



HM Treasury

UK Prospectus Regime Review

Review Outcome

March 2022

UK Prospectus Regime Review

Review Outcome



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

Review Outcome

1. In November 2020, the Chancellor asked Lord Hill of Oareford CBE to lead an independent review of UK listings. The review was set up to help boost the UK as a destination for initial public offerings (IPOs) and optimise the capital raising process for large and small companies on UK markets, taking advantage of our new freedoms in financial services following our withdrawal from the EU. This was part of the Chancellor's overall vision to enhance the competitiveness and functioning of UK capital markets.
2. One year on from the publication of Lord Hill's landmark UK Listings Review,¹ this document sets out the policy approach the government will take to reform the UK's prospectus regime, following the Prospectus Regime Review consultation.²
3. As proposed in the consultation, the government will replace the regime currently contained in the UK Prospectus Regulation and will legislate to do so when parliamentary time allows. These changes will simplify regulation in this area and make it more agile and effective, as well as facilitating wider participation in the ownership of public companies and improving the quality of information investors receive. These changes will separate the regulation of public offers of securities from the regulation of admissions of securities to trading, as Lord Hill recommended.
4. As part of this, the government will delegate a greater degree of responsibility to the Financial Conduct Authority (FCA) to set out the detail of the new regime through rules. As such, the full suite of reforms will take full effect after the FCA has consulted on, and is ready to implement, new rules under its expanded responsibilities. This is consistent with the government's broader direction to return responsibility for designing and implementing financial services regulatory requirements to the regulators, following the implementation of the outcomes of the Future Regulatory Framework Review.³ These changes are outlined in further detail in the sections below.

Admissions to trading on Regulated Markets

5. The concept of the prospectus will be retained as an important part of the regulation of public offers of securities admitted to trading on Regulated Markets. The government intends to give the FCA enhanced rule-making responsibilities regarding admissions of securities to trading on UK Regulated Markets. Enhanced responsibilities will allow the FCA to specify in its rulebook if and when a prospectus is required, including for a further issuance by an existing listed issuer. The FCA will also be able to make rules determining what a prospectus should contain where required and address the manner and timing of publication. FCA rulemaking responsibilities will cover other matters that currently sit in the

¹ 'UK Listing Review', Lord Hill of Oareford CBE, March 2021.

<https://www.gov.uk/government/publications/uk-listings-review>

² 'UK Prospectus Regime Review: A Consultation', HM Treasury, July 2021.

<https://www.gov.uk/government/consultations/uk-prospectus-regime-a-consultation>

³ 'Future Regulatory Framework Review: Proposals for Reform', HM Treasury, November 2021.

<https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-proposals-for-reform>

Prospectus Regulation. Its enhanced responsibilities will give it enough flexibility to determine whether to require a UK prospectus for a secondary listing or whether to rely on an overseas prospectus.

6. In connection with this, the government will remove the criminal offence which currently prohibits requesting admission to trading on UK Regulated Markets without first having published an FCA-approved prospectus. Furthermore, the reformed regime will give the FCA the discretion to decide whether – and, if so, in which circumstances – prospectuses must be reviewed and approved by it prior to publication.

A new architecture for public offerings of securities in the UK

7. While the FCA will be able to require a prospectus for admissions to trading on Regulated Markets, prospectuses will not be a feature of the public offerings regime. In the new system, there will be a general prohibition on public offerings of securities against which there will be exemptions. These will be derived from Article 1(4) of the existing Prospectus Regulation. However, the list of exemptions will be expanded to cover:
 - offerings of securities which are, or will be, admitted to UK Regulated Markets.
 - offerings of securities to those who already hold equity securities in the offering company, subject to certain conditions, including that the offer is made pro-rata to a person's existing holding.
 - other categories of offer described in the 'Junior markets', 'Private companies', and 'Public offerings from overseas' sections below.
8. Other exemptions retained include the 'Qualified Investors' and '150 persons' exemptions, and an exemption of the kind currently in Article 1(4)(i) for director/employee offers, while clarifying the concept of 'affiliated undertakings'. The new exemption for offers directed at holders of a company's own equity securities will not be constructed so as to apply to securities of another company offered as consideration (e.g. as part of a merger or acquisition). Instead, the existing exemptions for these offers in Article 1(4) will be retained and amended. All exempted offerings will be subject, as they currently are, to an 'equality of information' requirement derived from the requirement currently in Article 22.
9. Thresholds stated in Euros will be re-stated into sterling at 1 for 1. However, to minimise disruption to UK institutional investor access to international wholesale bond markets, the government intends to change the current €100,000 threshold in the Article 1(4)(c) exemption for offers of wholesale non-equity securities to £50,000.

