



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2014

Frequently Asked Questions Prospectus Regulation

23 May 2014




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These frequently asked questions are for guidance purposes only. It is a matter for any relevant person who may fall within the scope of the Prospectus (Directive 2003/71/EC) Regulations 2005 or the Commission Regulation (EC) No. 809/2004 or the Prospectus Directive 2003/71/EC or the Prospectus Rules of the Central Bank of Ireland to seek formal legal advice.

INTRODUCTION

Q1. What legislation transposed the Prospectus Directive 2003/71/EC (the Directive) in Ireland?

A. The legislation implementing the Directive in Ireland is the  [Prospectus \(Directive 2003/71/EC\) Regulations 2005](#) (the Regulation). The Regulation came into force by Statutory Instrument on 1 July 2005.

An issuer, offeror or person seeking admission to trading (a relevant person) falling within the scope of the Regulation must have regard to:

1. Part 5 of the [Investment Funds, Companies and Miscellaneous Provisions Act, 2005](#) (the Act of 2005);
2. the Regulation;
3. [Commission Regulation \(EC\) No. 809/2004](#) (the Prospectus Regulation), as amended from time to time;
4. ESMA's update of the CESR recommendations - The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive" (Reference: ESMA/2013/319);
5. the  [Prospectus Handbook](#) published by the Central Bank of Ireland (which incorporates the Prospectus Rules); and
6. ESMA's Questions and Answers on Prospectuses which is available on the ESMA website (<http://www.esma.europa.eu/>).

Q2. Who is competent authority in Ireland for the purposes of the Regulation?

A. The Central Bank of Ireland is the competent authority in Ireland for the purposes of the Regulation.

Q3. Who is ESMA?

A. The European Securities and Markets Authority ("ESMA") is an independent EU Authority. ESMA continues the work of CESR with new competencies and powers.

Prior to the establishment of ESMA, the role of CESR included the improvement of co-ordination among securities regulators and to work to ensure more consistent and timely day-to-day implementation of

Frequently Asked Questions Prospectus Regulation

community legislation in Member States. Further information about ESMA can be found on its website (www.esma.europa.eu).

Q4. What do I do if I am uncertain about what the Regulation 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 of Ireland to provide legal advice on matters arising pursuant to the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules. It is a matter for any relevant person who may fall within the scope of the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules to seek legal advice regarding the application or otherwise of the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules to their particular set of 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 of Ireland 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 of Ireland does this in the public interest to facilitate the efficiency of the market.

APPROVAL OF A PROSPECTUS

Q5. Has the Central Bank of Ireland issued any rules/guidance in relation to the process for the approval of a prospectus?

A. Yes. Please refer to Part 4 of the Prospectus Rules for rules/guidance in relation to an application to the Central Bank of Ireland for approval of a prospectus.


Where Rules 4.4, 4.5 and/or 4.6 are applicable, the wording specified in those rules must be the wording that is included in a prospectus.

Q6. When is the Central Bank of Ireland the competent authority for the approval of a prospectus?

A. The Central Bank of Ireland is the competent authority for the approval of a prospectus where Ireland is the relevant person's Home Member State.

Regulation 2 of the Regulation sets out the definition of "Home Member State".

Q7. 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 of Ireland 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

Frequently Asked Questions Prospectus Regulation

proactively raise all issues with the Central Bank of Ireland at an early stage in the approval process and should address all issues/queries raised by the Central Bank of Ireland during the approval process in a comprehensive and timely manner.

Q8. In what order should information appear in a prospectus?

A. Articles 25 and 26 of the Prospectus Regulation state that information should appear in a prospectus in the following order:

1. a table of contents;
2. the summary;
3. the risk factors; and
4. the other information items included in the schedules and building blocks according to which the prospectus is drawn up.

The order prescribed by Articles 25 and 26 is mandatory. However, a relevant person may include a brief cover note that has general information about the relevant person and the securities before the items prescribed in Articles 25 and 26 are stated in the prospectus.

