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C H A N C E

**EU LISTING ACT REFORMS TO THE
EU PROSPECTUS REGULATION:
IMPACT ON DEBT MARKETS**

EU LISTING ACT REFORMS TO THE EU PROSPECTUS REGULATION IMPACT ON DEBT MARKETS

In direct contrast to the ‘root and branch’ reforms to the UK prospectus regime (which is being repealed in full and replaced), the reforms to the EU prospectus regime will build on the ‘status quo’. The EU Listing Act amendments adjust the existing EU Prospectus Regulation.

Furthermore, the EU Listing Act provides for staggered application of provisions amending the EU Prospectus Regulation, and the most significant changes to the EU prospectus regime are not due to take effect until the end of 2025. That said, some changes will apply as soon as the EU Listing Act is in force, including changes which will impact debt issuance and prospectuses. Following approval of the EU Listing Act in the plenary session of the European Parliament today, that application date may be very soon.

Our “at-a-glance” briefing sifts through the relevant application dates and highlights:

- reforms which will be relevant immediately (and start to apply 20 days after the EU Listing Act is published in the Official Journal);
- reforms which will not apply for 15 months or 18 months and for which delegated acts are required or where there is Member State discretion;
- developments with an ESG element; and
- grandfathering provisions.

Which EU Listing Act changes to the EU Prospectus Regulation will apply immediately?

The following changes which impact debt markets will apply as soon as the EU Listing Act enters into force. Most of these immediate changes do not relate to content of prospectuses – and those that do are largely permissive, rather than restrictive – but see our comments on grandfathering of prospectuses and transitional provisions below:

- **Future financial information:** This is one of the most relevant changes for debt markets. An issuer will be able to incorporate future new annual or interim financial information into a base prospectus during the 12-month life of the prospectus without needing to prepare a prospectus supplement specifically to incorporate that new financial information. The financial information will need to meet other Article 19 of the EU Prospectus Regulation requirements, such as electronic publication.

This amendment is generally viewed as a welcome step – although it is worth noting that the option of producing a supplement remains. As a practical matter,

Key issues

- The EU Listing Act amendments build on the existing regime for public offers and admission to trading in the EEA.
- Additionally, staggered application dates means that many changes will not be relevant until at least the end of 2025.
- But certain reforms relevant to debt markets will apply imminently – including expansion of incorporation by reference to allow future financial information without a supplement.

however, issuers may wish to consider whether any additional disclosure is required overall, for example, in connection with the “no material adverse change” statements, and some issuers may still opt to supplement to the base prospectus when publishing new financial information.

- **Withdrawal rights - supplements - 3-day walk-away period reinstated:** The EU Listing Act reintroduces some of the temporary measure enacted during COVID and which expired on 31 December 2022.

One of these was investor-friendly, extending the statutory walk-away period for investors when a prospectus supplement is published. The extension from 2 working days to 3 working days has been reinstated.

Another of the temporary COVID measures was intended to alleviate burdens for financial intermediaries regarding notifications to investors about publication of a supplement. These are also reintroduced. Additionally, to facilitate the requirement for a financial intermediary to contact investors about withdrawal rights by the end of the first working day following that on which the supplement is published, such investor notifications need only be by electronic means (e.g., e-mail). Investors who decline to receive such electronic notifications will instead be warned to monitor the issuer’s or the financial intermediary’s website to check whether a supplement has been published.

- **Withdrawal rights - Final offer price and amount of securities:** There is a similar extension to 3 working days (from the existing 2 working days) where the final offer price and/or amount of securities to be offered to the public cannot be included in the prospectus. In that case, the acceptance of the purchase or subscription of securities may be withdrawn not less than 3 working days after the final offer price or amount of securities is filed.
- **Broadened exemptions from the requirement to produce a prospectus:** The extensive use of high denomination or professional investor exemptions, coupled with the ease of use of a base prospectus combined with Final Terms mean that exemptions under Article 1(4) and 1(5) of the EU Prospectus Regulation are rarely used in the debt markets. However, the EU Listing Act expands scenarios when a prospectus is not needed either in relation to a public offer or for admission to trading on an EEA regulated market or SME growth market:

- **Credit institutions:** Another of the COVID temporary measures has been reinstated, uplifting the current so-called “credit institution exemption” threshold for securities offered in a continuous or repeated manner from Euro 75 million to 150 million.
- **Taps - Higher 30% threshold:** The current 20% “fungibles exemption” (over a rolling 12-month period) will be raised 30%. It has also been extended to public offers as well as admission to trading on the same regulated market.

