



STATUTORY INSTRUMENTS.

S.I. No. 239 of 2012



PROSPECTUS (DIRECTIVE 2003/71/EC) (AMENDMENT)
REGULATIONS 2012

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I, RICHARD BRUTON, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No. 12 of 2005) (as adapted by the Enterprise, Trade and Innovation (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 245 of 2011)) and for the purpose of giving further effect to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003¹ as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010², hereby make the following regulations:

1. (1) These Regulations may be cited as the Prospectus (Directive 2003/71/EC) (Amendment) Regulations 2012.

(2) These Regulations shall come into operation on 1 July 2012.

2. In these Regulations, except where the context otherwise requires:

“Directive of 2003” means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003¹.

“Directive 2010/73/EU” means Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010².

“delegated acts” means any acts directly applicable in consequence of the Directive, and without prejudice to the generality of the foregoing, includes the Prospectus Regulation;

“Regulations of 2005” means Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005).

3. The Regulations of 2005 are amended—

(a) in Regulation 2(1)—

(i) by inserting the following definition between the definitions of “company” and “competent authority”:

“‘company with reduced market capitalisation’ means a company listed on a regulated market that had an average market

¹OJ L 345, 31.12.2003, p.64.

²OJ L 372, 11.12.2010, p. 1.

capitalisation of less than €100,000,000 on the basis of end-year quotes for the previous three calendar years;”, and

- (ii) by inserting the following definition between the definitions of “issuer” and “market operator”:

“‘key information’ means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to Regulation 21(3)(b) of the Regulations of 2005, to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:

- (i) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;
 - (ii) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;
 - (iii) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;
 - (iv) details of the admission to trading;
 - (v) reasons for the offer and use of proceeds;”, and
- (iii) by substituting for the definition of “qualified investors” the following definition:

“‘qualified investors’ means persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004³ (‘Directive 2004/39/EC’) on markets in financial instruments and persons or entities who are, on request, treated as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognised as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification on request to the issuer without prejudice to the relevant legislation on data protection. Investment firms authorised to continue considering existing

³OJ L 145, 31.04.2004, p. 1.

professional clients as such in accordance with Article 71(6) of Directive 2004/39/EC shall be authorised to treat those clients as qualified investors under this Directive;”,

- (b) by revoking Regulations 3 to 7,
- (c) in Regulation 8(1), by substituting for subparagraphs (h) and (j) the following subparagraphs:

“(h) securities included in an offer where the total consideration for the offer in the European Union is less than €5,000,000,” and

“(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the European Union is less than €75,000,000, which shall be calculated over a period of 12 months, provided that those securities:

- (i) are not subordinated, convertible or exchangeable;
- (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.”,

- (d) by substituting for paragraph (3) of Regulation 8 the following paragraph:

“(3) No offer of securities by an offeror or issuer shall be deemed to fall within paragraph (1)(h) unless the amount of the total consideration for the offer when aggregated with the consideration for all previous offers of securities of the same type in the issuer concerned made by the same offeror or issuer within the period of 12 months expiring on the date the offer is made is less than €5,000,000 (but excluding for the purposes of such aggregation any offer of securities made prior to the commencement of these Regulations).”,

- (e) in Regulation 9—

- (i) by substituting for paragraph (1) the following paragraph:

“(1) The obligation to publish a prospectus under Regulation 12 shall not apply to an offer of securities in the State falling within one or more of the following subparagraphs:

- (a) an offer of securities addressed solely to qualified investors;
- (b) an offer of securities addressed to fewer than 150 natural or legal persons, other than qualified investors;

- (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer;
- (d) an offer of securities whose denomination per unit amounts to at least €100,000;
- (e) an offer of securities with a total consideration in the European Union less than €100,000, which shall be calculated over a period of 12 months.”,

(i) by inserting after paragraph (3) the following paragraph:

“(3A) Notwithstanding paragraphs (2) and (3), there shall be no requirement for another prospectus in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid prospectus is available in accordance with Regulation 30 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.”,

(f) in Regulation 10—

(i) in paragraph (1), by substituting for subparagraphs (c), (d) and (e) the following subparagraphs:

“(c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the Bank as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation,

(d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer,

(e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the European Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer; for the purpose of this subparagraph ‘affiliated undertaking’ includes any parent or subsidiary undertaking of the employer or another

subsidiary undertaking of that parent undertaking.”,
and

(ii) by inserting after paragraph (1) the following paragraph:

“(1A) subparagraph (e) of paragraph (1) shall also apply to a company established outside the European Union whose securities are admitted to trading either on a regulated market or on a third- country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to in subparagraph (e), is available at least in a language customary in the sphere of international finance and provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned.”,

(g) in paragraph 1 of Regulation 11, by substituting for subparagraph (d) the following subparagraph:

“(d) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the Bank as being equivalent to that of the prospectus, taking into account the requirements of European Union legislation.”,

(h) in Regulation 21—

(i) by substituting for paragraph (2) the following paragraphs:

“(2) The summary shall in a concise manner and in non- technical language, provide key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities.

