



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Guidance on Prospectus Regulatory Framework

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1. Introduction

1.1 Purpose of the document

In accordance with the provisions of Section 1363(8) of the Companies Act 2014, the Central Bank has issued guidance on a number of topics to assist users of the European Union (Prospectus) Regulations 2019 (the Irish Regulations), Part 4 (Prospectus Requirements) of the Central Bank (Investment Market Conduct) Rules (the IMC Rules) and related legislation. This guidance comes into effect at the date of publication.

It is not the policy of the Central Bank to provide legal advice on matters arising from Irish and EU prospectus law and any guidance provided in this document should not be construed as legal advice or a legal interpretation of Irish and EU prospectus law. It is a matter for any person who may fall within the scope of Irish and EU prospectus law to seek legal advice regarding the application or otherwise of Irish and EU prospectus law to their particular set of circumstances.

1.2 Irish and EU Prospectus Law

Persons falling within the scope of the Part 4 (Prospectus Requirements) of the IMC Rules should have regard to:

- A. 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, and repealing Directive 2003/71/EC (the Prospectus Regulation);
- B. Chapter 1, Part 23 of the Companies Act 2014;
- C. The Irish Regulations;
- D. Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (the Commission Delegated Regulation on Format and Content);
- E. Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the

European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301;

- F. Part 4 (Prospectus Requirements) of the IMC Rules;
- G. The ESMA Guidelines on Alternative Performance Measures" (the "APM Guidelines") (Reference: ESMA/2015/1415).
- H. To the extent that they are compatible with the Prospectus Regulation, ESMA's Recommendations for the consistent implementation of the Prospectus Regulation (ESMA/2013/319)¹ (the ESMA Recommendations); and
- I. The ESMA document entitled "*Questions and Answers on the Prospectus Regulation*" and, to the extent that it is compatible with the Prospectus Regulation, the ESMA document entitled "*Questions and Answers - Prospectuses*" (together the ESMA Q&As).

References in this Guidance to:

- "Irish and EU prospectus law" refer to the Prospectus Regulation, Chapter 1 of Part 23 of the Companies Act 2014, the Irish Regulations, the Commission Delegated Regulations referred to at D) and E) above, and Part 4 of the IMC Rules.
- "Relevant person" means an issuer, offeror or person seeking admission to trading as the case may be.

1.2.1 Compliance with ESMA Recommendations

In considering whether Irish and EU prospectus law has been complied with, the Central Bank will take into account whether a relevant person has complied with Paragraphs 1-127 and 146-172 of the ESMA Recommendations referred to at 1.2 (H) above, to the extent that these are compatible with the Prospectus Regulation.

¹ The ESMA Recommendations are available on ESMA's website:
www.esma.europa.eu

1.2.2 Compliance with the ESMA Q&As

ESMA has produced a document entitled “*Questions and Answers on the Prospectus Regulation*”. ESMA has also clarified that Q&As contained in the document entitled “*Questions and Answers – Prospectuses*” should continue to be applied to prospectuses drawn up under the Prospectus Regulation to the extent that they are compatible with it.

The ESMA Q&As aim to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of the Prospectus Regulation. They do this by providing responses to questions asked by the public, financial market participants, competent authorities and other stakeholders. The Q&A tool is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (the ESMA Regulation).

In considering whether Irish and EU prospectus law has been complied with, the Central Bank will take into account whether a relevant person has complied with the ESMA Q&As.

The ESMA Q&As are updated as required and published on ESMA’s [website](#). Please check the ESMA website to access the latest version of the ESMA Q&As.

1.2.3 Seeking admission to trading

Following approval of the prospectus, a relevant person is reminded that they must contact the relevant stock exchange and adhere to its applicable procedures where they are seeking to admit the relevant securities to trading.

2. Use of Languages

For the purposes of Regulation 36 of the Irish Regulations, a language accepted by the Central Bank means Irish or English. For this reason, a prospectus submitted to the Central Bank for approval must be drawn up in the Irish or English languages (an “approved language”).

Subject to compliance with Rule 43 of the IMC Rules, a relevant person may choose to include non-approved language text (“foreign language text”), which is considered to be any language other than Irish or English, with or within text of the prospectus.

3. Submission

3.1 Initial prospectus submission and review

A relevant person should submit the draft prospectus to the Central Bank in an acceptable electronic format² in accordance with the procedure and accompanied by the relevant submission template set out on the Central Bank's [website](#). Whenever possible, a relevant person should submit a version of the prospectus which has been marked or black lined to show changes which have been made against a prospectus which has been previously approved by the Central Bank. Insofar as possible, the initial draft of the prospectus should be in substantially complete form.

3.2 Subsequent submissions

Each subsequent draft of the prospectus should be accompanied by the comment sheet detailing the relevant resolutions to each of the comments raised by the Central Bank in respect of the previous submission.

3.3 Approval submission

A prospectus can be approved once all the relevant provisions of Irish and EU prospectus law have been fully addressed and all comments which have been raised by the Central Bank have been resolved to its satisfaction.

3.4 Documents to be submitted in draft form

A relevant person should submit at least the following documents to the Central Bank in draft form with the initial submission of the prospectus or, where appropriate, during the review process:

- any reasoned request to authorise the omission of information from the prospectus as referred to in Article 18 of the Prospectus Regulation;
- any request to make a notification as referred to in Article 25(1) or Article 26(2) of the Prospectus Regulation; and
- an appendix (where required) as referred to in Article 26(4) of Regulation (EU) 2017/1129.

3.5 Final Form of a Prospectus Submitted for Approval

To ensure compliance with Rule 47 of the IMC Rules, and Article 43 of the Commission Delegated Regulation on Format and Content, those preparing a prospectus are advised to have appropriate safeguards and an audit trail in

² "Acceptable electronic format" means searchable Word or pdf format.

place to ensure that the final version of a prospectus submitted for approval reflects fully and accurately working documents finalised with the Central Bank. The Central Bank relies on relevant persons and their advisors in this regard and would consider any failure or errors in the process a serious matter. It is a breach of Rule 47 to submit a prospectus purportedly in final form, which is missing any text previously included in the final draft of a prospectus agreed with the Central Bank irrespective of the reason, or which includes text not previously submitted in the final draft of a prospectus.

3.6 Agents

Where a relevant person appoints an agent to discharge its obligations arising under Irish and EU prospectus law, it is expected that the agent will also satisfy the provisions of Rule 35 of the IMC Rules. In this regard, a relevant person should ensure that it has appropriate contractual arrangements in place with each appointed agent to ensure adherence to and compliance with the provisions of Rule 35.

While a relevant person may appoint an agent to discharge its obligations arising under Irish and EU prospectus law, responsibility for ensuring adherence to and compliance with Irish and EU prospectus law rests with the relevant person. Therefore, any breach of Irish and EU prospectus law by an agent, appointed by a relevant person to act on its behalf, will be considered a breach of Irish and EU prospectus law by the relevant person. Agents must provide written confirmation that they have the authority to act and, where relevant, sign on behalf of a relevant person (including authority to apply to the Central Bank for approval of the prospectus and, where applicable, request that it be passported to another Member State). Agents must also confirm that they have written evidence of the granting of such authority. The Central Bank may, at its discretion, request sight of such written evidence.

4. Supplements

A prospectus cannot be amended by way of a supplement after the offer has closed or, as the case may be, trading on a regulated market has begun.

5. Final terms

5.1 General

Final terms issued after the approval of the relevant base prospectus must be in a format consistent with that set out in the base prospectus.

The final terms must give a clear indication of the base prospectus to which it is attached. The issuer's intention to seek admission to trading should also be detailed within the final terms.

Where the relevant person determines that final terms are not required for a particular issuance of securities in accordance with any relevant exemption, the relevant person should inform the Central Bank at the time of filing the final terms for the subsequent issuance of securities.

5.2 Filing of final terms with the Central Bank

All final terms filed with the Central Bank must be in final and definitive form.

The relevant person must file the final terms as soon as practicable but in any case no later than 5 business days after the earlier of the date of the offer or the date the securities are admitted to trading.

