

09 December 2024

Circular on the Amendments to the Prospectus Regulation, Market Abuse Regulation, MiFIR brought about by the EU Listing Act

1.0 Introduction

On 14 November 2024, the EU Listing Act Package was published within the Official Journal of the EU. Proposed by the European Commission in 2022, the Listing Act includes *inter alia* the Listing Act Directive (Directive (EU) 2024/2811) and the Listing Act Regulation (Regulation (EU) 2024/2809) (the 'Amending Regulation'), with the latter amending the Prospectus Regulation, the Market Abuse Regulation ('MAR'), and the Markets in Financial Instruments Regulation (MiFIR).

The majority of the amendments being introduced by the Amending Regulation shall apply from the date of its entry into force, i.e. 04 December 2024. With the aim of fostering the continued compliance with the relevant requirements, the Authority is bringing these amendments to the attention of all the relevant stakeholders, namely the entities falling within scope of the Prospectus Regulation, MAR and MiFIR.

2.0 Amendments to the Prospectus Regulation

This part of the circular is being addressed to market participants falling within scope of Regulation (EU) 2017/1129 (the 'Prospectus Regulation'), i.e., entities under the obligation to draw up a prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State and all other relevant stakeholders, including sponsors and advisors assisting issuers in the drawing up of a prospectus.

Article 1: Subject matter, scope and exemptions

- The exemption laid down by paragraph 3 of Article 1 of the Prospectus Regulation, which exempted offers of securities with a total consideration in the Union of less than €1,000,000 from the Prospectus Regulation, has been removed.
- Paragraph 4 of Article 1 has also been amended to include an additional two types of offers which are to be exempted from the requirement to publish a prospectus set out in Article 3(1), more specifically:

- an offer of securities to be admitted to trading on a regulated market or an SME growth market and that are fungible with securities already admitted to trading on the same market (subject to conditions); and
- an offer of securities fungible with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities (subject to conditions)
- The introductory wording of point (j) of paragraph 4 of Article 1 was also amended, whereby the threshold relating to the total aggregated consideration in the Union for the securities has been doubled to €150,000,000. Point (l) has been deleted and two new sub-paragraphs relating to the formatting of the document containing the information set out in Annex IX of the Amending Regulation and the total aggregated consideration of the offers of securities to the public referred to in point (j), respectively, have been added.
- Points (a) and (b) of paragraph 5 of Article 1 have also been amended, whereby in both paragraphs, the relevant percentages mentioned therein have increased to 30%.
- Point (ba) has been included to require that securities fungible with securities that have been admitted to trading on a regulated market continuously for at least the last 18 months before the admission to trading of the new securities must meet the following conditions:
 - The securities to be admitted to trading on a regulated market are not issued in connection with a takeover by means of an exchange offer, a merger or a division;
 - The issuer of the securities is not subject to a restructuring or to insolvency proceedings;
 - A document containing the information set out in Annex IX is filed, in electronic format, with the competent authority of the home Member State and made available to the public in accordance with the arrangements set out in Article 21(2) at the same time as it is filed with that competent authority.
- Point (i) of paragraph 5 of Article 1 has also been amended, whereby the total of non-equity securities issued in a continuous or repeated manner by a credit institution has increased to not less than €150,000,000 per credit institution.
- Points (j) and (k) of paragraph 5 of Article 1 have been removed.
- The second subparagraph of paragraph 5 of Article 1 has been amended, whereby the percentage has increased to 30%.
- Two new subparagraphs have been added relating to the formatting of the document required under point (ba) of the Prospectus Regulation and the total aggregated consideration of the offers of securities to the public referred to in first subparagraph point (i), respectively.

- Paragraph 6 of Article 1 has been amended, whereby the percentage has increased to 30%.

Article 2: Definitions

- Article 2 has been amended by including the definitions of 'restructuring' (da) and 'insolvency proceedings' (db)
- The definitions of 'approval' and 'electronic format' set out in paragraphs (r) and (z) of Article 2, respectfully, have been amended.