(2A) The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities.”,

(ii) in paragraph (3), by substituting for subparagraph (d) the following subparagraph:

“(d) no civil liability shall attach to those legally responsible for the contents of the prospectus solely on the basis of the summary unless the summary, including any translation thereof, is, when read together with

the other parts of the prospectus, misleading, inaccurate or inconsistent, or does not provide, when so read, key information in order to aid investors when considering whether to invest in such securities.”, and

(iii) by substituting for paragraph (4) the following paragraph:

“(4) Where the prospectus relates to the admission to trading of non-equity securities having a denomination of at least €100,000, this Regulation shall not apply.”,

(i) in Regulation 22, in paragraph (1), by deleting “Subject to Regulation 23”,

(j) in Regulation 23, by substituting for paragraph (3) the following paragraph:

“(3) Where the final terms of the offer are neither included in the base prospectus nor in a supplement, the final terms shall be made available to investors, filed with the Bank and communicated, by the issuer, to the competent authority of each Host Member State when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus.”,

(k) by substituting for Regulation 26 the following Regulation:

“26. (1) Without prejudice to the requirement to give adequate information to investors, where, in exceptional cases, certain information required by any delegated acts to be included in a prospectus would be inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus may omit that required information but, unless there is no such equivalent information, shall contain information equivalent to that required information.

(2) Where securities are guaranteed by a Member State (including the State), a relevant person when asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with Regulation 8(5), shall be entitled to omit information about such guarantor.”,

(l) in Regulation 27, by substituting for paragraph (1) the following paragraph:

“(1) Subject to paragraph (3), information may be incorporated in a prospectus by reference to one or more previously or simultaneously published documents that have been approved by the Bank or filed with it in accordance with EU prospectus law or Directive 2004/109/EC

of the European Parliament and of the Council of 15 December 2004⁴.”,

(*m*) in Regulation 29, by substituting for paragraph (3) the following paragraph:

“(3) In the circumstances referred to in paragraph (2), the securities note shall, where there has been a material change or recent development which could affect investors’ assessments since the latest updated registration document, provide information that would normally be provided in the registration document, unless such information is provided in a supplement in accordance with Regulation 51.”,

(*n*) in Regulation 30—

(i) in paragraph (1)—

(I) by substituting for subparagraph (*a*) the following subparagraph:

“(a) subject to subparagraphs (*b*) to (*d*) a prospectus shall be valid for 12 months after its approval.”,

(II) by substituting for subparagraph (*d*) the following subparagraph:

“(d) a registration document as referred to in Regulation 22 (2) (*a*) previously filed and approved shall be valid for the purposes of Regulation 29 (2) for twelve months after its approval.”,

(ii) by substituting for paragraph (2) the following paragraph:

“(2) The registration document updated, in accordance with Regulation 29(3) or Regulation 51, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.”,

(*o*) in Regulation 45—

(i) in paragraph (1), by substituting for subparagraph (*c*) the following subparagraph:

“(c) in electronic form on the issuer’s website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents.”,

and

⁴OJ L 390, 31.12.2004, p. 38.

(ii) by substituting for paragraph (2) the following paragraph:

“(2) The issuer or the person responsible for drawing up a prospectus who publishes a prospectus in accordance with subparagraphs (a) or (b) of paragraph (1) shall also publish a prospectus electronically in accordance with subparagraph (c) of that paragraph.”;

(p) in Regulation 49, paragraph (2), by substituting “A relevant person or financial intermediary” for “A relevant person of financial intermediary”,

(q) in Regulation 51 by substituting for paragraphs (1) and (2) the following paragraphs:

“(1) A relevant person shall include in a supplement to the prospectus 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 to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later.

(2) Such a supplement shall be the subject of the procedures under Part 7 in relation to the approval of prospectuses but these procedures shall be completed in a maximum of 7 working days and the supplement shall be published at least in the manner in which the original prospectus was published.”,

(r) by substituting for Regulation 52 the following Regulation:

“52. (1) Where the prospectus relates to an offer of securities to the public, (to which this Part applies) persons who have already agreed to purchase or subscribe for the securities concerned before a supplement is published shall have the right, exercisable within 2 working days after the publication of the supplement, to withdraw their acceptances provided that the new factor, mistake or inaccuracy referred to in Regulation 51 (1) arose before the final closing of the offer to the public and the delivery of securities.

(2) Subject to paragraph (3), the period in paragraph (1) may be extended by the relevant person.

(3) The final date of the right of withdrawal shall be stated in the supplement.”,

(s) by substituting for Regulation 56 the following Regulation:

“56. (1) In circumstances where the State is the Home Member State and the Bank has approved a prospectus (including a prospectus submitted under Regulation 8(5)) the Bank shall, at the request of the

relevant person or the person responsible for drawing up the prospectus, notify the competent authority of each Host Member State with a certificate of approval referred to in Regulation 57, together with a copy of the prospectus.

(2) A request to the Bank made under paragraph (1) shall be complied with by it within 3 working days after the receipt of the request or, where the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus.

(3) If required by the competent authority of the Host Member State under EU prospectus law, the notification under paragraph (1) shall be accompanied by the translation of the summary produced under the responsibility of the relevant person or person responsible for drawing up the prospectus.

(4) The Bank shall also notify the relevant person or the person responsible for drawing up the prospectus of the certificate of approval at the same time as it notifies the competent authority of each Host Member State.”,

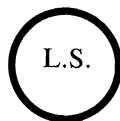
(t) by substituting for Regulation 65 the following Regulation:

“65. Whether the State is the Home Member State or a Host Member State where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least €100,000 is sought in one or more Member States (including the State), the prospectus shall be drawn up either in a language accepted by the competent authorities of the Home Member State and the Host Member State or States or in a language customary in the sphere of international finance, at the election of the relevant person.”,

(u) by revoking Regulations 68, 69, 70, 71 and 72,

and

(v) in paragraph 7 of Schedule 1, by inserting in paragraph (b) “or paragraph 3(2)(f)” after “paragraph 2(2)(f)”.



GIVEN under my Official Seal,
29 June 2012.

RICHARD BRUTON,
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

These Regulations give effect to Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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