

# NEW PROSPECTUS REGULATION

## Quick Guide

July 2017



### Effective from 20 July 2017

Rule Point	Key Change	Points to Note
<b>Requirement for a prospectus (admission to trading on a regulated market)</b>	<ul style="list-style-type: none"> <li>Securities (not just shares) representing, over a 12 month period, less than 20% of the number of securities already admitted to trading on the same regulated market will be exempt;</li> <li>Shares resulting from the conversion or exchange of other securities or from the exercise of rights, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market are exempt PROVIDED that the resulting shares represent, over a 12 month period, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market.</li> </ul>	<p>Increased from 10%. Should facilitate future fundraisings.</p> <p>This measure is more restrictive but will not apply where:</p> <ul style="list-style-type: none"> <li>a prospectus has already been drawn up for an offer to the public or for admission to trading on a regulated market for the securities giving access to the shares; or</li> <li>the securities giving access to the shares have been issued before 20 July 2017.</li> </ul> <p>The exemptions for offers to the public remain unchanged.</p>

### Effective from 21 July 2018

Rule Point	Key Change	Points to Note
<b>Exempt offers to the public</b>	<p>Offers of securities to the public where the total consideration being offered in the EU is less than €8 million, calculated over a 12 month period, will be exempt.</p> <p>This assumes HM Treasury will adopt the maximum limit allowed.</p>	<p>Increased from €5 million.</p> <p>May assist small cap companies wanting to allow their "retail" shareholders to participate in fundraisings.</p>

### Effective from 21 July 2019

Rule Point	Key Change	Points to Note
<b>Exemptions</b>	<p>The exemptions from the obligation to publish a prospectus for an offer to the public and/or admission to trading on a regulated market may be combined where the conditions are fulfilled at the same time.</p> <p>For example, for an offer to the public, if the offer is made simultaneously to qualified investors, 150 persons and to existing directors and employees of the issuer, the offer will be exempt.</p>	<p>Should facilitate further issues without the requirement to publish a prospectus.</p> <p>The two exemptions referred to above cannot be combined if the 20% limit would be exceeded over a 12 month period. As this provision does not apply until 21 July 2019, it appears, and there is no commentary to the contrary, that this additional restriction is being phased in.</p>

Rule Point	Key Change	Points to Note
<b>Prospectus summaries</b>	The summary must be accurate, fair, clear and not misleading. It should be read as an introduction to the prospectus and must be consistent with the other parts of the prospectus.	As before, civil liability will only attach to the summary where it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.
	<p>The page limit has been reduced to a maximum length of seven sides of A4 paper when printed with four headings (as opposed to five):</p> <ul style="list-style-type: none"> <li>• an introduction, containing warnings;</li> <li>• key information on the issuer;</li> <li>• key information on the securities; and</li> <li>• key information on the offer of securities to the public and/or admission to trading on a regulated market including an indication of whether the offer is subject to an underwriting agreement on a firm commitment basis, stating any portion not covered.</li> </ul>	<p>Previously not to exceed 7% of the prospectus or 15 pages, whichever is longer. The idea is to maintain the requirement for a summary but for it to be shorter and more prescriptive.</p> <p>Maintains prohibition against cross-references from the summary to other parts of the prospectus or incorporation by reference.</p>
	The last three sections should each contain a brief description of the most material risk factors contained in the prospectus. The total number of risk factors in the summary must not exceed 15.	The requirement to limit the key risk factors in the summary to 15 seems arbitrary and may prove problematic for issuers.
<b>Prospectus-risk factors</b>	<p>The materiality of the risk factors should be assessed based on the probability of their occurrence and the expected magnitude of their negative impact. Each risk factor should be adequately described, explaining how it affects the issuer or the securities being offered. Materiality may be assessed using a low, medium or high qualitative scale.</p> <p>Risk factors should be presented in a limited number of categories depending on their nature with the most material risk factors being presented first.</p>	Issuers may be reluctant to label a risk with 'low, medium or high' to avoid mis-categorisation.
<b>Universal registration document (URD)</b>	'Frequent issuers' listed on a regulated market or an MTF* will be able to file an annual URD (shelf registration document) containing all the necessary information about an issuer even if it does not intend to offer securities/issue debt at that time. After the document has been approved by the FCA for two consecutive years, subsequent URDs can be filed without prior approval.	<p>This type of document may be useful to issuers that frequently access capital markets. Issuers that maintain a URD will benefit from a fast track approval process for prospectuses - five working days instead of ten.</p> <p>However, the benefit of this regime is unclear. If an issuer has an existing URD that has been filed without approval, only the securities note and summary will need to be drawn up but the entire documentation will still be subject to approval.</p>
<b>Simplified disclosure regime for secondary issuances</b>	Issuers whose securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months may draw up a simplified prospectus for secondary issuances for offers to the public or admission to trading on a regulated market.	<p>This will replace the proportionate disclosure regime for rights issues. According to the Commission, 70% of prospectuses approved annually across Europe are secondary issuances.</p> <p>The simplified regime should be beneficial to companies with securities already listed on the Main Market wishing to issue additional securities or raise debt. However, its application has been narrowed; it will no longer apply to MTFs.</p>
<b>EU Growth prospectus</b>	SMEs (and some mid-sized companies) that want to undertake an offer to the public will be able to make use of a lighter, simplified prospectus provided they have no securities admitted to trading on a regulated market.	This will create a lighter prospectus for SMEs and replace the existing proportionate disclosure regime for SMEs which few companies have taken advantage of.

\*Multilateral Trading Facility e.g. AIM

### Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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