

news letter

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THE NEW PROSPECTUS EU REGULATION-2017/1129

Relaxed obligations on the publication and approval of prospectuses


KINANIS
LAW FIRM

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 This means that any national legislation currently in place transposing the EU Directive 2003/71, shall be repealed.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 or 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.

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.

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