



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2017

Prospectus Regulatory Framework Questions and Answers

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Prospectus Regulatory Framework Questions and Answers

This document sets out answers to queries which may arise in relation to the Prospectus Regulation, the Irish Regulations and the Prospectus Rules. It updates and replaces the Frequently Asked Questions on the Prospectus Regulation dated 23 May 2014 previously published by the Central Bank. It is published in order to assist in limiting uncertainty and is not relevant to assessing compliance with regulatory requirements. In addition to being published in the Central Bank's 'Markets Update' it will be posted on the Central Bank website and will be updated there occasionally as required. You should check the website from time to time in relation to any matter of importance to you to see if the position on a query may have altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

In this document:

“ESMA” refers to the European Securities and Markets Authority.

“ESMA Q&A on Prospectuses” refers to the document entitled “Questions and Answers – Prospectuses” published by ESMA and available from the ESMA website.

“ESMA Recommendations” refers to the ESMA update of the CCSR recommendations on the consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ref ESMA/2013/319 – 20 March 2013).

“Irish Regulations” refers to the Prospectus (Directive 2003/71/EC) Regulations 2005, as amended.

“Prospectus Directive” refers to 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 and amending Directive 2001/34/EC, as amended.

“Prospectus Handbook” refers to the Central Bank's Guide to Prospectus Approval in Ireland and which contains the Prospectus Rules.

“Prospectus Regulation” refers to Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, as amended.

“Prospectus Rules” refers to the rules issued by the Central Bank under Section 1363 of the Companies Act 2014.

“Relevant person” refers to the issuer, offeror or person seeking admission to trading, as the case may be.

“RTS on Approval, Publication and Advertisements” refers to Commission Delegated Regulation (EU) No 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

“RTS on Supplements” refers to Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.

Introduction

ID 1001

Q. Who is the competent authority in Ireland for the purposes of the Irish Regulations?

A. The Central Bank. Information regarding the Irish Regulations and related matters are available on the Central Bank's website [here](#).

ID 1002

Q. What do I do if I am uncertain about what the Irish Regulations or the Prospectus Rules require me to do?

A. The first step is to seek formal legal advice. It is not the policy of the Central Bank to provide legal advice on matters arising pursuant to the Irish Regulations, the Prospectus Rules, the Prospectus Regulation or the Prospectus Directive. It is a matter for any person who may fall within the scope of the Irish Regulations, the Prospectus Rules, the Prospectus Regulation or the Prospectus Directive to seek legal advice regarding their application or otherwise in the circumstances.

It is acknowledged, however, that even with the benefit of legal advice, a relevant person may be uncertain how to proceed during the prospectus approval process. For this reason, the Central Bank will enter into a process of dialogue with relevant persons and their appointed agents prior to the final submission of a prospectus for approval. The Central Bank does this in the public interest to facilitate the efficiency of the market.

Approval of a Prospectus

ID 1003

Q. When is the Central Bank the competent authority for the approval of a prospectus?

A. The Central Bank is the competent authority for the approval of a prospectus where Ireland is the home Member State, as defined in Regulation 2 of the Irish Regulations.

ID 1004

Q. If I have a query about the prospectus approval process, whom should I contact?

A. You can contact markets@centralbank.ie.

ID 1005

Q. Has the Central Bank issued rules and / or guidance on the process for the approval of a prospectus?

A. Yes. Part 4 of the Prospectus Rules sets out rules and guidance in relation to an application to the Central Bank for approval of a prospectus. Rules 4.4, 4.5 and 4.6 specify the text of certain statements which must be included in the prospectus (where they are applicable).

ID 1006

Q. What is the procedure for submitting a prospectus for approval?

A. A relevant person seeking approval of a prospectus is required to submit a draft form prospectus to the Central Bank for scrutiny in accordance with the procedures set out in the Prospectus Handbook. In order to avoid any delay in the approval of a prospectus, a relevant person should proactively raise all issues with the Central Bank at an early stage in the approval process and should address all issues/queries raised by the Central Bank during the approval process in a comprehensive and timely manner.

ID 1007

Q. In what order should information appear in a prospectus?

A. Article 25 (prospectus) and Article 26 (base prospectus) of the Prospectus Regulation set out the order in which certain information should appear in a prospectus. However, it is permitted to include a brief cover note that has general information about the issuer and the securities before the items prescribed in Articles 25 and 26 are disclosed.

Every prospectus must include a “Risk Factors” section. This section must set out information relating to all material risk factors specific to the issuer and the securities.

Further information on order of information and on risk factor disclosures is available from the ESMA Q&A on Prospectuses. Please refer to the questions and answers entitled “Order of information in the prospectus” and “Risk factors section”.

ID 1008

Q. Is it possible to publish a prospectus that is part of a larger document which includes information about securities that are not subject to a requirement to publish a prospectus?

A. The Central Bank will consider approving such a prospectus on a case by case basis, provided that:

- particularly where the denomination of the securities is below €100,000, the comprehensibility of the prospectus is not adversely effected; and
- it is clear from the document which parts constitute a prospectus that has been approved by the Central Bank and which parts do not.

Rule 4.6 of the Prospectus Rules specifies text which must be included in the prospectus in these circumstances.

ID 1009

Q. Can I omit information from a prospectus?

A. You may only omit required information from a prospectus if the Central Bank has authorised the omission of that information in accordance with Regulation 25 of the Irish Regulations. If you wish the Central Bank to authorise the omission of certain required information you must submit a request in writing to the Central Bank in accordance with Rule 4.11 of the Prospectus Rules.

In order to avoid any delays in the approval of a prospectus, you should submit an omission of information request at the earliest available opportunity and, if possible, in advance of the initial submission of a prospectus for review. At the latest, you should submit the omission request with the first draft of the prospectus submitted to the Central Bank.

ID 1010

Q. Has the Central Bank issued any rules and /or guidance on the process for filing documents from which information may be incorporated by reference?

A. Yes. Part 10 of the Prospectus Rules sets out rules and guidance in relation to filing documents with the Central Bank for the purposes of incorporation by reference.

ID 1011

Q. How do I go about having the approval of my prospectus transferred to a competent authority in another Member State when Ireland is my home Member State?

A. You should refer to Section 2.5 in Section Two of the Prospectus Handbook.

Ireland will remain as the home Member State under the Irish Regulations notwithstanding any agreement to transfer the approval of a prospectus to the competent authority of another Member State. Therefore, any transfer of approval will relate only to the prospectus which was the subject of the request and not to any other prospectus the relevant person may prepare in the future.

ID 1012

Q. When must I produce a supplement to a prospectus?

A. It is the responsibility of a relevant person to decide what it considers to be a significant new factor, material mistake or inaccuracy which would require publication of a supplement in accordance with Regulation 51 of the Irish Regulations. Also, the RTS on Supplements sets out certain circumstances when publication of a supplement is mandatory.

Further information on the circumstances where publication of a supplement is required is available from the ESMA Q&A on Prospectuses. Please refer to the questions and answers entitled “Supplement to prospectuses: interim financial information” and “Supplement to prospectuses: profit forecast”.

ID 1013

Q. When must I produce a supplement to a prospectus summary?

A. Where the summary contains information which corresponds to the information being supplemented in the body of the prospectus the summary must also be supplemented in accordance with Article 25(5) or Article 26 (7) of the Prospectus Regulation, as applicable.

ID 1014

Q. What are the acceptable languages for prospectuses submitted for approval to the Central Bank?

A. A prospectus may be drawn up in Irish or English. A relevant person may choose to include text in another language. In this case the relevant person must ensure that this text is accompanied by one of the statements

specified in Rule 6.1 of the Prospectus Rules.

Publication

ID 1015

Q. Are prospectuses approved by the Central Bank published on the Central Bank website?

A. Yes, unless a relevant person notifies the Central Bank in accordance with the procedure set out in Rule 5.1 of the Prospectus Rules.

ID 1016

Q. Where can I find a list of the prospectuses that have been approved by the Central Bank?

A. The list of approved prospectuses for the preceding 12 months can be found on the Central Bank's website [here](#).

ID 1017

Q. What method of publication must I adopt if I choose not to have my prospectus published on the Central Bank's website?

A. You must ensure that the prospectus is published in some other manner, in accordance with Regulation 45 of the Irish Regulations. When requesting the Central Bank not to publish your prospectus on the Central Bank website, you must specify, in that request, the alternative means of publication.

