

## Luxembourg: the EU Prospectus Regulation and the new Prospectus Law

### ***I. EU Prospectus Regulation***

In July 2019, the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market ("[Prospectus Regulation](#)") entered into force, thereby repealing the 2003 Prospectus Directive.

The Prospectus Regulation sets forth changes with regard to the prospectus summary (A) and the specification of risk factors (B). In addition, it introduces regimes pertaining to a simplified prospectus (C) and to a growth prospectus (D).

#### A. Prospectus summary

New content requirements aim to make the prospectus summary more useful to investors, as issuers now have the flexibility to include any information that is "material and meaningful" to investors. The summary must comprise four sections: (i) introduction, (ii) key information on the issuer, (iii) key information on the securities, and (iv) key information on the offer. The regulation articulates content requirements for each section. The new reduced length (i.e. not longer than seven sides of A4 paper) aims to force issuers to keep summaries concise, while the requirement for clear, non-technical language is likely to improve readability. The number of risk factors permitted in the summary is limited to 15, a requirement that should prompt issuers to focus on the risks that are most relevant to investors.

Issuers will certainly appreciate the move away from overly proscriptive content requirements for the summary, as the old rules (which required summaries to include elements from specific disclosure tables) often resulted in the inclusion of immaterial information.

#### B. Risk factors

One objective of the new rules is to encourage issuers to include only risk factors that are specific to the company or their securities and avoid including generic risks. Risk factors should only cover issues that are material for taking informed investment decisions and need to be corroborated by information published elsewhere in the prospectus. Risks must be categorised by their nature, with the most material risk presented first (based on the probability of the occurrence and the expected magnitude of the negative impact). However, other risks within the category do not need to be ranked in order of materiality.

These changes, along with the upcoming [ESMA Guidelines on Risk Factors](#), should make competent authorities more rigorous in their review of risk factors, which could lengthen the timetable for prospectus approvals. However, if issuers follow the new rules and guidelines in drafting the relevant disclosures, they should not be overly concerned about the new requirements in relation to risk factors.

#### C. Simplified prospectus

The Prospectus Regulation has introduced a new simplified disclosure regime for secondary issues, which replaces the current proportionate disclosure regime for rights issues. Issuers that have been listed for at least 18 months on a regulated market or SME growth market may use a simplified prospectus consisting of a summary, a specific registration document, and a specific securities note containing reduced disclosure requirements. A simplified prospectus requires only one year of historical financial information, in addition to a working capital statement.

#### D. Growth prospectus

The Prospectus Regulation allows qualifying issuers to prepare an EU growth prospectus under a proportionate disclosure regime using a standardised format.

These new growth prospectus rules will apply to (i) SMEs; (ii) other issuers traded on an SME growth market with an average market capitalisation of less than EUR 500 million for the prior three years; and (iii) other issuers where an EU offer does not exceed EUR 20 million over 12 months, provided that such issuer is not traded on an MTF and had up to an average of 499 employees during the previous year.

However, it is doubtful whether the growth prospectus and the simplified prospectus satisfy the disclosure requirements under US securities laws, making them presumably unsuitable for international offers under Rule 144A of the 1933 Securities Act. (The rule provides a safe harbour from the registration requirements of the Securities Act for certain private resales of minimum USD 500,000 units of restricted securities to qualified institutional buyers.)

## ***II. New Prospectus Law***

While the Prospectus Regulation is directly applicable in the EU, certain of its provisions necessitate nonetheless specific implementation measures on the part of the member states. To this effect, the Luxembourg Parliament has adopted, on 2 July 2019, the draft law n° 7328 implementing the Prospectus Regulation ("[Prospectus Law](#)") and repealing the Law of 10 July 2005 on prospectuses for securities, as amended ("2005 Prospectus Law").

The key features of the new Prospectus Law include a prospectus exemption for small-scale offerings (A), as well as an alleviated prospectus regime (B).

#### A. Prospectus exemption for small-scale offerings

In line with the provisions of the Prospectus Regulation, Luxembourg has opted to exempt offers of securities to the public falling within the scope of the Prospectus Regulation, from the obligation to publish a prospectus, provided that the total consideration of the offer in the EU is lower than EUR 8,000,000, calculated over a 12 months period. This sum corresponds to the maximum amount which member states could have opted for under the Prospectus Regulation.

However, the exemption is subject to certain conditions. To begin with, anyone who wants to benefit from this exemption will need to notify the Commission de Surveillance du Secteur Financier (CSSF) beforehand. Further, if the total consideration of the offer amounts to at least EUR 5,000,000 (but is lower than EUR 8,000,000) over a 12 months period, an information note

must be published in accordance with the new Prospectus Law, in addition to the aforementioned prior notification to the CSSF. In order to ensure a certain level of investor protection, the information note must contain brief information on the issuer and the securities offered as well as on the reasons and conditions of the offer (as further detailed in the Prospectus Law).

The increase of the exemption threshold (compared to the one set out under the 2005 Prospectus Law) is particularly favourable for small and medium-sized companies seeking financing on the capital markets, freeing them from the hurdles of a full prospectus approval process.

#### B. Alleviated prospectus regime

The Luxembourg legislator has also maintained a national prospectus regime (Part III of the Prospectus Law). It follows the general lines of the simplified prospectus regime under the 2005 Prospectus Law, for all offers of securities to the public and admissions to trading on a regulated market which do not fall under the scope of the Prospectus Regulation. The Prospectus Law specifies in detail all features of, and the regime applicable to, the alleviated prospectus.

It is worth noting here that the new prospectus exemption for small-scale offerings described above will also apply in the context of the alleviated prospectus regime.

Finally, similar to the voluntary prospectus regime set out in the Prospectus Regulation, the Luxembourg legislator has also decided to grant such an option under its national prospectus regime for alleviated prospectuses. As a result, where an offer of securities or an admission to trading of securities on a regulated market is otherwise exempted from the obligation to draw up an alleviated prospectus pursuant to the Prospectus Law, issuers may still opt to draw up a “voluntary” prospectus entailing the same rights and obligations as an alleviated prospectus required under the Prospectus Law.