However, there is a proviso that the 30% exemption is not available if an issuer is subject to insolvency proceedings or a restructuring.

In addition, a short “Annex IX” document with a maximum length of 11 pages must be filed with the Home Member State and made available to the public at the same time - see Appendix for content requirements. The document is not subject to competent authority review, but it is worth noting that one of the

content requirements is a statement by the issuer that it has continuously complied with reporting and disclosure obligations “throughout the period of being admitted to trading”, including under the EU Transparency Directive, and, where applicable, the EU Market Abuse Regulation or Commission Delegated Regulation (EU) 2017/565 which supplements MiFID2.

- **New fungibles exemption:** A new, broader public offer and admission to trading exemption is being introduced, with no size limit, for securities fungible with securities that have been admitted to trading on an EEA regulated market or SME growth market for at least the previous 18 months. However, there is a proviso not only that this exemption is not available if an issuer is subject to insolvency proceedings or a restructuring but, also, that the securities must not be issued in connection with a takeover by means of an exchange offer, a merger or a division.

This exemption, similarly, imposes the requirement to file with the Home Member State and publicise an “Annex IX” document (see Appendix).

In parallel, the current exemption under Article 1(5)(j) for admission to trading exemption for securities already admitted to trading on another EEA regulated market is being removed.

- **20% equity conversion or exchange exemption increased to 30%:** The volume of the exemption for shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities is being increased from 20% to 30% of the number of shares of the same class already admitted to trading. This uplift is unlikely to have a practical impact on debt markets and behaviour.
- **Broader scope for incorporation by reference:** The list of documents which may be incorporated by reference has been expanded slightly. The following may now also be incorporated by reference:
 - a document filed in accordance with the Annex IX requirements (that is, a short document filed in connection with a fungible issue see Appendix); and
 - sustainability reports included in management reports.

Issuers may also include additional, voluntary information into a prospectus by reference, as long as the Article 19 criteria (such as, being available electronically and meeting Article 27 language requirements) are satisfied.

- **More scope to opt-in for voluntary prospectuses:** The “quirk” in PD3 which limited the ability of certain exempt issuers to “opt in” and produce an EU Prospectus Regulation-compliant prospectus has been removed. There will be no restrictions on types of issuers who may opt-in.
- **Universal registration document (URD) – reduced period:** This is likely to be of more interest to equity issuers than those issuing debt. The current requirement to have a URD approved for two consecutive years before being able to file without prior approval will be reduced to one year, to incentivise use of URDs. As a further

incentive, there is a derogation from the need for a URD to comply with the standard format, sequence and length requirements due to be introduced in 18 months'-time – see table below.

- **Risk factors:** Whilst the original December 2022 European Commission EU Listing Act proposal would have removed the need for an issuer to “rank” risk factors altogether, the end-result is a slight relaxation only. In practice, it will be unlikely to result in amended drafting or ordering of risk factors in stand-alone bonds or base prospectuses.

The amended EU Prospectus Regulation will still require an assessment of the probability of occurrence and expected magnitude of a risk, but “to ease the burden for issuers” the new text will require that the risk factors are “listed in a manner that is consistent with” an assessment of materiality (replacing the idea of the most material being “mentioned first”).

In addition, the EU Listing Act clarifies the need to avoid generic risk factors or “disclaimers”, or those which do not give a sufficiently clear picture of the specific risks for investors.

- **Publication of prospectus:** A copy of the prospectus is now required to be provided in an electronic format only, and the obligation to provide a paper copy at a potential investor’s request has been removed.
- **Languages:** An issuer with a wholesale denomination prospectus already has significant choice regarding the language used – and that will continue, with no change being made to Article 27(5) of the EU Prospectus Regulation. Accordingly, the alleviations to reduce issuer burdens will be of most interest to issuers of equity or retail denomination debt. Such issuers will be awarded more scope to select the language of a prospectus, even where the Home Member State is involved along with other Host Member States. Moreover, only a summary will need to be translated and not the prospectus. There are also slightly more language options for an issue-specific summary, although unlikely to be significant.