ID 1018

Q. How do I get a copy of a prospectus when it does not appear to be available on the Central Bank website?

A. You will find a notification on the Central Bank website directing you to the location where the prospectus may be obtained.

ID 1019

Q. I am looking for a prospectus which is more than 12 months old. Is it available on the Central Bank's website?

A. No. Only prospectuses which have been approved in the last 12 months are available on the Central Bank's website.

If you require a prospectus that is more than 12 months old, you should contact the relevant person directly. Prospectuses for debt issues may be available on the website of the Irish Stock Exchange (www.ise.ie). If Regulation 38 of the Irish Regulations applies, a prospectus may be available from the Companies Registration Office website (www.cro.ie).

Passport Notifications to and from other Member States

ID 1020

Q. Has the Central Bank issued any rules or guidance on passport notifications to and from other Member States?

A. Yes. You should refer to Part 7 of the Prospectus Rules with regard to notifications to other Member States and to Section 2.4 of the Prospectus Handbook with regard to notifications from other Member States.

ID 1021

Q. My prospectus includes a summary. Which host Member States require a translation of the summary?

A. ESMA has published a guide entitled “*Languages accepted for the purpose of the scrutiny of the Prospectus and requirements of translation of the Summary*”, which sets out the requirements for each Member State. This guide is available on the ESMA website.

Where a translation of the summary is required, you should ensure that it is an exact translation of the summary contained in the approved prospectus. You should have regard to the question and answer entitled “*Quality of translations of passported prospectuses*” included in the ESMA Q&A on Prospectuses, also available on the ESMA website.

ID 1022

Q. Can I include a foreign language summary within the prospectus as part of a single PDF document?

A. Yes. A foreign language summary may be included in the prospectus or prepared as a separate document.

ID 1023

Q. When can the offer of securities to the public or admission to trading begin in a host Member State?

A. Notwithstanding that you have received confirmation that the Central Bank has sent a passport notification to a host Member State, you cannot assume that activity can commence in that Member State. You should seek legal advice to ensure that there are no additional national legal or regulatory requirements to be complied with in the host Member State.

ID 1024

Q. If a passport notification has been sent by the Central Bank to a host Member State(s) in accordance with Regulation 56 of the Irish Regulations, do I need to submit a passport request to the Central Bank in respect of any subsequent supplement to that prospectus?

A. No. The Central Bank will automatically send a passport notification in respect of a supplement to a prospectus to a host Member State(s) where it has previously sent a passport notification in relation to the prospectus.

ID 1025

Q. Has the Central Bank issued any guidance on producing a new or updated translation of the summary where a passported prospectus is supplemented?

A. Yes. You should refer to Sections 2.4.18 and 3.4.4 of the Prospectus Handbook.

ID 1026

Q. Where can I find a list of passport notifications from other Member States?

A. The list of all passport notifications received from other Member States for the preceding 12 months can be found on our website [here](#).

ID 1027

Q. Can I get a copy of a prospectus which has been passported from another Member State from the Central Bank's website?

A. No. Prospectuses passported to Ireland are not available on our website and the Central Bank cannot provide copies of such prospectuses.

However, ESMA has compiled a list of prospectuses approved within at least the last 12 months based on notifications made to it by national competent authorities of Member States of the European Economic Area. This list is available on ESMA's Registers website [here](#).

Alternatively, you could contact the relevant person directly to obtain a copy

of the prospectus or consult the website of the competent authority of the relevant home Member State to find out how the prospectus is being made available.

Employee Share Schemes

ID 1028

Q. Where can I find guidance in relation to employee share scheme prospectuses?

A. This matter is addressed in the ESMA Q&A on Prospectuses which is available from the ESMA website.

Formal Notice

ID 1029

Q. What is a formal notice and when is it required?

A. Where Ireland is the home Member State a formal notice that a prospectus has been published is required under Regulation 46 of the Irish Regulations, in relation to a prospectus for equity securities (other than equity securities issued by a collective investment undertaking).

A relevant person must publish the formal notice within the timeframe and in accordance with the requirements set out in Article 9 of the RTS on Approval, Publication and Advertisements.

Exemption from publishing a Prospectus

ID 1030

Q. Has the Central Bank issued any rules or guidance in relation to exemptions from the obligations to publish a prospectus in the context of a merger or take-over?

A. Yes, in Part 9 of the Prospectus Rules.

ID 1031

Q. Do I need approval from the Central Bank to avail of an exemption from the obligation to publish a prospectus as set out in Part 3 of the Irish Regulations?

A. No. You must be satisfied that you can avail of the exemption. It is not the policy of the Central Bank to provide legal advice on matters arising pursuant to the Irish Regulations, the Prospectus Rules, the Prospectus Regulation or the Prospectus Directive. It is a matter for any person who may fall within the scope of the Irish Regulations, the Prospectus Rules, the Prospectus Regulation or the Prospectus Directive to seek legal advice regarding their application or otherwise in the circumstances.

The Central Bank recommends that a relevant person maintains adequate and appropriate documentary records to support any decision to avail of an exemption, which will be available to the Central Bank on request.

Securities already Admitted to Trading on a Regulated Market in another Member State

ID 1032

Q. I have a valid base prospectus which was approved within the last 12 months in another Member State. Existing securities issued off that base prospectus are admitted to trading on a regulated market in that Member State. How can I arrange for those securities to be admitted to trading on a regulated market in Ireland?

A. As the approval granted in the other Member State remains valid, it is open to you to request the relevant competent authority to submit a passport notification in respect of the base prospectus to the Central Bank.

The disclosure in the base prospectus must allow for the passporting of the securities into Ireland and for their admission to trading on a regulated market in Ireland. If not, a supplement to the prospectus is required in accordance with Article 2(f) of the RTS on Supplements.

You may also find it useful to refer to the question and answer entitled “*More than one final terms for a specific issue of bonds*” in the ESMA Q&A on Prospectuses which includes information on filing a replacement set of final terms where a supplement is required.

ID 1033

Q. I want to rely on the exemption from the obligation to publish a prospectus in Regulation 11(1)(h) of the Irish Regulations. Do I have to publish a summary where the securities that are to be admitted to trading in Ireland are non-equity securities having a denomination of at least €100,000?

A. Yes. Publication of a summary is a condition to availing of the exemption under Regulation 11(1)(h), including for non-equity securities with a denomination of at least €100,000.

You are not obliged to publish a summary but, if you do not do so, you cannot rely on the exemption in Regulation 11(1)(h).

ID 1034

Q. I want to arrange for a number of different securities to be admitted to trading on a regulated market in Ireland without producing a prospectus, in reliance on the exemption in Regulation 11(1)(h) of the Irish Regulations. Will the Central Bank require me to publish a separate summary for each different security?

A. In general, you must publish a separate summary, which complies with the requirements of Regulation 21 of the Irish Regulations, for each security. However, a single summary may be produced for multiple securities in the circumstances and in accordance with the requirements set out in Article 24(3) of the Prospectus Regulation. This is subject to the comprehensibility of such a single summary not being affected and to compliance with the limitations on the size of the summary set out in Article 24(1) of the Prospectus Regulation. You should also refer to the question and answer entitled “Format for the individual summary relating to several securities” in the ESMA Q&A on Prospectuses for further information.

ID 1035

Q. I intend to rely on the exemption from the obligation to publish a prospectus in Regulation 11(1)(h) of the Irish Regulations. Will the summary, that has to be published by me in order to rely on that exemption, be reviewed by the Central Bank?

A. No. The Central Bank will not review a summary document prepared by an issuer seeking to rely on Regulation 11(1)(h). However, this is without prejudice to the capacity of the Central Bank to impose a sanction pursuant to Part 15 of the Irish Regulations where there is a contravention of prospectus law.

ID 1036

Q. I intend to rely on the exemption from the obligation to publish a prospectus in Regulation 11(1)(h) of the Irish Regulations. How must the summary, that has to be published by me in order to rely on that exemption, be made available to the public?

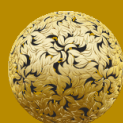
A. The summary, which must be published in Irish or English, must be made available to the public in the manner specified in Regulation 45 of the Irish Regulations. For example, the summary could be made openly available in electronic form on your website.

The Central Bank does not publish summary documents which it has not approved on its website.

T +353 1 224 6000

www.centralbank.ie

markets@centralbank.ie



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Bosca PO 559, Baile Átha Cliath 1, Éire
PO. Box No 559, Dublin 1, Ireland