



THE NEW FACE OF THE PROSPECTUS WORLD

LuxCMA sums up some of the main changes under the new prospectus regime applicable as from 21 July 2019.

SOME OF THE KEY BENEFICIAL CHANGES FOR ISSUERS

- **Simplified prospectus for secondary issuances and alleviated treatment for non-equity issues on wholesale market:** issuers/offers whose non-equity securities or securities which are fungible with existing securities are admitted to trading on a regulated market or an SME growth market for a continuous period of 18 months may draw up a simplified prospectus; issuers/offers of non-equity securities, traded on a regulated market, or a specific segment thereof, to which only qualified investors have access, are subject to an alleviated disclosure treatment.
- **Standard simplified prospectus for growth issuers:** the following issuers may draw up a simplified prospectus in a standardised form for offerings to the public: (i) SMEs, (ii) other issuers with an average market capitalisation of less than EUR500 million for the prior 3 years, who are/will be traded on an SME growth market and (iii) other issuers, where the offer does not exceed EUR20 million over a 12-month period subject to certain conditions.
- **Exemptions from the scope of the prospectus regime:** The new regime does not apply to an offer of securities to the public with a total consideration in the EU, calculated over a period of 12 months, of less than EUR1 million and Member States have the option of exempting domestic offers of securities to the public from the obligation to publish a prospectus where the total consideration of the offer in the EU, calculated over a period of 12 months, does not exceed EUR8 million.

MORE CONSTRAINTS ON ISSUERS FOR A BETTER INVESTOR PROTECTION

- **Refit of risk factors requirements:** risk factors must now be (i) specific to the issuer and/or the securities as opposed to generic disclosure, (ii) material based on the probability of their occurrence and the expected magnitude of their negative impact, (iii) concise and (iv) consistent and 'corroborated' by the content of the prospectus. They must be presented in categories (and if relevant, in sub-categories) using appropriate heading, the most material risk factor being presented first in each category. The new regime is supported by ESMA's guidelines to National Competent Authorities (NCAs) being able to challenge risk factors used as disclaimers and would closely look at excessive or inappropriate mitigating language.
- **Reshape of prospectus summary:** In line with the former regime, summary requirements only apply to retail offers but with more rigorous prescriptions. Summaries must comprise key information on the issuer (who), on securities (what) and on the offer of securities and/or the admission to trading (where) and must be (i) shorter (max 7 sides of A4-sized paper when printed – risks factors must be limited to up to 15 most material ones), (ii) structured in 4 sections, each divided into sub-sections and (iii) concise and (iv) accurate, fair, clear and not misleading, using comprehensible and non-technical jargon.
- **Expanded requirements on advertisements:** As from 21 July 2019, the new features of the advertisement regime are (i) broader definition of advertisement which now encompasses 'communication' rather than 'announcement', (ii) the new rules also apply to the provision of oral



information, (iii) the prospectus must be identified in the advertisement, and (iv) additional requirements on content for retail investors. NCAs of all Member States where the advertisements are disseminated shall have power to exercise control (subject to fees) over the compliance of advertising activity (subject, as the case may be, for cross-border activities, to specific bilateral agreements between NCAs (notified to ESMA) where such control remains with the Home Member State).

LUXEMBOURG ANGLE

In Luxembourg, the Law of 16 July 2019 on prospectus for securities implements the Prospectus Regulation and sets forth the Luxembourg rules that apply to offers to the public and to admissions to trading on a regulated market of securities, which are outside the scope of the Prospectus Regulation.

Although the new regime introduced by the Prospectus Regulation was greeted with a frenzy to submit prospectuses before the 21 July 2019 deadline, issuers on the Luxembourg market can take comfort with the fact that (i) the familiar regime in terms of scope of the Law and the structure of the Luxembourg rules remains the same (Part II and Part III of the Law), (ii) the split of responsibilities between the CSSF and the Luxembourg Stock Exchange for the approval of prospectuses has not changed, and (iii) the Luxembourg rules do not introduce anything new or going beyond what is required under the European Regulation. Additionally, the Luxembourg rules continue to allow for easy passporting of prospectuses to other Member States and a flexible approach on language requirements.

The CSSF has already published [Circular 19/724](#) with guidance on the new regime as well as the procedure to be followed for the filing of a prospectus for CSSF approval.

GRANDFATHERING

Please note that for prospectuses approved before 21 July 2019 in accordance with the national laws transposing the previous regime, these will continue to be governed by that national law until the end of their validity, or until 12 months have elapsed after 21 July 2019, whichever occurs first.

FINAL REMARKS

As a conclusion, the recent updates of the EU and Luxembourg prospectus regime entail more formalities. However, with the additional flexibility that comes with the new regime, new issuances should be easier, cheaper and more accessible, especially to smaller issuers.

LuxCMA will keep you informed on any further legal and regulatory developments on this matter. In the meantime, all current key documentation is available on the website of the [CSSF](#).

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