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Adoption of Delegated Regulations under the New Prospectus Regulation - Regulation (EU) 2017/1129

Background

On 30 June 2017, [Regulation \(EU\) 2017/1129](#) on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the “New Prospectus Regulation”) **was published in the Official Journal** of the European Union, this shall replace both the Prospectus Directive¹ (2003/71/EC) as well as the current Prospectus Regulation² (809/2004).

The rationale behind the New Prospectus Regulation is to streamline the current regime relating to the publication of prospectuses; to facilitate access to capital markets for companies seeking to raise funds publicly; and to harmonise the scrutiny and approval regime across EU Member States. Save for a few provisions which came into force during 2017 and 2018, the New Prospectus Regulation shall apply from 21 July 2019, and shall be directly effective in all EU member states.

The Securities and Markets Supervision function within the MFSA is in the process of implementing the New Prospectus Regulation and shall be updating the Listing Rules accordingly. Further updates thereon shall be communicated to the relevant stakeholders in due course.

Key Changes Resulting from the Prospectus Regulation

The main features of the New Prospectus Regulation are the following:

a) *Exemption threshold*

The New Prospectus Regulation has increased the threshold requiring the publication of a prospectus from a total offer amount of **€100,000 to €1 million**. Additionally, member states are **allowed to exempt offers within their jurisdiction with relate to a total consideration of less than €8 million** over a span of 12 months. This change aims to make it easier and cheaper for SMEs to raise funding in the EU. Moreover the regulation specifies, with greater clarity, the amount of information needed in order to make prospectuses shorter and clearer.

¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, as amended.

² Commission regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

b) Prospectus summary

Under the New Prospectus Regulation, the prospectus summary shall not exceed a maximum of 7 sides of an A4 sized paper, as opposed to the current maximum of 15 sides or 7% of the length of the prospectus, whichever the shorter. Furthermore, the summary is to contain four sections as follows: (1) an introduction containing warnings; (2) key information on the issuer; (3) key information on the securities; and (4) key information on the offer of the securities to the public and/or admission to trading. The New Prospectus Regulation also mandates that the summary is to include up to 15 of the most material risk factors, which ought to be specific to both the issuer and the guarantor (where applicable).

c) Risk Factors

The New Prospectus Regulation requires that the risk factors identified in a prospectus should be focused on and limited to the issuer and securities at hand, and should avoid any generic statements which are not particularly relevant to the issuer or securities in question. The list of specific risks is to be categorised according to the nature of the risks, with the most material risks per category being disclosed first.

d) Universal Registration Document

Companies that intend to frequently offer securities to the public are able to avail of the Universal Registration Document (URD) as introduced under the New Prospectus Regulation. Subsequent to this new introduction, issuers listed on a regulated market or multilateral trading facility will be allowed to file an annual URD, which is to be approved by competent authorities even in instances when such issuers do not immediately intend to offer or list securities to the public. Once an issuer has had a URD approved for two consecutive years, it will no longer require prior approval for the filing of any subsequent URDs, and will be able to benefit from a fast tracked approval process.

e) EU Growth Prospectus

On condition that SMEs and other similar specific companies do not have any securities admitted to trading on a regulated market, various smaller companies will have the option to compile a tailor-made prospectus (known as the EU Growth prospectus) when offering securities to the public. This new form of prospectus will allow such smaller companies to focus on information that is material to them, and will impose less onerous requirements when drawing up a prospectus.

f) Secondary issuances

Issuers who have securities admitted to trading on a regulated market or on an SME growth market for a minimum period of at least 18 consecutive months shall benefit from a simplified disclosure regime. The simplified prospectus is intended to minimise the cost of capital and to reduce the information required in a manner that is proportionate and relevant to secondary issuances.

g) Single Access Point for all EU Prospectuses

The European Securities and Markets Authority (ESMA) is to create an online database that will provide access to any prospectus approved within the EU. Such access shall be free of charge and will include appropriate search functions to ensure that the public has access to reliable data that may be analysed as efficiently as possible. Moreover in terms of the New Prospectus Regulation paper prospectuses shall no longer be required unless a potential investor requests them.

Issue of Commission Delegated Regulations

The New Prospectus Regulation empowers the European Commission to adopt delegated and implementing acts with the intention of clarifying how competent authorities and market participants are to comply with the provisions of the New Prospectus Regulation itself.

On 15 March 2019, the Commission has adopted the below two Delegated Regulations in terms of the New Prospectus Regulation, which may be accessed through the following link: https://ec.europa.eu/info/law/prospectus-regulation-eu-2017-1129/amending-and-supplementary-acts/implementing-and-delegated-acts_en. The Delegated Regulations shall enter into force on the twentieth day following their publication in the Official Journal, up to the date of publication of this Circular the Delegated Regulations have not been published in the Official Journal, and shall be come applicable from 21 July 2019.

1. Commission delegated regulation as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004

As the content and form of a Prospectus are dependent on diverse factors and include information specific to *inter alia* the type of issuer, security being offered, involvement of a **guarantor etc...** this Delegated Act aims to set out the type and order of information that issuers are to include in a prospectus, whether drawn up as a single document or otherwise. Moreover this Delegated Act seeks to ensure consistent interpretation and application of the prospectus rules by Issuers and National Competent Authorities alike.

The main points that the delegated regulation endeavours to clarify are the following:

- a. the format of the prospectus, base prospectus and final terms, and specific content to be included in a prospectus;
- b. EU Growth Prospectus format, contents, and summary-specific contents;
- c. Substance of the simplified prospectus for Secondary issuances;
- d. Universal Registration Document contents and form;
- e. the criteria relating to the scrutiny and approval of prospectuses by National Competent Authorities, ; and
- f. the scrutiny and approval/filing and publication criteria for Universal Registration Documents.

The Explanatory Memorandum and Delegated Act can be accessed through the below links:

- a. http://ec.europa.eu/finance/docs/level-2-measures/prospectus-regulation-delegated-act-2019-2020_en.pdf; and
- b. http://ec.europa.eu/finance/docs/level-2-measures/prospectus-regulation-delegated-act-2019-2020-annex_en.pdf

2. Commission delegated regulation with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission delegated regulation (EU) No 382/2014³ and Commission delegated regulation (EU) 2016/301⁴

The purpose of this Regulatory Technical Standard is to provide technical clarifications on various matters, including:

- a. Minimum content and format of presentation of the key financial information to be included in a prospectus summary;
- b. the requirements concerning the publication of prospectuses, certain Level 2 provisions not included in the New Prospectus Regulation are being carried forward herein, and the ban on the use of hyperlinks in the prospectuses is being removed;
- c. the instances where the publication of a prospectus supplement is required;
- d. the content and distribution of advertisements, allowing competent authorities to supervise the advertising activity and cooperate in a more efficient manner;
- e. the data fields necessary for the notification of prospectuses to ESMA, which will allow ESMA to (i) provide a centralised storage mechanism of prospectuses allowing access free to charge and appropriate search facilities for the public; (ii) draw up the annual report containing statistics on prospectuses and an analysis of trends that will facilitate the future evaluation of prospectus rules; and
- f. the technical arrangements relevant to the notification portal.

The Explanatory Memorandum and Regulatory Technical Standard can be accessed through the below links:

- a. http://ec.europa.eu/finance/docs/level-2-measures/prospectus-regulation-rts-2019-2022_en.pdf
- b. http://ec.europa.eu/finance/docs/level-2-measures/prospectus-regulation-rts-2019-2022-annex_en.pdf

Contacts

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³ Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus

⁴ Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004