EUR 1,000,000, calculated over a 12 months period. The EU member states will be able to increase the threshold at which a prospectus is required for offers to the public from EUR 5,000,000 to a maximum of EUR 8,000,000 in total over a period of 12 months. The exemption will only apply to the requirement to prepare a prospectus when there is an offer to the public, however, a prospectus will still be required for admission to trading (unless an issuer can rely on other exemption).

New Prospectus Regime Effective As From 21 July 2019

The New Regulation provides a considerably lighter regime and less complex requirements for issuing a prospectus, such as:

- the “EU Growth Prospectus” a lighter prospectus for SME’s, provided that they have no securities admitted to trading on a regulated market. This is a standardized format document consisting of a specific summary, specific registration document and securities note;
- the New Regulation specifies, with greater clarity the amount of information needed in order to make a prospectus shorter and clearer:
 - the New Regulation provides that the summary should consist of four sections: an introduction containing warnings, key information on the issuer, key information on the securities, and key information on the securities to the public and/or admission to trading on a regulated market. The summary may not exceed a maximum length of seven pages of A4 size paper, it should be short, simple and easy for investors to understand. The summary must also include a brief description of material risk factors and must not exceed 15 risk factors;
 - a prospectus should not contain risk factors which are generic and only serve as disclaimers, hence the risk factors will have to be presented under a limited number categories depending on their nature. The risk factors featured in a prospectus should be limited to risks which are specific to the issuer and/or to the securities and which are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note. The issuer will have to assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.
- The New Regulation introduces an optional shelf registration mechanism for "frequent issuers" admitted to trading on regulated markets. Under this new feature of the prospectus regime, every year an issuer will complete a registration document containing legal, business, financial, accounting and shareholding information and providing a description of the issuer for the financial year. This will lead to a fast-track approval (5 days instead of 10 days) with the competent authority when a prospectus is later required.

Clearly, the New Regulation simplifies the prospectus regime and eases the process for companies to access and raise money in the EU capital market.

Please do not hesitate to contact us with any questions.

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