Article 4: Voluntary prospectus

- Article 4 paragraph 1 has been amended by removing the reference to a scenario of an offer of securities to the public or an admission of securities to trading on a regulated market being outside the scope of the Prospectus Regulation in accordance with Article 1(3).

Article 5: Subsequent resale of securities

- Article 5 subparagraph 1 has been amended to also include points (da) and (db) of Article 1(4) to be considered as a separate offer.

Article 6: The prospectus

- Article 6 paragraph 1 has been amended so that now it is to be read without prejudice to Article 14a(2), Article 15a(2) and Article 18(1).

Article 9: The universal registration document

- Article 9(2) second subparagraph has been amended, whereby following the approval of a universal registration document for one financial year, subsequent universal registration documents may be filed without prior approval of the competent authority.

Article 11: Responsibility attaching to the prospectus

- Article 11(2) second subparagraph has been amended so that now it is to be read that Member states shall ensure that no civil liability shall attach to any person solely on the basis of the summary pursuant to Article 7, including any translation thereof.

Article 13: Minimum information and format

- Article 13 paragraph 3 has been amended, whereby the delegated acts referred to in Article 13 paragraphs 1 and 2 shall comply with Annexes I, II and III of the Prospectus Regulation.

Article 16: Risk factors

- Article 16 paragraph 1 subparagraph 2 has been included to highlight that risk factors featured in the prospectus should not be generic, only serve as disclaimers, or do not give a sufficient clear picture of the specific risk factors which investors are to be aware of.
- Article 16 paragraph 1 subparagraph 4 has been amended to highlight that the issuer, the offeror or the person asking for admission to trading on a regulated market shall adequately describe each risk factor, and explain how that risk factor affects the issuer, or affects the securities being offered or to be admitted to trading.
- Article 16 paragraph 1 subparagraph 5 has also been amended to highlight that the most material risk factors shall be listed in a manner that is consistent with the assessment provided for in the third paragraph instead of mentioned according to the assessment provided for in the second subparagraph.

Article 17: Final offer price and amount of securities

- Article 17 paragraph 1 point (a) has been amended, whereby the acceptance of the purchase or subscription of securities may be withdrawn for not less than three working days after the filing of the final offer price or amount of securities to be offered to the public.

Article 19: Incorporation by reference

- Article 19 paragraph 1, first subparagraph has been amended to include that information to be included in a prospectus pursuant to the Prospectus Regulation and delegated acts, may be incorporated by reference in that prospectus where it has been

previously or simultaneously published electronically drawn up in a language fulfilling the requirements of Article 27.

- Article 19 paragraph 1 points (a) and (b) have also been amended to include documents which have been approved by or filed with a competent authority in accordance to the Prospectus Regulation, and documents referred to in Article 1(4), first subparagraph, points (da), (db) and (f) to (i), and in Article 1(5), first subparagraph, points (ba) and (e) to (h).
- Article 19 paragraph 1 point (f) has been amended to include also Chapter 6 of Directive 2013/34/EU within the requirements of management reports and also to include where applicable the sustainability reporting requirement.
- Paragraph 1a has been added to include that information not to be included in a prospectus may still be incorporated by reference in the prospectus on a voluntary basis.
- Paragraph 1b has also been added to include that an issuer, an offeror or a person asking for admission to trading on a regulated market shall not be required to publish a supplement pursuant to Article 23(1) for new annual or interim financial information published when a base prospectus is still valid pursuant to Article 12(1).

Article 20: Scrutiny and approval of the prospectus

- Paragraph 6a has been amended to include that the time limits shall be reduced to seven working days for an EU Follow-on prospectus that is subject to the maximum length referred to in Article 14a(5) and (6). A new subparagraph has also been included to highlight that the reduced time limit shall not apply to an EU Follow-on prospectus drawn up by issuers as referred to in Article 14a(1), point c.

Article 21: Publication of the prospectus

- Paragraph 1 second subparagraph has been amended, whereby prospectuses in case of an initial offer to the public of a class of shares that is admitted to trading on a regulated market for the first time, shall be made available to the public at least three working days before the end of the offer, instead of six working days.
- Paragraph 5a has been amended to include that an EU Follow-on prospectus shall be separately classified in the storage mechanism referred to in paragraph 6 in a way that is differentiated from the other types of prospectuses.
- Paragraph 5b has been included to highlight that EU Growth issuance prospectuses shall be classified in the storage mechanism in a way that it is differentiated from the other types of prospectuses.

Article 23 – Supplements to the prospectus

- Paragraph 2 has been amended to allow investors who have already agreed to purchase or subscribe for the securities before the supplement is published an additional working day (i.e., three working days) after the publication of the supplement to withdraw their acceptances.
- Subparagraph 2 of Paragraph 2 has been amended to make to a clearer reference to the information which is to be included within the statement concerning the right of withdrawal. Point (c) therein has also been amended slightly as follows: *whom investors may contact if [previously 'should'] they wish to exercise the right of withdrawal.*
- Paragraph 2a, which previously referred to the right of investors who have already agreed to purchase or subscribe for the securities before the supplement is published to withdraw their acceptances, has been deleted.
- Paragraph 3 has been amended to include a timeframe by when a financial intermediary shall undertake the steps covered by points (a) to (d) therein. Where the investors referred to in the first sub-paragraph of Article 3 have the right of withdrawal, the financial intermediary shall contact those investors by electronic means by the end of the first working day following that on which the supplement is published.

A clarification has also been added to explain that where the securities are purchased or subscribed directly from the issuer, that issuer shall inform investors of the *period* when a supplement would possibly be published.

- Paragraph 3a, which previously referred to notification obligations of issuers, has been deleted.
- Paragraph 4a, which relates to the prohibition of using a base prospectus to introduce a new type of security for which the necessary information has not been included in that base prospectus, and the exemption relating to such prohibition, has been included.

Article 27 – Use of Language

- Paragraph 3, relating to the language in which a prospectus is to be drawn up in cases where an offer of securities to the public is made or an admission to trading on a regulated market is sought in more than one Member State including the home Member State, has been deleted.
- Sub-paragraph 1 of paragraph 4 has been amended to remove reference to the summary of the individual issue. The summary of the individual issue is being covered separately by a new sub-paragraph in paragraph 4.

Point (a) of sub-paragraph 2 of the Prospectus Regulation has been combined with the second sub-paragraph and the reference to sub-paragraph 2 of paragraph 3 has been removed. Point (b) is also removed.

Article 29 – Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country

- The title of Article 29 has been amended to 'Equivalence'.
- Paragraph 1 now lays down the conditions which are to be met by a third country issuer wishing to offer securities to the public in the Union or seeking admission to trading of securities on a regulated market established in the Union after prior publication of a prospectus drawn up and approved in accordance with, and which is subject to, the national laws of a third country.
- The wording of Paragraph 2 has been amended, but references to the relevant articles are the same.
- Paragraph 3 now refers to the rights and obligations of issuers meeting the conditions in paragraph 1.

Article 48a – Transitional Provisions

- Article 48a is an additional article being included by the Amending Regulation. It lays down the way in which prospectuses are to be governed. The following paragraphs are added:

1. Prospectuses approved until 4 June 2026 shall continue to be governed until the end of their validity by the version of this Regulation in force on the day of their approval.
2. By way of derogation from paragraph 1, prospectuses approved in accordance with Article 14 until 4 March 2026 shall continue to be governed by that Article until the end of their validity.
3. By way of derogation from paragraph 1, prospectuses approved in accordance with Article 15 until 4 March 2026 shall continue to be governed by that Article until the end of their validity.

3.0 Amendments to the Market Abuse Regulation

This part of the circular is being addressed to all market participants falling within scope of Regulation (EU) No 596/2014 on market abuse ('MAR').

Article 3: Definitions

- Article 3 has been amended to also include the definition of a systematic internaliser:

Article 5: Exemption for buy-back programmes and stabilisation

- Point (b) of Paragraph 1 of Article 5 was amended to require trades to be disclosed to the public in an aggregated form.
- Paragraph 3 has been amended to make reference to the competent authority of the most relevant market in terms of liquidity as opposed to the competent authority of the trading venue on which the shares have been admitted to trading or are traded.

Article 7: Inside Information

- Point (d) of paragraph 1 has been amended to also include information which was conveyed by persons acting on the client's behalf or information known by virtue of management of a proprietary account or of a managed fund.

Article 11: Market Soundings

- The introductory wording of paragraph 1 has been amended to include the possibility of no transaction being announced following the communication of information.
- Paragraph 4 has been amended to introduce a number of conditions which must be complied with in order for a disclosing market participant to be deemed to have disclosed inside information in the course of a market sounding in the normal exercise of a person's employment, profession or duties for the purposes of Article 10(1).
- Paragraph 5, laying down the steps which are to be undertaken by the disclosing market participant prior to making the disclosure has been deleted.
- Paragraph 6 has been amended to exempt the disclosing market participant from having to inform the market sounding recipient that the information disclosed in the course of a market sounding ceases to be inside information in cases where the information has otherwise been announced publicly.
- Paragraph 7 has been amended to exempt the market sounding recipient from having to assess whether it ceases to be in possession of inside information.

Article 13: Accepted market practices

- Point (d) of Paragraph 12 has been amended to no longer require the market operator or the investment firm operating the SME growth market to agree to that contract's terms and conditions.

Article 17: Public disclosure of inside information

- Paragraph 5 has been amended to remove the reference to the preservation of the stability of the financial system.

Article 18: Insider lists

- The second subparagraph of paragraph 6 has been amended to no longer require the lists to be drawn up in accordance with Annex II of Commission Implementing Regulation (EU) 2022/1210. In turn, the fourth, fifth and sixth subparagraphs have been deleted.

Article 19: Managers' Transactions

- Paragraph 8 has been amended to increase the threshold above which notifications are to be submitted to the issuer or the emission allowance market participant and the competent authority in accordance with Article 19(1) of MAR to €20,000.
 - o The Authority has made use of the discretion afforded to it by paragraph 9 and decreased the threshold set out in paragraph 8 to €10,000. This amendment is being reflected within the Prevention of Financial Market Abuse Rules through the addition of a new rule.
- Point (a) of paragraph 12 was amended to also make reference to financial instruments other than shares. Point (b) was amended to also make reference to employees' schemes concerning financial instruments other than shares and qualifications or entitlements of financial instruments other than shares
- Paragraph 12a has been included to require issuers to allow a person discharging managerial responsibilities within it to trade or to make transactions on its own account or for the account of a third party during a closed period in the case of transactions or trade activities that do not relate to active investment decisions undertaken by the person discharging managerial responsibilities, or that result exclusively from external factors or actions of third parties, or that are transactions or trade activities, including the exercise of derivatives, based on predetermined terms.

4.0 Updates on the Amendments to the Markets in Financial Instruments Regulation (MiFIR)

This part of the circular is being addressed to all market participants falling under MiFIR.

Article 25 paragraph 2 of MiFIR has been amended, to include that the relevant data relating to all orders in financial instruments are advertised through their systems in a machine-readable format and using a common template.

5.0 Contacts

Should you have any queries in relation to Section 2.0, kindly contact the Authority on Listings@mfsa.mt.

Should you have any queries in relation to Section 3.0, kindly contact the Authority on Pfma@mfsa.mt.

Should you have any queries in relation to Section 4.0, kindly contact the Authority on MarketInfrastructures@mfsa.mt.