While not approved by the Central Bank, final terms may be subject to review by the Central Bank. The Central Bank reserves the right to request amendments to be made to final terms filed with it where deemed necessary. Any deviation from the Guidance set out in this document or from the procedures as indicated on the Central Bank's [website](#) may result in an amendment to the final terms being requested by the Central Bank.

Where the Central Bank approves a base prospectus, all final terms (including a summary, if applicable) relating to that base prospectus must be filed with the Central Bank, irrespective of the jurisdiction where the offer of securities and/or admission to trading is taking place.

5.3 Amendments to final terms

Amended final terms filed with the Central Bank after the original final terms have been filed will be accepted provided:

- A. amendments to the information in the original final terms do not constitute a significant new factor, material mistake or material inaccuracy and are not capable of affecting the assessment of the relevant securities requiring publication of a supplement;
- B. the amended final terms are not dated the same date as the original final terms but dated in the following format:
[Date of original final terms] (Amended [Date of amended final terms]); and
- C. the amended final terms should be filed as set out in paragraph 5.2.

Where final terms are amended, an investor must be able to identify the amendments in the final terms, in particular by way of footnotes. An amended summary should also be filed, if applicable.

In advance of filing amended final terms with the Central Bank, the issuer should be satisfied that it has reserved the right to amend the original final terms in the applicable terms and conditions relating to the securities set out in the base prospectus. It is the issuer's responsibility to ensure that it acts at all times in compliance with the applicable terms and conditions relating to the securities. As an alternative to filing amended final terms with the Central Bank, a relevant person may make an announcement via an RIS regarding the amendments to the information in the original final terms.

6. Omission of information – subsidiary guarantors

Where an issuer issues securities through a company within its group structure with the issuer's debt being guaranteed on a joint and several basis by a number or all subsidiaries of the main operating company, the following items must generally be disclosed in accordance with the Commission Delegated Regulation on Format and Content:

- A. consolidated accounts relating to the issuer; and
- B. information about each relevant guarantor as if it were the issuer of that same type of security that is the subject of the guarantee.

Therefore, the issuer is required to present separate single accounts relating to each company in the group guaranteeing the securities.

The Central Bank takes the view that in certain circumstances it may be more helpful to investors in making an informed assessment of the assets and liabilities of the issuer and any relevant guarantors for an issuer to provide consolidated financial statements in lieu of such single financial statements.

Such requests will be considered by the Central Bank on a case by case basis during the approval process. The Central Bank will provide an indication to the relevant person as to whether the omission request is likely to be authorised during the approval process. Formal approval of the omission request will only be provided on the date of approval of the prospectus. Such requests will normally only be authorised by the Central Bank where:

- A. the issuance is in denominations of greater than €100,000;
- B. guarantees are full and unconditional and joint and several;³

³ A guarantee will be full and unconditional if it is in respect of the full amount of the principal and interest guaranteed (i.e., it is not a partial guarantee or limited to a specific amount) and is not subject to the occurrence of specific conditions before a claim against the guarantor can be made if the issuer fails to make payment.

A guarantee may still be considered "full and unconditional" provided that the guarantee is expressed to be enforceable to the fullest extent permitted by applicable law except for (1)

- C. subsidiary guarantors are 100%-owned subsidiaries, excluding directors' shares or other non-material share interests issued for legal reasons; and
- D. if the consolidated accounts include both guarantor and non-guarantor companies and the non-guarantor companies represent a material⁴ amount of revenues, net income or assets, the financial information relating to each group must be separately presented in a note to the consolidated financial statements (covered by an audit opinion), presenting, in separate columns, the issuer, the guarantor subsidiaries (on a combined basis) and the non-guarantor subsidiaries (on a combined basis), with an additional column reflecting eliminating adjustments, if material.

The Risk Factors section of the prospectus should include a specific risk warning which:

- A. details that an omission request has been made and approval of the omission request has been granted by the Central Bank, as appropriate;
- B. outlines the specific information that has been omitted from the prospectus; and
- C. specifically draws the attention of investors to the equivalent information that has been included in the consolidated financial statements and any relevant notes to such financial statements.