The situation for a purely domestic issue (as set out in Article 27(1) of the EU Prospectus Regulation) is not amended in this first wave of changes, however, and will be addressed in 18 months'-time – see below.

- **No new securities to be added into a base prospectus via supplement:** As a clarification, rather than a shift in the existing position, a supplement to a base prospectus cannot be used to introduce a new type of security, saving that there is a carve-out where an issuer is complying with capital requirements under EU law.

This provision is due to take effect immediately, but the EU Listing Act provides that ESMA will, within 18 months, develop guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security.

- **Third country prospectus equivalence:** Provisions intended to simplify the framework to permit use of third country prospectuses by determining equivalence criteria will apply as soon as the EU Listing Act comes into force. Practically speaking, though, further steps will be required at a European level.

Which EU Listing Act changes will not apply for at least 15 or 18 months?

The table below summarises provisions with delayed application – largely due to the requirement for guidance or for Level 2 measures to be created.

Grandfathering

The EU Listing Act contains transitional provisions for “grandfathering” of prospectuses. The transitional wording in the February 2024 compromise text published by the European Council was unclear, but text in the Amendment 2 paper (A9-0302/2) dated 15 April 2024 published on the European Parliament website with the Rapporteur report gives more clarity and tallies with our discussions with the European Commission on the point.

The text in the Amendment 2 paper provides that, until the end of its validity, a prospectus approved up to 18 months after the EU Listing Act comes into force will continue to be governed by the version of the EU Prospectus Regulation that was in force on the day on which that the prospectus was approved. There are similar transitional provisions but with a fifteen-month window for prospectuses approved under the regimes that will be replaced by EU Follow-on and EU Growth issuance prospectuses.

Applying 15 months after the EU Listing Act comes into force

EU Follow-on prospectuses	<p>Overview: Replaces the existing “simplified disclosure regime for secondary issuances” and the “EU Recovery prospectus” regime (which are both deleted).</p> <p>Summary:</p> <ul style="list-style-type: none"> • Content requirements: Content derives from the skeleton new Annexes IV or V being introduced into the EU Prospectus Regulation, plus relevant delegated acts. • Length limit: Maximum 50 sides for shares (excl. summary). • Securities for which a EU Follow-on prospectus may be drawn up: Briefly, this is available where securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the preceding 18 months or where securities are fungible with such securities. An issuer with only non-equity securities admitted to trading on a regulated market or SME growth market cannot use an EU Follow-on prospectus to admit equity securities. 	Level 2 measures within 15 months.
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Applying 15 months after the EU Listing Act comes into force

EU Growth issuance prospectus	<p>Overview: Replaces the existing “EU Growth prospectus” regime (which is deleted).</p> <p>Summary:</p> <ul style="list-style-type: none"> • Content requirements: Content derives from the skeleton new Annexes VII or VIII being introduced into the EU Prospectus Regulation, plus relevant delegated acts. • Length limit: Maximum 75 sides for shares (with exceptions) • Persons who may draw up an EU Growth issuance prospectus: Briefly, this includes SMEs or issuers whose securities are, or are to be admitted to, trading on an SME growth market, and those who have not made a public offer, but there are more detailed tests. 	Level 2 measures within 15 months
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Applying 18 months after the EU Listing Act comes into force

