

# Bird & Bird & Capital Markets Group: PLC Update

*April 2018*

## *ESMA publishes proposed new rules on the format, content, scrutiny and approval of prospectuses*

The European Securities and Markets Authority ("ESMA") has published its final technical advice ("Report") containing proposed new rules on the form and content of prospectuses, as well as the manner in which they will be scrutinised and approved by national competent authorities.

Subject to the proposals being endorsed by the European Commission, the new rules are to be adopted by January 2019.

### **Background**

The Prospectus Regulation (809/2004) came into force on 20 July 2017, repealing and replacing the existing Prospectus Directive (2003/71/EC). The Prospectus Regulation provides for a single regime throughout the EU governing the content, format, approval and publication of prospectuses. ESMA was mandated by the European Commission to provide certain technical advice in relation to the format of the prospectus, its content and the manner in which the prospectus is scrutinised and reviewed by the appropriate regulator in an EU state.

### **Format and content of Prospectus**

On the format and content of prospectuses, the Report largely proposes to maintain the existing regime and approach of using "building blocks" when preparing a prospectus. However, ESMA have proposed to streamline some of the content requirements, with a view to reducing the cost and administrative burdens associated with preparing a prospectus, as well including as a number of additional disclosure requirements that are deemed necessary for investor protection.

In response to feedback received during the consultation process, ESMA has decided to withdraw its proposals for a mandatory cover note to be included in a prospectus, a 'how to use the prospectus' section and a stand-alone use of proceeds section. It has also decided that the risk factors section should continue to appear at the beginning of the prospectus after the summary section. Whilst a majority of respondents asked for the requirement for an audit report to be prepared on any profit forecasts and profit estimates to be retained, ESMA has decided to delete this requirement on the basis that the cost would be disproportionate to the added comfort given to potential investors.

## Content, format and sequence of the EU growth prospectus

The Report sets out the minimum disclosure requirements for the EU Growth prospectus (a new type of prospectus for small and medium-sized enterprises and, in certain cases, non-SMEs for small issuances), the order in which the parts of it should be presented, and the format and content of the specific summary required. Certain changes are proposed to be made to the format of the EU Growth prospectus, the content of the EU Growth registration document, the content of the EU Growth securities note and the content of the EU Growth summary.

## Scrutiny and approval of prospectus

ESMA proposes standard criteria for the scrutiny of the completeness, comprehensibility and consistency of the prospectus, while giving national competent authorities a certain level of flexibility, as ESMA believes this is necessary to ensure investor protection. The Report also contains details of the procedures for the approval and filing of the prospectus, which are based largely on the existing rules in this regard.

## Next steps

The final Report has been delivered to the European Commission. Subject to endorsement by the European Commission, the technical advice contained in the Report will form the basis for the delegated acts to be adopted by the European Commission by January 21, 2019.

The second part of the mandate handed to ESMA, which is to be received by the European Commission by August 31 2018, focuses on documents containing the minimum information required for a takeover by way of an exchange offer, a merger or a division. It also covers advice regarding the general equivalence criteria that should be applied with respect to the information requirements imposed by third countries.

For more information please contact:

**Adam Carling**

Partner

Tel: +442079056371  
adam.carling@twobirds.com



**twobirds.com**

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Stockholm & Sydney & Warsaw

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses. Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.