7. Other Filings

7.1 Filing of documents produced in relation to takeovers, mergers and divisions

Rule 55 of the IMC Rules requires that “a person who relies on an exemption referred to in Article 1(4)(f) or (g), or Article 1(5)(e) or (f) of the Prospectus Regulation... shall file with the Bank the document that is to be made available to the public in accordance with that exemption... on the date that that document is made available to the public.”

The Central Bank does not carry out systematic checks that such documents comply with the requirements of Irish and EU prospectus law. It is the issuer's responsibility to ensure that the relevant legislative requirements have been met before it relies on the exemption.

limitations required by applicable law, or (2) intercreditor provisions customary in the European market and permitted by applicable law.

⁴ A threshold of 20% of EBIDTA (earnings before interest, depreciation, tax and amortisation) and net assets; i.e. Where 20% or more of EBIDTA and/or net assets are represented by subsidiaries who do not provide a guarantee, a split presentation will be required to be provided in the audited consolidated accounts.

7.2 Article 17 notifications

Article 17 of the Prospectus Regulation requires that, where the final offer price and/or amount of securities to be offered to the public cannot be included in the prospectus, the final offer price and amount of securities must be filed with the competent authority of the home Member State and made available to the public.

Such filing and making available to the public should occur as soon as the final offer price and/or amount of the securities which will be offered is known.

8. Transfer of approval

Article 20(8) of the Prospectus Regulation provides that, on request of a relevant person, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State.

The Central Bank may accept or reject, in its sole and absolute discretion, any such request for transfer received. Factors taken into account by the Central Bank in considering a transfer request may include:

- the domicile of the issuer;
- the country where the issuer's securities are admitted to trading; and
- the location of any offer proposed by the issuer.

This is not an exhaustive list and each transfer request is considered by the Central Bank on a case by case basis.

In the event the Central Bank accepts the transfer request, the Central Bank will contact the competent authority identified in the transfer request in order to determine whether that competent authority is willing to accept the transfer of approval function in relation to the relevant prospectus. Once preliminary agreement from the relevant competent authority to accept the transfer of approval function is received, the Central Bank will make a formal request for transfer to the relevant competent authority.

9. Maintenance of documentary evidence

Rule 49 and, where applicable, Rule 50 and 51 of the IMC Rules require a relevant person to maintain appropriate documentary evidence of the review carried out for the purposes of those Rules.

Appropriate documentary evidence generally means a dated and signed memorandum setting out the basis on which the relevant person is satisfied that:

- Ireland has been validly and correctly designated as Home Member State;
- it meets the eligibility criteria referred to in Article 14(1) of the Prospectus Regulation as regards preparation of a simplified prospectus under the simplified disclosure regime for secondary issuances; or
- it meets the eligibility criteria referred to in Article 15(1) of the Prospectus Regulation as regards preparation of an EU Growth prospectus, as applicable.

The content of the memorandum should evidence the exercise of a considered judgement. The memorandum should be available for disclosure to the Central Bank upon it making a request pursuant to Rule 35.

10. Collective Investment Undertaking of the Closed-End Type

For the purposes of the Prospectus Regulation, the Central Bank understands a “Collective Investment Undertaking of the Closed-End Type” to mean a collective investment scheme which does not permit the redemption of its units at the holder’s request. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from its net asset value should be regarded as equivalent to such redemption.

For this purpose, “action taken by a collective investment undertaking” does not include the appointment of a market maker or other intermediary to assist in the provision of liquidity to investors in the collective investment undertaking on the secondary market. The reference to “action taken by the collective investment undertaking” relates to collective investment undertakings which are obliged, under their fund rules, to ensure that, while investors cannot request redemption, they are assured that their holding can be sold at a price which does not significantly vary from the net asset value of the collective investment undertaking.

A collective investment undertaking which provides for the redemption of its units at the holder’s request, albeit that such redemption is subject to the discretion of its directors should not be regarded as a collective investment undertaking of the closed end type.

A collective investment undertaking which provides for the compulsory repurchase of its units at the sole discretion of its directors should be regarded as a collective investment undertaking of the closed end type where the collective investment undertaking is not obliged, under its fund rules, to ensure that, while investors cannot request redemption, they are

assured that their holding can be sold at a price which does not significantly vary from the net asset value of the collective investment undertaking.



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