Standardised prospectus format	<p>Overview: <i>The EU Listing Act brings greater emphasis on the order and format, with further work to be undertaken by ESMA and the European Commission (including on ESG-related disclosure). Significantly, the prospectus page limit only impacts equity.</i></p> <p><i>There is, however, a key concession for certain cross-border offers in the EU Listing Act. The requirements regarding format and sequence and page limit shall not apply where securities are to be admitted to trading on an EEA regulated market and are simultaneously offered to or privately placed with investors in a third country where an offering document is prepared under law, rule or market practice. The intention is to avoid an issuer having to produce several documents.</i></p> <p>Summary: Format and sequence – general:</p> <ul style="list-style-type: none"> • Standardised format • Information disclosed in a prospectus to be presented in a standardised sequence, in accordance with delegated acts. • By way of derogation, information included in a URD may be included without regard to the standardised format, the standardised sequence, the maximum length, template and layout. <p>Format and sequence - ESG: The Commission’s standardised format and sequence shall take into account</p>	<p>ESMA to produce Guidelines on comprehensibility / plain English.</p> <p>ESMA to provide draft ITS on layout, etc. within 12 months.</p> <p>European Commission to create Level 2, both on format and ESG content schedule within 18 months.</p> <p>Depends on type of prospectus / investors targeted.</p>
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Applying 18 months after the EU Listing Act comes into force

	<ul style="list-style-type: none"> • Non-equity prospectus: whether the relevant securities are advertised as taking into account environmental, social or governance (“ESG”) factors or pursuing ESG objectives. • The prospectus for a European Green Bond shall incorporate by reference the relevant information contained in the European Green Bond factsheet as referred to in Article 10 of the Green Bond Regulation. • The prospectus for a bond marketed as environmentally sustainable or for a sustainability-linked bond (as referred to in the Green Bond Regulation) shall include the relevant optional disclosures, provided that the issuer has opted in for these optional disclosures. <p>Page length: Shares</p> <ul style="list-style-type: none"> • For the avoidance of doubt, the proposed maximum prospectus page length (of 300 sides, with certain concessions) is not applicable to non-equity securities. 	
Prospectus Summary	<ul style="list-style-type: none"> • Summary requirements remain substantially the same, except that sequencing of the items will be fixed. An issuer may include a graph or chart, if desired. 	
Languages	<ul style="list-style-type: none"> • Domestic-only issuance: Currently, under Article 27(1), where a security is offered or admitted solely in a Home Member State, the prospectus (rather than just the summary) must be in the language selected by that State. An EU Listing Act change is that the prospectus may be in language customary in sphere of international finance. There is, however, a Member State opt-out and ESMA will keep a list of such elections. 	Member State discretion
Offer to the public – Euro 12 mn exemption	<ul style="list-style-type: none"> • Revised exemption: As a streamlining measure, the current discretionary Euro 8 million offer to the public exemption is replaced. Instead there will be a uniform Euro 12 million (aggregated over 12 months) except where offered cross-border. • Member State discretion: Member States will have discretion to set a lower threshold of Euro 5 million and to require certain filings. 	Member State threshold and filing discretion

Multilateral trading facilities (MTFs)

For the avoidance of doubt – and unlike the scope of the proposed sweeping UK regime changes which will encompass certain MTFs in the UK – the EU Listing Act changes will not extend the scope of the EU Prospectus Regulation. Accordingly, the EU Listing Act changes will not encompass any EEA exchange regulated markets or EEA MTFs. However, we are already seeing some MTFs following the trend of alleviations and modifications within their own rules – such as, some of the changes which the Irish Global Exchange Market (GEM) will be adopting in May in its rulebook.

APPENDIX

Extracted requirements of new Annex IX document (relevant for fungible exemptions)

Annex IX – Information to be included in the document referred to in article 1(4), first subparagraph, points (da) and (db), and in article 1(5), first subparagraph, point (ba)

- (-1) The name of the issuer (including its LEI), country of incorporation, link to the issuer's website.
- (-1a) A declaration by those responsible for the document that, to the best of their knowledge, the information contained in the document is in accordance with the facts and that the document makes no omission likely to affect its import.
- (III) The name of the competent authority of the home Member State in accordance with Article 20 of Regulation (EU) 2017/1129. A statement that the document does not constitute a prospectus within the meaning of Regulation (EU) 2017/1129 and that the document has not been subject to the scrutiny and approval by the competent authority of the home Member State.
- (IV) A statement of continuous compliance with reporting and disclosure obligations throughout the period of being admitted to trading, including under Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, Commission Delegated Regulation (EU) 2017/565.
- (V) An indication of where the regulated information published by the issuer pursuant to ongoing disclosure obligations is available and, where applicable, where the most recent prospectus can be obtained.
- (VI) Where there is an offer of securities to the public, a statement that at the time of the offer the issuer is not delaying the disclosure of inside information pursuant to Regulation (EU) No 596/2014.
- (VII) The reason for the issuance and use of proceeds.
- (VIII) The risk factors specific to the issuer.
- (IX) The characteristics of the securities (including their ISIN).
- (X) For shares, the dilution and shareholding after the issuance.
- (XI) Where there is an offer of securities to the public, the terms and conditions of the offer.
- (XII) Where applicable, any regulated markets or SME growth markets where the securities fungible with the securities to be offered to the public or to be admitted to trading on a regulated market are already admitted to trading.'

CONTACTS

Matthew Ball

Counsel, Tokyo
P: +81 3 6632 6342
E: matthew.ball@cliffordchance.com

Auriane Bijon

Counsel, Paris
P: +33 1 4405 2468
E: auriane.bijon@cliffordchance.com

Cédric Burford

Partner, Paris
P: +33 1 4405 5308
E: cedric.burford@cliffordchance.com

Mark Chan

Partner, Hong Kong
P: +852 2826 3424
E: mark.chan@cliffordchance.com

Andrew Coats

Partner, London
P: +44 20 7006 2574
E: andrew.coats@cliffordchance.com

Lounia Czupper

Partner, Brussels
P: +32 2 533 5987
E: lounia.czupper@cliffordchance.com

Paul Deakins

Partner, London
P: +44 20 7006 2099
E: paul.deakins@cliffordchance.com

Gareth Deiner

Partner, Singapore
P: +65 6410 2202
E: gareth.deiner@cliffordchance.com

Filippo Emanuele

Partner, Milan
P: +39 02 8063 4251
E: filippo.emanuele@cliffordchance.com

Matt Fairclough

Partner, London
P: +44 20 7006 1717
E: matt.fairclough@cliffordchance.com

Gioacchino Foti

Partner, Milan
P: +39 02 8063 4335
E: gioacchino.foti@cliffordchance.com

Ursula Gil

Regional Head of Knowledge and Information, Middle East
P: +971 4 503 2702
E: ursula.gil@cliffordchance.com

Antonio Henriquez

Partner, Madrid
P: +34 91 590 9426
E: antonio.henriquez@cliffordchance.com

Tineke Kothe

Senior Counsel, Amsterdam
P: +31 20 711 9146
E: tineke.kothe@cliffordchance.com

Julia Machin

Knowledge Director, London
P: +44 20 7006 2370
E: julia.machin@cliffordchance.com

Sebastian Maerker

Partner, Frankfurt
P: +49 69 7199 1510
E: sebastian.maerker@cliffordchance.com

Marc Mehlen

Partner, Luxembourg
P: +352 48 50 50 305
E: marc.mehlen@cliffordchance.com

Eimear O'Dwyer

Counsel, Luxembourg
P: +352 48 50 50 259
E: eimear.odwyer@cliffordchance.com

Joanne Pacewicz

Professional Support Lawyer, Singapore
P: +65 6410 2248
E: joanne.pacewicz@cliffordchance.com

Reiko Sakimura

Co-Managing Partner, Tokyo
P: +81 3 6632 6616
E: reiko.sakimura@cliffordchance.com

Simon Sinclair

Partner, London
P: +44 20 7006 2977
E: simon.sinclair@cliffordchance.com

Stuart Ure

Partner, Dubai
P: +971 4503 2659
E: stuart.ure@cliffordchance.com

Jurgen van der Meer

Partner, Amsterdam
P: +31 20 711 9340
E: jurgen.vandermeer@cliffordchance.com

Kate Vyvyan

Partner, London
P: +44 20 7006 1940
E: kate.vyvyan@cliffordchance.com

Dewi Walian

Counsel, Amsterdam
P: +31 20 711 9064
E: dewi.walian@cliffordchance.com

Jessica Walker

Knowledge Director, London
P: +44 20 7006 2880
E: jessica.walker@cliffordchance.com

Deborah Zandstra

Partner, London
P: +44 20 7006 8234
E: deborah.zandstra@cliffordchance.com

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