

UK Prospectus Regime Review outcome

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On 1 March 2022, HM Treasury set out the policy approach the UK government will take to reform of the prospectus regime in the UK, following the Prospectus Regime Review consultation in July 2021. Our client update highlights the reforms.

As trailed in HM Treasury's publication in December 2021 of the [summary of responses](#) to the [July 2021 consultation](#), the reformed regime will, among other things, separate the regulation of public offers of securities from the regulation of admissions of securities to trading; delegate a greater degree of responsibility to the UK Financial Conduct Authority (the "FCA") to set out the detail of the new regime through rules; and, more broadly, aim to simplify prospectus regulation, encourage broader ownership of public companies in the UK and improve the quality of information investors receive.

The [reforms](#) include the following highlights:

Prospectuses for admissions of securities to regulated markets

The government intends to give the FCA enhanced rule-making responsibilities relating to admissions of securities to UK regulated markets. Among other things, the FCA will be allowed to specify in its rulebook if and when a prospectus is required for admission, including for further issues of securities by listed companies. As a result, the government will remove the criminal offence which currently prohibits requesting admission to trading on a UK regulated market without first having published an FCA-approved prospectus.

The FCA will also be able to make rules determining matters currently set out in the UK Prospectus Regulation, including prospectus contents, whether a prospectus needs to be reviewed and approved by the FCA prior to publication and the manner and timing of publication. In the case of issuers listed overseas, the FCA will also have the flexibility to determine if a prospectus is required for a secondary listing or whether to rely on an overseas prospectus.

Prospectuses for public offers of securities

Under the new regime, prospectuses will not be a feature of the public offer rules and instead there will be a general prohibition on offering securities to the public, and a range of exemptions will apply. These exemptions will derive from the existing exemptions in Article 1(4) of the UK Prospectus Regulation and will include additional ones for:

- **Offers of securities which are, or will be, admitted to regulated markets in the UK.** This means that issuers will need to comply with one set of rules only for prospectus publication (namely, as noted above, the FCA's new rules that will apply when securities are admitted to trading on a regulated market). In practice, this exemption should, for example, make it easier for retail investors to participate in an undocumented equity placing by a listed company.

- **Offers of securities to existing shareholders.** This exemption will be subject to certain conditions, including that the offer is made pro-rata to a shareholder's existing holding. This means that pre-emptive share offerings (such as rights issues and open offers) will only need a prospectus if required by the FCA's new rules that will apply when securities are admitted to trading on a regulated market.
- **Offers of securities by companies listed on overseas exchanges.** A new regime of regulatory deference will permit issuers of securities listed on certain designated overseas stock exchanges to extend offerings into the UK on the basis of offering documents prepared according to the rules of that overseas market, without FCA review and approval. The regime will place reliance on an assessment of the overall effectiveness of the applicable overseas regulation, with powers for the FCA to intervene to protect UK investors in exceptional circumstances.
- **Offers of securities by private companies.** With a view to increasing the capital raising options for private, unlisted companies, the new rules will remove the current requirement for a prospectus to be published for offers over €8 million (the threshold below which offers of securities by private companies are exempt from the prohibition on public offers is still being considered). Instead, securities will be allowed to be offered to the public provided the offer is made through a platform operated by a firm specifically authorised for that purpose. As a result, the operation of an electronic platform for the public offering of securities, such as a crowdfunding platform, will be a new regulated activity.
- **Offers of securities which are, or will be, admitted to trading on certain multilateral trading facilities (MTFs) (including junior markets such as AIM).** While MTF operators will remain responsible for determining the content requirements for admission documents subject to FCA rules and oversight, the government intends to develop a mechanism that treats admission documents as a type of prospectus for regulatory purposes.

Certain existing public offer exemptions will be retained, including the 'qualified investors', '150 persons' and 'directors/employees' exemptions.

In addition, existing monetary thresholds stated in Euros will be restated into sterling at a 1-for-1 rate, save that the existing €100,000 threshold for offers of wholesale non-equity securities will be changed to £50,000 in order to minimise disruption to UK institutional investor access to international wholesale bond markets.

The 'necessary information' test

The existing, statutory 'necessary information' test that provides the overarching disclosure standard for the content of prospectuses in the UK will be retained with the following changes:

- the current distinction in prospectus disclosure standards for non-equity securities based on the size of their denomination (i.e. whether over or under €100,000) will be removed, on the basis this creates a disincentive to issue lower-denomination securities affordable to a broader range of investors.
- the 'necessary information' test may vary depending on whether an offer of securities relates to a first-time admission to a market or is a secondary issue.
- The 'necessary information' test will be modified for debt securities to include a focus on the issuer's or guarantor's creditworthiness, rather than prospects.

Forward-looking information

As proposed in the consultation, the threshold for liability that applies to certain categories of forward-looking information will be raised. A person responsible for a prospectus (e.g. issuers and directors) will be liable to pay compensation in respect of that information only if they knew the statement to be untrue or misleading or were reckless as to whether it was untrue or misleading; or, in the case of an omission, they knew the omission to be a dishonest concealment of a material fact. In practice, this makes the liability standard for such forward-looking information a 'recklessness' standard.

The FCA will have responsibility for specifying the categories of forward-looking information to which the new liability threshold will apply. Such disclosures will be required to be clearly labelled as forward-looking information to which that threshold applies.

The existing statutory liability regime for any other false, misleading or omitted information will be retained with a 'negligence' standard of liability.

Next steps

The government will introduce new legislation to replace the existing prospectus regime when parliamentary time allows, and the FCA will need to consult on new rules, consistent with government's broader desire to return responsibility for designing and implementing financial services regulatory requirements to the regulators.

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