Every prospectus must include a "Risk Factors" section. This section must set out information relating to **all** material risk factors specific to the relevant person and the securities.

Relevant persons should have regard to the questions entitled "Order of information in the prospectus" and "Risk factors section" in ESMA's Questions and Answers on Prospectuses which is available on the ESMA website (<http://www.esma.europa.eu/>).

Q9. What is the scope of the Central Bank of Ireland's approval?


A. The Central Bank of Ireland only approves a prospectus as meeting the requirements imposed under Irish and EU prospectus law pursuant to the Directive. On a case by case basis, we do permit a relevant person to publish a document which meets all the requirements of Irish and EU prospectus law but which also includes additional information which is not being published pursuant to the provisions of such law.

Q10. Can I include a summary in a prospectus on a voluntary basis?

A. A prospectus relating to the admission to trading on a regulated market of non-equity securities having a denomination of at least €100,000 is not required to contain a summary. However, if a relevant person voluntarily includes a section described as a "summary" in a prospectus, that summary must comply with all the requirements relating to summaries. If a relevant person uses another name to describe this section (e.g., overview, etc), the section will not be expected to comply with the requirements relating to summaries.

Relevant persons should have regard to the question entitled "Inclusion of a summary on a voluntary basis in the prospectus" in ESMA's Questions and Answers on Prospectuses which is available on the ESMA website (<http://www.esma.europa.eu/>).

Q11. Can I omit information from a prospectus?

A. You may only omit information from a prospectus if the Central Bank of Ireland has authorised the omission of that information. A relevant person who wishes the Central Bank of Ireland to authorise the omission of certain information required by the Regulation or the Prospectus Regulation is required to submit a request in writing to the Central Bank of Ireland. The request must detail the specific information concerned and the specific reasons for its omission. The request must also state the reasons the relevant person is of the opinion that one or more of the grounds set out in Regulation 25 of the Regulation applies. In order to avoid any delays in the approval of a prospectus, a relevant person should submit an omission of information request with the first draft of the prospectus submitted to the Central Bank of Ireland for scrutiny. A relevant person must have regard to Rule 4.11 of the Prospectus Rules and should consult the guidance contained in the  [Prospectus Handbook](#).

Q12. What information can I incorporate by reference?

A. Information may be incorporated in a prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the Home Member State or filed with it in accordance with the Directive or Directive 2004/109/EC. A relevant person must have regard to Regulation 27 of the Regulation when incorporating information by reference in a prospectus.

Updated 23 May 2014.

Q13. If Ireland is the relevant person's Home Member State, can the approval of a prospectus be transferred to a competent authority in another Member State?

A. In accordance with Regulation 40 of the Regulation, the Central Bank of Ireland may, with the consent of the competent authority in another Member State, transfer the function of approving a prospectus to the competent authority of another Member State. A relevant person seeking such a transfer must submit a detailed written request to the Central Bank of Ireland, in the form set out in the Prospectus Handbook, setting out the reasons for the proposed transfer and the name of the competent authority to which the transfer is sought. The Central Bank of Ireland will consider each request received on a case by case basis to determine whether or not to transfer the function of approving a prospectus and will contact the competent authority in the other Member State directly in this regard. The Central Bank of Ireland will only consider transferring the function of approving a prospectus if the relevant person can demonstrate that it would contribute to the proper functioning of the capital markets and the protection of investors. A relevant person will be advised of the response to the request for transfer of approval within three days of a decision being made by the Central Bank of Ireland.

A relevant person should be aware that any transfer of approval will relate only to the specific prospectus of the relevant person which was the subject of the request and not to any other prospectus the relevant person may prepare in the future. A separate request for the transfer of approval for each future prospectus must be submitted to the Central Bank of Ireland for its consideration on an individual basis.

Frequently Asked Questions Prospectus Regulation

In addition, a relevant person should also be aware that Ireland will remain as the Home Member State of the relevant person under the Regulation notwithstanding any agreement to transfer the approval of a prospectus to the competent authority of another Member State.

