

The New Prospectus Regulation – key changes for equity issues

What is the Prospectus Regulation?

The Prospectus Regulation ((EU) 2017/1129) (PR) comes into force on 20 July 2017. The PR sets out a new framework of rules which govern when a prospectus is required, what information must be included and how it must be approved. Except for a few specific provisions which will take immediate effect, most of the provisions will apply on 21 July 2019. The PR will replace and repeal the Prospectus Directive and its corresponding measures.

Why do we have a new regime?

The PR forms part of the EU's Capital Markets Union Action Plan. The prospectus regime has been re-designed with a view to improving access to capital markets for businesses, particularly SMEs, by seeking to alleviate the administrative and costly burden of joining a public market.

What are the key changes?

Here are some of the key changes affecting equity issues:

Provision	Old regime (Directive 2003/71/EC)	New regime (Prospectus Regulation (EU) 2017/1129)	When will it apply?
Scope of PR	Does not apply to offers of securities to the public (an 'offer') where the total consideration in the EU is less than EUR 5 million, calculated over a 12 month period. <i>(Article 1(2)(h), as amended by the Amending Directive 2010/73/EU)</i>	Does not apply to an offer with a total value in the EU of less than EUR 1 million, calculated over a 12 month period. <i>(Article 1(3))</i> Member States may opt to exempt offers if the total consideration of the offer in the EU is less than a specified monetary amount calculated over a 12 month period which must not exceed EUR 8 million. <i>(Article 3(2))</i>	21 July 2018
	Does not apply to an offer with a total consideration in the EU of less than EUR 100,000 calculated over a 12 month period.	Provision is deleted.	21 July 2018

Provision	Old regime (Directive 2003/71/EC)	New regime (Prospectus Regulation (EU) 2017/1129)	When will it apply?
Exemption for the admission of securities of the same class to trading on a regulated market	<p>(Article 3(2)(e))</p> <p>Shares must represent less than 10% of the same class of shares already admitted to trading on the same regulated market (calculated over a 12 month period). (Article 4(2)(a))</p>	<p>10% threshold is increased to 20% and applies to securities rather than just to shares. (Article 1(5)(a))</p>	20 July 2017
Exemption for the admission of shares resulting from conversion, exchange or exercise of rights of securities if shares are of the same class as shares admitted to trading on a regulated market	<p>Exemption not subject to any limitation. (Article 4(2)(g))</p> <p>No equivalent restriction.</p>	<p>Exemption is restricted so that the resulting shares must represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading, subject to certain limitations. (Article 1(5)(b))</p> <p>The two exemptions above may not be combined if such combination could lead to the immediate or deferred admission to trading of more than 20% of the number of shares of the same class already admitted to trading on the same regulated market over a period of 12 months. (Article 1(6))</p>	20 July 2017 21 July 2019
Exemptions in respect of (i) public offers and (ii) the admission to trading of securities to a regulated market offered in connection with a takeover by means of an	<p>Exemptions apply if a document is made available containing information that is regarded by a competent authority as being equivalent to a prospectus. (Article 4(1)(b))</p>	<p>Exemptions apply if a document is made available containing information describing the transaction and its impact on the issuer. (Article 1(4)(f) and (g) and Article 1(5)(e))</p>	21 July 2019

Provision	Old regime (Directive 2003/71/EC)	New regime (Prospectus Regulation (EU) 2017/1129)	When will it apply?
exchange offer and for securities offered, allotted or to be allotted in connection with a merger or a division	<i>and (c) and Article 4(2)(c) and (d))</i>	<i>and (f))</i>	
Director and employee exemption in respect of public offers relating to securities offered, allotted or to be allotted to existing or former directors or employees by their employer	Exemption applies if issuers have their head office or registered office in the EU, have securities admitted to trading on a regulated market, or have securities admitted to trading on a third country market in respect of which the Commission has adopted an equivalence decision. If these conditions are fulfilled, issuers must make available a document containing information on the number and nature of transferable securities and reasons for and details of the offer. (<i>Article 4(1)(e)</i>)	Exemption applies if a document is made available containing information on the number and nature of the securities and the reasons for, and detail of, the offer or allotment. (<i>Article 1(4)(i)</i>)	21 July 2019
Summary length	A maximum length of 15 pages or 7% of the length of the prospectus (whichever is longer). (<i>Article 24 of the Prospectus Directive Regulation (No 2004/809/EC)</i>).	Must be a 'short document written in a concise manner'. A maximum length of seven sides of A4 when printed. In exceptional cases, the maximum length may be extended. (<i>Article 7(3) and (7)</i>)	21 July 2019
Universal registration document (URD)	No equivalent provision.	An optional registration document for frequent issuers admitted to trading on regulated markets or MTFs. The URD should contain information on the issuer's organisation, business, financial position, earnings and prospects, governance and shareholding structure. A URD which has been approved for two consecutive	21 July 2019

Provision	Old regime (Directive 2003/71/EC)	New regime (Prospectus Regulation (EU) 2017/1129)	When will it apply?
Reduced disclosure – secondary issues	<p>Proportionate disclosure regime for certain secondary issues and SMEs. (<i>Amending Directive 2010/73/EU and Amending Regulation 486/2012</i>)</p>	<p>financial years allows subsequent URDs to be filed each year without prior approval. Fast track approval of the prospectus is then subject to the issuer: (i) confirming that it has, to the best of its knowledge, complied over the last 18 months (or a shorter period commencing from the obligation to disclose regulated information) with its disclosure obligations under the Market Abuse Regulation and the Transparency Directive; and (ii) amending its URD to reflect any comments from the competent authority. (<i>Article 9</i>)</p>	<p>21 July 2019</p> <p>Reduced disclosure regime for secondary issues will be available for the following parties in the case of an offer of securities to the public or of an admission to trading of securities on a regulated market:</p> <ul style="list-style-type: none"> - Offerors of securities admitted to trading on a regulated market or on a SME growth market continuously for at least the last 18 months. - Issuers with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue securities that are fungible with existing securities

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Reduced disclosure - EU Growth prospectus	<p>Proportionate disclosure regime for certain secondary issues and SMEs. (<i>Amending Directive 2010/73/EU and Amending Regulation 486/2012</i>)</p>	<p>which have been previously issued.</p> <ul style="list-style-type: none"> - Issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities. <p>(Article 14)</p>	<p>New EU growth prospectus regime, 21 July 2019 allowing the following entities to draw up a standardised, lighter and easy to complete document when offering securities to the public, provided that their securities are not traded on a regulated market:</p> <ul style="list-style-type: none"> - SMEs; - issuers, other than SMEs, whose securities are traded, or are to be traded, on an SME growth market and who have an average market capitalisation of less than EUR 500,000,000 for the previous 3 calendar years; - offerors of securities by the above two categories of issuers; and

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		2017/1129)	
Risk factors		<ul style="list-style-type: none"> - any other issuer where the offer is of a total consideration in the EU that does not exceed EUR 20,000,000 in a 12 month period, whose securities are not traded on an MTF and who has an average number of employees during the previous financial year of up to 499. <p>(Article 15)</p>	
		<p>Risk factors are a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions. (Article 2(3) of the Prospectus Directive Regulation (No 2004/809/EC)) No other formal provisions.</p>	<p>Risk factors must be limited to risks which are specific to the issuer and/or to the securities and which are material for making an informed investment decision. Issuer must assess the materiality of the risk factor based on probability and expected magnitude of negative effect. The assessment may be disclosed by using a qualitative scale of low, medium or high. Risk factors must be categorised and presented with the most material risk factor mentioned first according to the issuer's assessment. (Article 16)</p>

What is the impact?

Some of the changes reflect the European Commission's commitment to simplify the regime for issuers, for example, with the introduction of the new shelf registration document – the universal registration document and its fast track approval process, together with the simplified disclosure regime for SMEs, which is hoped to be a more attractive route to market than the proportionate disclosure regime. The detail of the measures, however, will be set out in the delegated acts and regulatory technical standards – and so it may be too early to draw conclusions on the PR just yet. These measures are expected to be published for consultation in the summer of 2017 and will put the 'flesh on the bones' of the PR, giving us a clearer indication of whether the changes will bring practical benefits to issuers, particularly SMEs. Equally, global investors will watch with interest – facilitating access to the markets must be counterbalanced by strong investor protections and it remains to be seen whether the new regime will be found to have struck the right balance.

The Brexit effect – what now?

The bulk of the PR provisions will apply on 21 July 2019 – after the proposed date for Brexit. At this stage, it is not clear whether the Government will choose to transpose the provisions into national law. A possible outcome is that the Government will incorporate all PR provisions into UK law and will consider any divergences in due course. The Government will doubtless wish to ensure that, post-Brexit, issuers are able to offer their securities in the EU and that UK investors will have access to offerings by EU businesses without significant cost and process.

Contacts

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