



3 July 2017

Prospectus regime - all change

What is happening?

The EU Prospectus Regulation (the "**Regulation**"), which will repeal and replace the current prospectus regime, was published in the Official Journal on Friday. The Regulation, which forms a key part of the European Commission's Capital Markets Union project, comes into force 20 days following publication, i.e. on 20 July, and has direct effect in the EU, without the need to be implemented into local law.

What is changing and when?

On 20 July

Most of the provisions of the Regulation will apply 24 months after the Regulation comes into force, However, a couple of important changes will be effective **immediately** upon the Regulation coming into force – they relate to the exemptions in relation to an admission of shares to a regulated market:

Current	Change
An exemption applies where the new shares to be admitted to trading represent, over a period of 12 months, 10% or less of the shares of the same class already admitted to trading on the same market.	The threshold will be increased to 20% of the number of securities already admitted to trading on the same market. The exemption will also apply to securities, rather than only shares.
There is an exemption for shares resulting from the conversion or exchange of other transferable securities, if the shares are of the same class as the shares already admitted to trading on the same regulated market. The exemption does not contain a threshold.	The conversion exemption will be limited to an increase of less 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. The 20% limit will be disapplied in certain circumstances, including where: <ul style="list-style-type: none">• a prospectus was drawn up for the securities giving access to the shares; or• the securities giving access to the shares were issued before the Regulation came into force.

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There is a provision in the Regulation prohibiting the combination of the two above exemptions – this provision does not itself apply until 24 months after the Regulation comes into force. However, we would not expect this to be read as allowing companies to issue convertible securities as a way to circumvent prospectus requirements.

In July 2018

12 months after the Regulation comes into force, there will be a change to the consideration threshold which takes an offer of securities outside the scope of the prospectus regime. This threshold in the UK is currently €5 million. Under the Regulation, the prospectus regime will not apply where the consideration in the EU over 12 months is less than €1million. However, Member States will be able to exempt offers from the prospectus requirement where the consideration in the EU over 12 months is between €1million and €8 million. The UK has not yet stated its position on this – the FCA has said that this is a matter for HM Treasury.

In July 2019

The remaining provisions will come into force 24 months after the Regulation comes into force.

These include:

- certain changes as to form and content of a prospectus, including the summary which will be limited to seven pages in length;
- the concept of a Universal Registration Document –this will allow issuers to have a "shelf" registration document which will be filed annually, and which will entitle the issuer to a fast-track approval process for a prospectus;
- simplified prospectuses for secondary offerings and growth companies; and
- changes to the presentation of risk factors – the number of risk factors in the summary will be limited to 15, and risk factors will have to be categorised, and set out in order of their materiality.

How will the changes take effect?

For the two changes taking place on 20 July, the FCA proposed in its March 2017 [Quarterly Consultation](#) that the Prospectus Rules be amended to include references to the relevant provisions of the Regulation (and also included the proposed text of those provisions). We expect a similar approach to be adopted to the provisions taking effect in the future; however, of course this all depends on the timing and nature of Brexit.

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