A relevant person considering making a request for transfer of approval is advised to highlight this to the Central Bank of Ireland at the earliest possible opportunity.

Updated 23 May 2014.

Q14. When can I produce a supplement?

A. Pursuant to Regulation 51 of the Regulation, every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer or, as the case may be, the time when trading on the regulated market begins, shall be included in a supplement. It is the responsibility of the relevant person to decide what it considers to be a significant new factor, material mistake or inaccuracy.

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.

Where an announcement is made by a relevant person, which amends a previously approved prospectus after the offer has closed and/or trading on a regulated market has begun, the relevant person must be satisfied that it has the appropriate legal power to prepare and issue such an announcement. For the avoidance of doubt, announcements cannot be used where a prospectus or supplement would otherwise be required.

Relevant persons should have regard to the guidance provided in Rule 4.10 of the Prospectus Rules.

Updated 23 May 2014.

Q15. When must I produce a supplement?

A. With effect from 5 May 2014, a supplement to the prospectus **must** be published in any of the circumstances set out in [Commission Delegated Regulation \(EU\) No 382 of 2014](#) supplements 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 (“RTS on Supplements”).

Article 2 of the RTS on Supplements sets out the circumstances that require a supplement and the types of issues to which it applies.

Updated 5 May 2014.

Q15A. When must I produce a supplement of the summary of a base prospectus?

Where the summary in a base prospectus contains information which corresponds to the information being supplemented in the body of the base prospectus the summary must also be supplemented in accordance with Article 26 (7) of the Prospectus Regulation.

Updated 23 May 2014

Q15B. When must I produce a translation of a summary in a supplemented base prospectus?

As per Regulation 58 of the Regulation, supplements are subject to the same notification requirements as the base prospectus.

When supplements are submitted for approval they must be accompanied by all translations required by each host Member State to which the base prospectus was passported. Please see the ESMA document titled "Languages accepted for the purpose of the scrutiny of the Prospectus and requirements of translation of the Summary".

Updated 23 May 2014

Q16. What languages are acceptable to the Central Bank of Ireland when a relevant person is drawing up a prospectus?

A. For the purposes of Part 10 of the Regulation a language accepted by the Central Bank of Ireland means Irish or English. For this reason, a prospectus submitted to the Central Bank of Ireland for approval must be drawn up in the Irish or English language.

A relevant person may choose to include foreign language text, which is considered to be any language other than Irish or English, with the prospectus. However, a relevant person is required to ensure that where foreign language text is included, one of the statements specified in Rule 6.1 of the Prospectus Rules must be included in the prospectus.

PUBLICATION OF A PROSPECTUS**Q17. Does the Central Bank of Ireland publish approved prospectuses on its website?**

A. Yes, unless the Central Bank of Ireland receives a non-publication request pursuant to Rule 5.1 of the Prospectus Rules before the approved prospectus is published.

Q18. Has the Central Bank of Ireland issued any rules/guidance in relation to the publication of an approved prospectus?

A. Yes. Please refer to Part 5 of the Prospectus Rules for rules/guidance in relation to the publication of prospectuses.

Q19. Where can I find a list of the prospectuses that have been approved by the Central Bank of Ireland?

A. The list of all approved prospectuses for the preceding 12 months can be found on the Central Bank of Ireland's website by clicking on the "Approved Prospectuses" icon on the homepage.

Q20. Can I choose not to have my prospectus published on the Central Bank of Ireland's website?

A. Yes. Rule 5.1 of the Prospectus Rules covers non-publication of a prospectus by the Central Bank of Ireland. A relevant person must submit a non-publication request to the Central Bank of Ireland before the prospectus is published on our website. A non-publication request received after the prospectus has been published on our website will not be accepted.

Q21. If I choose not to have my prospectus published on the Central Bank of Ireland's website, what method of publication does the Regulation allow me to adopt to ensure the prospectus is made available to the public?

A. If a relevant person requests that a prospectus should not be published on our website, a relevant person must ensure that the prospectus is published in accordance with one or more of the methods of publication set out in Regulation 45 of the Regulation. The non-publication request to the Central Bank of Ireland should explicitly state the alternative method(s) of publication chosen by the relevant person.

Q22. A relevant person appears to have chosen not to publish a prospectus on the Central Bank of Ireland's website and instead make it available by some other method in accordance with Regulation 45 of the Regulation. How do I get a copy of the prospectus?

A. The Central Bank of Ireland will publish a notification on our website outlining where the prospectus has been made available by the relevant person. A person seeking a copy of the prospectus should review the details in the notification to determine where a copy of the prospectus can be obtained.

Q23. I am looking for a prospectus which is more than 12 months old, is it available on the Central Bank of Ireland's website?

A. No, only valid prospectuses (i.e., less than 12 months old) are available on our website. If you require a prospectus that is more than 12 months old, you should contact the relevant person directly. Prospectuses for debt issuers may be available on the ISE's website (www.ise.ie). If Regulation 38 of the Regulation applies, a prospectus may be available, for a fee, from the Companies Registration Office website (www.cro.ie).

PASSPORT NOTIFICATIONS TO OTHER MEMBER STATES

Q24. Has the Central Bank of Ireland issued any rules/guidance in relation to the sending of passport notifications to other Member States?

A. Yes. Please refer to Part 7 of the Prospectus Rules for rules/guidance in relation to passport notifications to other Member States.

Q25. Where my prospectus includes a summary, which host Member States require a translation of the summary?

A. ESMA has produced a document 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 [here](#).

Where a translation of the summary is required, a relevant person should ensure that it is an exact translation of the summary contained in the approved prospectus. A relevant person should have regard to the question entitled "Quality of translations of passported prospectuses" of ESMA's Questions and Answers on Prospectuses which is available on the ESMA website (<http://www.esma.europa/>).

Q26. Can I include a foreign language summary within the prospectus as a single PDF document?

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

Updated 23 May 2014.

Q27. If a relevant person has received confirmation from the Central Bank of Ireland that a passport notification has been issued in relation to a prospectus to a host Member State(s), can an offer of securities to the public begin or admission to trading take place in the host Member State(s) immediately?

A. No. Once a relevant person has received confirmation from the Central Bank of Ireland that a passport notification has been issued in relation to a prospectus to a host Member State(s), a relevant person should contact the host Member State(s) directly to ensure that there are no additional national legislative provisions to be complied with before an offer of securities to the public can begin or admission to trading on a regulated market can take place in that host Member State(s).

Q28. If a passport notification in respect of a prospectus has been issued by the Central Bank of Ireland to a host Member State(s) in accordance with Regulation 56 of the Regulation, is a relevant person required to submit a passport request to the Central Bank of Ireland in respect of any subsequent supplement to that prospectus?

A. No. The Central Bank of Ireland will automatically issue a passport notification in respect of a supplement to a host Member State(s) where it has previously issued a passport notification to that host Member State(s) in respect of the related approved prospectus, in accordance with Guidance 7.1(B) provided in relation to Rule 7.1 of the Prospectus Rules.

Q29. Deleted 23 May 2014.

PASSPORT NOTIFICATIONS FROM OTHER MEMBER STATES**Q30. Has the Central Bank of Ireland issued any rules/guidance in relation to passport notifications from other Member States?**

A. Yes. Please refer to Section 2.4 of the Prospectus Handbook for guidance in relation to passport notifications from other Member States.

Q31. Where can I find a list of passport notifications from other Member States?

A. The list of all passport notifications received by the Central Bank of Ireland from other Member States for the preceding 12 months can be found on our website by clicking on the "Approved Prospectuses" icon on the homepage and choosing "Passport Notifications".

Q32. Can I get a copy of a prospectus that has been passported from another Member State from the Central Bank of Ireland?