The 'necessary information' test

10. Under the new regime investors who can show they have sustained losses as a result of false or misleading information in, or the omission of information from, a prospectus will be able to seek compensation through the courts, as is the case now (under the provisions currently in section 90 of the Financial Services and Markets Act 2000). Linked to this, the government intends to retain a single statutory 'necessary information' test as a basic standard of preparation for a prospectus, with three key alterations.

11. First, the government does not intend to include denomination as a factor which would permit differing disclosure for non-equity securities. The test in the current regulation differentiates between non-equity securities in denominations over and under €100,000, creating an artificial incentive to issue high-denomination securities.
12. Second, the government intends to clarify that necessary information may vary according to whether an offer of securities relates to a first-time admission to a market or is a secondary issuance.
13. Finally, to ensure that prospectuses contain information that investors need to make an informed assessment, the government intends that a modified necessary information test will apply to debt securities which focuses on the issuer or guarantor's creditworthiness, rather than prospects.

Facilitating forward-looking information

14. While retaining the existing statutory remedy for false, misleading or omitted information, the government intends to raise the threshold for liability that applies to certain categories of forward-looking information in prospectuses. This will ensure that a person responsible for the preparation of a prospectus is liable to pay compensation only if:
 - that person knew the statement to be untrue or misleading;
 - was reckless as to whether it was untrue or misleading; or
 - in the case of an omission, if that person knew the omission to be a dishonest concealment of a material fact.
15. The government intends to ensure that these disclosures are clearly labelled as forward-looking information to which that threshold applies, and that the FCA will be given responsibility for specifying the categories of forward-looking information to which the new liability threshold will or will not apply.

Junior markets

16. The government intends to add to the list of exemptions (described in paragraph 7) offers of securities which are or will be admitted to trading on certain multilateral trading facilities (MTFs). The government also intends to develop a mechanism by which admission documents published in accordance with the rules of the relevant MTFs are treated as a type of prospectus. This will not change the current system in which the operators of MTFs establish admission criteria and rules for the facilities they run, subject to FCA rules and oversight.

Scope of the new public offerings regime

17. The existing obligations under the Prospectus Regulation apply to offers of 'transferable securities' and this will continue to be the case under the new public offerings regime.
18. In April 2021, the government consulted on the regulation of non-transferable debt securities (NTDS).⁴ That consultation presented three options, one of which

⁴ 'The Regulation of non-transferable debt securities (mini-bonds)': a consultation, HM Treasury, April 2021. <https://www.gov.uk/government/consultations/regulation-of-non-transferable-debt-securities-mini-bonds-a-consultation>

was to bring NTDS within the scope of the Prospectus Regulation. The government's preferred option at this stage is to include non-transferable securities within the scope of the new public offerings regime, the reasoning for which is outlined in the government's 'Regulation of non-transferable debt securities (mini-bonds) consultation response'.

19. Certain offerings of securities will continue to be entirely out of scope of the new public offerings regime. These are the seven categories of security or offer currently listed in Article 1(2) and Article 1(3).

Private companies

20. The government will maintain the right of companies to offer securities to the public without admitting them to a stock market, and wishes to increase the capital raising options available to private (i.e. unlisted) companies, enabling them to grow their businesses quicker. As such, the government intends to remove the current requirement for an FCA-approved prospectus on offers over €8million in size to be published. Instead, securities will be allowed to be offered to the public provided the offer is made through a platform operated by a firm specifically authorised for the purpose. In connection with this, the government intends to create a new regulated activity covering the operation of an electronic platform for the public offering of securities, such as an equity crowdfunding platform.
21. It will then be for the FCA to determine the detailed requirements that such platforms will be subject to, including the levels of due diligence and disclosure with which issuers will need to comply. The government is still considering the threshold below which offers of securities from private companies are exempt from the prohibition on public offers (but still will be subject to the 'equality of information' requirement). The government will not exclude overseas private companies from offering securities to the UK public, subject to UK regulation.
22. As it takes forward this reform, the government is committed to ensuring that the UK securities-based crowdfunding industry continues to thrive, by promoting competition, protecting consumers, minimising costs for issuers raising funding, and ensuring any regulation is proportionate.

Public offerings from overseas

23. The government intends to develop a new regime of regulatory deference for offers into the UK of securities listed on certain designated overseas stock markets. This will permit offerings to be extended into the UK on the basis of offering documents prepared according to the rules of the relevant overseas jurisdiction and market. It will not feature FCA review and approval of the offering documentation and will instead place reliance on an assessment of overall effectiveness of the regulation of the overseas market in question. There will be appropriate powers for the FCA to intervene to protect UK investors in exceptional circumstances.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk