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The New EU Prospectus Regulation is coming – Key Novelties for Issuers

The Regulation (EU) 2017/1129 ("**New Prospectus Regulation**") of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ("**Prospectus Directive**") came into force on 20 July 2017 and will come into full effect across the EU, including Romania, starting with 21 July 2019.

Also, a new Commission delegated regulation to repeal the current Commission Regulation (EU) No. 809/2004 and to supplement the New Prospectus Regulation as regards the format, content, scrutiny and approval of the prospectuses to be published when securities are offered to the public or admitted to trading on a regulated market ("**Delegated Act**") is expected soon – the final form¹ was adopted by the Commission on 14 April 2019 and the objection period was expected to end around 14 June 2019.

After the New Prospectus Regulation becomes fully applicable, the Prospectus Directive will cease to have effect and the provisions of Romanian Law no. 24/2017 on issuer of financial instruments and market operations transposing the Prospectus Directive ("**Financial Instruments and Market Operations Law**") are expected to be repealed².

The new regime set out by the New Prospectus Regulation will not apply retroactively and the prospectuses approved in accordance with the Financial Instruments and Markets and Operations Law will continue to be governed by that law until the later of (i) the end of their validity period, or (ii) twelve months after 21 July 2019.

The New Prospectus Regulation aligns the rules governing the content, format and the approval process in relation to EU prospectuses and introduces some changes to the existing prospectus regime, as highlighted below.

Prospectus Summary

The New Prospectus Regulation maintains the concept of summaries, but contemplates a different approach as compared to the Prospectus Directive, aiming to create a more investor-friendly summary regime.

As part of such effort, the summaries are changing in terms of content and format. The maximum length of summaries will be limited to seven sides of A4-sized paper when printed (subject to extensions in certain circumstances) and the summaries required to include four sections: (i) introduction, (ii) key information on the issuer, (iii) key information on the securities and (iv) key information on the offer - with specific content requirements for each section.

The number of risk factors to be included in the summaries is subject to certain limitations as well. The New Prospectus Regulation sets out that summaries should include only the most 15 risk factors, challenging issuers to focus on the materiality of the risks.

The New Prospectus regulation also introduces certain carve-outs to the requirement to prepare a prospectus summary. As such, prospectus summaries will no longer be required in relation to non-equity securities having a denomination per unit of at least EUR 100,000 or traded on a regulated market (or a specific segment thereof) to which only qualified investors have access for trading purposes. Base prospectuses for debt issuances programmes will

¹ Available at: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=pi_com:C\(2019\)2020](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=pi_com:C(2019)2020).

² Draft law on, *inter alia*, the amendment of the Financial Instruments and Market Operations Law available (in Romanian language) at: http://discutii.mfinante.ro/static/10/Mfp/resurse/transparenta/proiectlegemodifacativenormative_05062019.docx.



no longer have to include summaries either, but only issue-specific summaries will be needed when the final terms have been determined.

Risk factors

In order to create a framework for more investor-friendly prospectuses, the New Prospectus regulation expands the burden on issuers to make subjective assessments when disclosing the risk factors.

While under the current regime the standard approach is to include in the prospectus any potential material risk which may affect the investor's investment decision, under the New Prospectus Regulation the risk factors disclosure should comply with several requirements, further detailed under the ESMA Guidelines on risk factors under the New Prospectus Regulation³ ("ESMA Guidelines").

In brief:

- **Risk factors should be specific:** there should be a clear and direct link between the risk factor and the issuer/securities and the specificity must be apparent from the disclosure;
- **Risk factors should be material:** the risk factors should be limited to those material for taking an informed decision based on the probability of their occurrence and the expected magnitude of their impact; the potential negative impact of a certain risk factor should be disclosed using qualitative scale of low, medium or high (where available or appropriate) or using qualitative approach;
- **Risk factors should be corroborated by the rest of the prospectus:** the specificity and materiality of the risk factors should be corroborated by the overall picture of the issuer and the securities presented by the prospectus;
- **Risk factors should be categorised:** the risk factors should be presented in a limited number of categories (and sub-categories), depending on their nature, which should not be disproportionate to the size/complexity of the transaction and the risk to the issuer. The most material risk factors should be presented first in each category but it is not mandatory for all the remaining risk factors to be ranked in order of their materiality;
- **Risk factors should be presented in concise and comprehensible form:** the risk factors should be in as concise form as possible. An extensive risk factor disclosure can obscure the comprehensibility of the prospectus.

The Romanian Financial Supervisory Authority ("FSA") will be entitled to challenge the risk factors disclosure which does not comply with the requirements briefly set out above.

Simplified Prospectus

The New Prospectus Regulation sets out a simplified disclosure regime for secondary issues available for companies that have had securities (debt or equity) admitted to trading on a regulated market or on a SME growth market (no SME growth market registered in Romania) for at least the last 18 months.

The lighter disclosure regime requires a simplified prospectus consisting in a summary, a specific registration document and a specific securities note. A simplified prospectus will need to include only one year of historical financial information as well as a working capital statement.

Notwithstanding the simplified regime, the issuers will however need to comply with certain prescriptive disclosure requirements on: significant changes in the business and financial position of the issuer since the last financial year, the rights attaching to the securities and the reasons for the issuance and its impact on the issuer.

Additional details on the reduced information to be included in the simplified prospectus are set out under the Delegated Act.

³ Available at: https://www.esma.europa.eu/sites/default/files/library/esma31-62-1217_final_report_on_guidelines_on_risk_factors.pdf



EU Growth Prospectus

Aiming to facilitate the access to capital markets for smaller companies, the New Prospectus Regulations brings the novel EU Growth prospectus concept - a simplified disclosure regime targeting SMEs (widened definition under the New Prospectus Regulation) and certain other mid-sized companies that do not have securities admitted to trading on a regulated markets.

The EU Growth prospectus consists in a standardised, written prospectus comprised of a summary, a specific registration document and a specific securities note. Additional details on the reduced information to be included in the EU Growth prospectus are set out under the Delegated Act.

Universal Registration Document

The New Prospectus Regulation introduces the concept of universal registration document ("URD") – a registration document setting out the relevant information on the issuer and its business which may be annually published by the issuers whose securities are admitted to trading on a regulated market or a multilateral trading facility. In certain circumstances, the issuers will be able to comply with their disclosure requirements under the Transparency Directive (transposed in Romania under the Financial Markets and Operations Law) by integrating their annual and half-yearly financial reports under the URD.

The URDs need to be pre-approved by the FSA. Issuers that have had URDs approved by FSA for two consecutive financial years, will not need prior approval for publishing subsequent URDs.

A prospectus which integrates an URD that has been previously published would benefit from a faster approval process by the FSA. However, the FSA will still be able to challenge the content of the URD in the prospectus approval process.

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