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

However, ESMA has compiled the list of prospectuses and any supplements thereto on the basis of notifications made to it by the national competent authorities of the Member States of the European Economic Area (EEA). This list is available on ESMA's Registers website (<http://registers.esma.europa.eu/publication/searchProspectus>).

Alternatively, persons seeking copies of any such prospectus should contact the relevant person directly to obtain a copy of the prospectus or, alternatively, consult the website of the competent authority of the relevant Home Member State to find out how the prospectus is being made available by the relevant person.

Updated 23 May 2014.

EMPLOYEE SHARE SCHEME PROSPECTUSES**Q33. Has the Central Bank of Ireland issued any rules/guidance in relation to employee share scheme prospectuses?**

A. No. This matter is dealt with in the question entitled "Employee Share Scheme Prospectuses" in ESMA's Questions and Answers on Prospectuses document which is available on the ESMA website (<http://www.esma.europa.eu/>).

FORMAL NOTICE**Q34. When is publication of a formal notice required?**

A. Pursuant to Regulation 46 of the Regulation a formal notice must be published in respect of a prospectus relating to equity securities (other than equity securities issued by a collective investment undertaking subject to the Regulation).

Relevant persons must also ensure that the formal notice is published within the timeframe set out in Article 31(2) of the Prospectus Regulation and in the type of newspaper(s) specified in Article 30 of the Prospectus Regulation.

Relevant persons must ensure that a formal notice contains the information required by Article 31(3) of the Prospectus Regulation.

DOCUMENT EQUIVALENT TO A PROSPECTUS**Q35. Pursuant to Part 3 of the Regulation, is my take-over or merger document deemed to be equivalent to a prospectus?**

A. Only if the Central Bank of Ireland deems this to be the case. A relevant person may be required to make a detailed written submission to the Central Bank of Ireland requesting the Central Bank of Ireland to assess the equivalence of information contained in the document in accordance with Rule 9.1 of the Prospectus Rules.

EXEMPTION FROM PUBLISHING A PROSPECTUS**Q36. I am availing of an exemption from the obligation to publish a prospectus set out in Part 3 of the Regulation. Do I need to get agreement from the Central Bank of Ireland to avail of the exemption?**

A. No. The relevant person must be satisfied that they can avail of the exemption. It is not the policy of the Central Bank of Ireland to provide legal advice on matters arising pursuant to the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules. It is a matter for any relevant person who may fall within the scope of the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules to seek legal advice regarding the application or otherwise of the Regulation or the Prospectus Regulation or the Directive or the Prospectus Rules to their particular set of circumstances. The Central Bank of Ireland recommends that a relevant person should ensure that it maintains adequate and appropriate documentary records to support its decision to avail of the exemption. These documentary records must be made available to the Central Bank of Ireland upon request.

ADMINISTRATIVE SANCTIONS

Q37. Am I subject to administrative sanctions?


A. In accordance with the provisions of Section 51(7) of the Act of 2005 and Part 15 of the Regulation, the Central Bank of Ireland may impose a sanction for the contravention of Irish and EU prospectus law, with regard to the following:

1. Part 5 of the Act of 2005;
2. the Regulation;
3. the Prospectus Regulation;
4. the ESMA Recommendations;
5. the ESMA Questions and Answers on Prospectuses; and
6. the Prospectus Rules.

Part 15 of the Regulation sets out the administrative sanctions that may be imposed.

CENTRAL BANK OF IRELAND GUIDANCE

Q38. Has the Central Bank of Ireland published any guidance which I should be aware of?

A. The Central Bank of Ireland has published the  [Prospectus Handbook](#), which contains the Prospectus Rules issued under Section 51 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, the ESMA's Questions and Answers on Prospectuses and Central Bank of Ireland guidance on the Prospective Directive.

CONTACTS

Q39. If I have a query in relation to the prospectus approval process, whom should I contact?

A. The contact details for the Corporate Finance Division of the Central Bank of Ireland and the Irish Stock Exchange can be found on the 'Contact Us' page on the Securities Markets Regulation section of our [website](#).

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