

Implementation of the new prospectus regime in Luxembourg



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As of 21 July 2019, a new Luxembourg law on prospectuses for securities came into effect (the New Prospectus Law), repealing and replacing the Luxembourg law of 10 July 2005 on prospectuses for securities (the Law of 2005).

1. Background

The New Prospectus Law implements 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 (the New Prospectus Regulation).

Being a EU regulation, the New Prospectus Regulation is directly applicable throughout the EU, but leaves the Member States with some level of discretion with respect to certain provisions relating to applicable thresholds.

This new regime applies to prospectuses approved on or after 21 July 2019, whilst the prospectuses approved before that date in accordance with the Law of 2005 continue to be governed by the former regime until the end of their validity period or 21 July 2020.

2. Key changes of the new regime

a. Increase of exemption thresholds

Offers of securities to the public with a total consideration of less than EUR 8,000,000 in the European Union over a period of 12 months are exempted from the obligation to publish a prospectus in accordance with the New Prospectus Regulation.

An information note is required and must be published in case of an offering of securities to the

public with a total consideration of at least EUR 5,000,000 and lower than EUR 8,000,000 over a period of 12 months. Such note shall set out certain information about the issuer, the guarantor (if applicable), the securities, the conditions, and the reasons for the securities' offering.

? a notification has to be made to the Luxembourg financial sector regulator (the CSSF) to benefit from this exemption, but no formal approval of the CSSF is required.

? this exemption should prove particularly attractive for smaller businesses who may in the past have been deterred by the obligation to publish a prospectus under the former regime.

b. Simplified prospectus under the Luxembourg national prospectus regime

The New Prospectus Law sets out a national prospectus regime in relation to public offers or admissions to trading on a regulated market in Luxembourg that do not fall within the scope of the New Prospectus Regulation.

The formal national regime remains largely untouched, and for these offers the same thresholds exemption as set out above also apply in the context of the Luxembourg national prospectus regime.

? a simplified prospectus shall be drawn up and approved by the CSSF according to the New Prospectus Law in case of an offering of securities to the public with a total consideration of at least EUR 8,000,000.

? offers of securities to the public with a total consideration below EUR 8,000,000 do not require a simplified prospectus and CSSF approval.

? offers of securities to the public with a total consideration of at least EUR 5,000,000 and below EUR 8,000,000 require an information note to be prepared and a notification to the CSSF.

In line with what is provided for in the New Prospectus Regulation, issuers which are exempted from the obligation to publish a simplified prospectus are allowed by the New Prospectus Law to draw up and publish such prospectus on a voluntary basis, in accordance with the provisions of the New Prospectus Law.