news letter

03/18

THE NEW PROSPECTUS EU REGULATION-2017/1129

Relaxed obligations on the publication and approval of prospectuses







A. INTRODUCTION

On 30th June 2017, the European Parliament and the European Council published in the Official Journal of the European Union the Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the "New Prospectus Regulation").

B. ENFORCEMENT

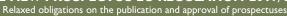
The enforcement of the New Prospectus Regulation is gradual taking place in three stages, ultimately replacing the EU Directive 2003/71 in its entirety and it is directly applicable on all Members States. This means that any national legislation currently in place transposing the EU Directive 2003/71, shall be repealed. This also applies to Cyprus legislation, L114(I) /2005, on the conditions of making a public offer and publishing of a prospectus approved by the Cyprus Securities and Exchange Commission ("CySec").

The New Prospectus Regulation has entered into force on 20th July 2017 and applies as follows:

- 1. From 20th July 2017, in relation to Article 1(5) (a), (b), (c) and second subparagraph of Article 1(5) of the New Prospectus Regulation;
- 2. From 21st July 2018, in relation to Articles 1(3) and 3(2) of the New Prospectus Regulation; and
- 3. From 21st July 2019, in relation to the remainder of the provisions of the New Prospectus Regulation

In effect, as from July 2017, there is no obligation to publish a prospectus for the admission to trading on a regulated market on any of the following:

- a. Securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market;
- b. Shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of Article 1(5);
- c. Securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), Article 59(2) or Article 63,(1) or (2), of Directive 2014/59/ EU.





Following the immediate application of the above provisions, CySEC issued an announcement dated 21.02.2018 suggesting the repeal of Article 7(1) (a) and (g) of national legislation L114(I)/2005 with immediate effect.

C. NEW OPPORTUNITIES FOR SMALL SCALE OFFERINGS AS FROM 21ST JULY 2018 - PUBLIC FUNDING UP TO €1.000.000 WITHOUT A PROSPECTUS OR APPROVAL

According to Article 1(3), the New Prospectus Regulation shall not apply to an offer of securities to the public with a total consideration in the European Union of less than €1.000.000, which shall be calculated over a period of 12 months.

In such a case public funding up to €1.000.000 may be raised without the need to issue and publish a prospectus and without the approval of CySec.

Nevertheless, Members States maintain the power to require other disclosure requirements at national level to the extent that such requirements do not constitute a disproportionate on unnecessary burden.

The benefit of the increase of the minimum threshold from €100.000 to €1.000.000 is evident for small scale offers where the cost of producing a prospectus in accordance with the prospectus laws is likely to be disproportionate.

Additionally, Article 3(2) of the New Prospectus Regulation gives the discretion to Members States to exempt offers of securities to the public from the obligation to publish a prospectus provided that the total consideration of each such offer in the European Union is less than a monetary amount calculated over a period of 12 month which shall not exceed €8.000.000 (compared to the current €5.000.000 limit).

This means that Member States are now free to set out in their national laws a threshold between €1.000.000 and €8.000.000, below which, the exemption to publish a prospectus would apply. Such exempted offers of securities, though, cannot benefit from the passporting regime under the New Prospectus Regulation.

In view of the above forthcoming changes, CySEC suggested in its announcement the repeal of sections 3(2)(h) and 4 (3) (e) of national legislation L114(I)/2005 as from 21st July 2018.

In exercising the discretionary powers conferred on Members States, CySEC is yet expected to introduce relevant legislation.



Relaxed obligations on the publication and approval of prospectuses

C. CONCLUSION

The New Prospectus Regulation introduces a significant regulatory change constituting an essential step towards the completion of the Capital Markets Union. Among others, it gives the benefit to small scale companies to raise funding and capital in the EU easier and cheaper. How the Members States will react to the discretionary powers coffered upon them by the New Prospectus Regulation, remains to be seen.

March 2018

Author:
ANDRI MICHAEL
Manager-Lawyer
Andri.Michael@kinanis.com

Disclaimer: This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.



Relaxed obligations on the publication and approval of prospectuses

Our Firm

Kinanis LLC, a law and consulting firm, is one of the leading and largest business law firms in Cyprus and advises for over 35 years the international investor and private clients on all aspects of law, tax and accounting.

Kinanis LLC absorbed the business of its shareholders which are in the legal and consulting profession since 1983, with local and international dimensions.

Experience and practice over the years brought forward the need for transformation from a traditional law firm to a more innovative multidisciplinary firm providing a full range of services combining law and accounting with the extensive expertise in corporate and tax advice to ensure that our clients will obtain the best possible spherical advice adopting the principle as to the services offered "All in one place", so that the client will find a quick, correct and efficient solution to its daily legal, accounting and tax issues in a trustworthy environment.

This combination of legal, accounting and tax services through our well qualified personnel and our involvement and participation in international transactions over the years, have established our firm as one of the key players in the field. Our involvement in international financial transactions has also provided us with the extensive expertise in representing groups, corporations, funds as well as the private client.

The firm is staffed with around 80 young, energetic and ambitious professionals, including lawyers, accountants and administrators who provide prompt, efficient and high quality services and who are capable of meeting the current demanding challenges of the local and international business environment.

We always look to give solutions in a simple and as possible quick way focusing on the needs of each client trying to anticipate the issues before becoming a problem.

Kinanis LLC

Lawyers' Limited Company

12 Egypt Street, 1097, Nicosia P.O. Box 22303, 1520 Nicosia, Cyprus

Tel: + 357 22 55 88 88 | Fax: + 357 22 66 25 00

E-mail: KinanisLLC@kinanis.com | Web site: www.kinanis.com