

New Luxembourg Prospectus Law



Ms. Mevlâde-Aysun Tokbag

Partner

mtokbag@wildgen.lu



Mr. Daniel Krauspenhaar

Director

daniel.krauspenhaar@wildgen.lu

On 2 July 2019, the Luxembourg parliament adopted the bill of law no. 7328 (the “New Prospectus Law”), implementing Regulation 2017/1129/EU 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 “Prospectus Regulation”) and repealing the Luxembourg law of 10 June 2005 on prospectuses for securities, as amended (the “Law of 2005”).

The Prospectus Regulation will become fully applicable on 21 July 2019 and supersede Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (amending Directive 2001/34/EC), as well as the national transposition laws, i.e. in Luxembourg, the Law of 2005.

Although being directly applicable in the Member States, the Prospectus Regulation provides for certain provisions which require transposition into national law, and in this regard, there is also to a certain extent flexibility for the Member States. The New Prospectus Law therefore contains, for example, provisions designating the Luxembourg financial supervisory authority (Commission de Surveillance du Secteur Financier; “CSSF”) as the competent authority, defining certain exemptions from the obligation to publish a prospectus according to the Prospectus Regulation and, in addition, provisions regarding the national prospectus law regime for offers of securities to the public falling outside the scope of the Prospectus Regulation.

The New Prospectus Law will be applicable as from the same date as the Prospectus Regulation and will replace the Law of 2005. Nevertheless, it should be noted that prospectuses approved by the CSSF in accordance with the Law of 2005 before 21 July 2019 shall continue to be governed by such law until the end of their validity, or until 12 months have elapsed after 21 July 2019, whichever occurs first.

European prospectus law regime: exemption from the obligation to publish a prospectus for offers of securities to the public

With regard to the prospectus law regime according to the Prospectus Regulation, the Prospectus Regulation gives Member States the option of exempting offers of securities to the public not exceeding EUR 8,000,000 from the obligation to publish a prospectus. Member States are free to set out in their national law a threshold between EUR 1,000,000 and EUR 8,000,000, expressed as the total consideration of the offer in the European Union over a period of 12 months, below which the exemption should apply.

According to the New Prospectus Law, the Luxembourg legislator has decided to make use of such exemption and determined the maximum possible threshold, i.e. EUR 8,000,000.

Nonetheless, it is important to note that, according to the New Prospectus Law, in case of an offering of securities to the public with a total consideration of at least EUR 5,000,000, an information note is required. Such information note shall contain brief information about the issuer, the securities and the conditions and reasons for the offering of the securities. An issuer wishing to make use of this exemption shall notify the CSSF prior to making such an offer. No formal approval of the offering and the information note is required.

Changes to the existing Luxembourg national prospectus law regime

Besides the prospectus law regime under the Prospectus Regulation, there still exists a Luxembourg national prospectus law regime according to the New Prospectus Law which is similar to the simplified prospectus regime according to the Law of 2005. Such Luxembourg national prospectus law regime applies to offers of securities made to the public in Luxembourg not falling under the scope of the Prospectus Regulation, including in particular under certain conditions money market instruments having a maturity of less than 12 months.

The Luxembourg national prospectus law regime is aligned with the exemption mentioned above, which means that an alleviated prospectus will have to 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. Below such threshold no such alleviated prospectus and CSSF approval is required. However, in case of an offering of securities to the public with a total consideration of at least EUR 5,000,000 an information note and a notification to the CSSF prior to making an offer to the public is required.

Conclusion

The Luxembourg legislator has adopted the New Prospectus Law just in time before the Prospectus Regulation becomes fully applicable. Therefore, on the Luxembourg level there is now certainty about the applicable rules for making an offer of securities to the public. The exemptions mentioned above should be particularly helpful for start-ups and small and medium sized enterprises. It is, however, yet to be seen how the new legal environment will be applied in practice, in particular by the CSSF.

Further information about the Prospectus Regulation can be viewed [here](#).