



The Listing Act – Alleviations for companies in a listing process and for already listed companies



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In 2020, the European Commission presented a new extended action plan for the Capital Markets Union. A core aim of the Capital Markets Union has been to improve small and medium-sized enterprises access to capital market financing, as a complement to bank financing. In recent years, several legal acts have been adopted and amended to this end. However, over the last decade, the total number of listed companies in the EU has decreased and European trading venues are considered by regulators to be underdeveloped in relation to the US. Against this background, the Commission presented the 'Listing Act' legislative package on December 7, 2022, which aims to make capital markets within the EU more attractive to companies and facilitate listings of companies of all sizes, including small and medium-sized enterprises, on European stock exchanges.

On 8 October 2024, the Listing Act was adopted, following the preparation and revision of the proposals by the EU institutions under the ordinary legislative procedure, by the European Council, and the measures put forward therein aim to streamline the rules applicable to companies going through a listing process and companies

already listed. The measures further aim to simplify for the companies by reducing their administrative burdens and costs, while maintaining a sufficient degree of transparency, investor protection and market integrity.

On November 14, the adopted legislative package was subsequently published in the Official Journal of the European Union, and thus the legislative package enters into force in December 2024. However, the regulation becomes applicable in three different phases.

The Listing Act entering into force entails changes in the EU Prospectus Regulation, the EU Market Abuse Regulation, MiFIR and MiFID II, which are implemented through three different EU legal acts: i) a Regulation on amendments to the Market Abuse Regulation, the Prospectus Regulation and MiFIR, ii) a Directive amending MiFID II and repealing the Listing Directive, and iii) a new Directive on multiple-vote share structures for companies applying for their shares to be admitted to trading on a growth market for small and medium-sized enterprises.

Upon its entry into force several significant changes to the EU Prospectus Regulation will come into effect, *inter alia*, the new prospectus exemptions (apart from the new threshold for prospectus requirement). Selected key amendments for equity issuers on the Swedish capital market as a result of the Listing Act, with a focus on the changes to the Prospectus Regulation, follows below.

Amendments to offers to the public

Offer period

The minimum offer period is reduced from six to three working days for offers to the public of share class to be admitted to trading for the first time on a regulated market. In these cases, the prospectus must be made available to the public at least three working days before the end of the offer.

Right of withdrawal

The deadline for investors to withdraw their consent is extended from two to three working days if the issuer publishes a supplement due to a significant new factor, material mistake or material inaccuracy.

Broader prospectus exemptions

Prospectus exemption for offers - Dual thresholds established

Previous thresholds will be replaced, and the new threshold, below which offers of securities to the public will be exempt from the obligation to publish a prospectus (provided that these offers do not require passporting) will be €12 million (calculated over a twelve-month period). However, Member States will have the possibility to lower this threshold from €12 million to €5 million but will not have the flexibility to choose a different threshold. As Sweden chose not to raise the threshold in the last revision of the Prospectus Regulation from EUR 2.5 million, despite the possibility to do so, it is likely that the threshold will be set at the lowest level of EUR 5 million, but it remains to be seen how this will be implemented in Sweden. The exemption comes into effect on June 5, 2026.

Raised threshold for admission to trading

The threshold, below which issuers are exempt from the obligation to publish a prospectus for the admission to trading on a regulated market of securities fungible with those already admitted to trading on the same regulated market, is increased from <20% to <30%.

Volume dependent exemption

A new exemption is also introduced for offers to the public of <30% of securities that are fungible with those already admitted to trading on a regulated market or an SME growth market, provided that (i) the issuer is not subject to a restructuring or insolvency proceedings; and (ii) a summary document (maximum 11 A4 pages) is submitted to the competent authority and made available to the public. Thus, the exemption also covers companies listed on SME-classified MTFs, and larger share issues and private placements of listed securities will now in several cases be exempt from the prospectus obligation.

Volume independent exemption

A new exemption is also introduced for offers to the public and admission to trading of securities - irrespective of the size of the offer/issue - if the original securities have been admitted to trading for at least 18 months on a regulated market or an SME growth market, provided that (i) the new securities are not issued in connection with a takeover by way of an exchange offer, a merger or division, (ii) the issuer is not subject to a restructuring or insolvency proceedings, and (iii) a summary document (maximum 11 A4 pages) is filed with the competent authority and made available to the public. The exemption is foreseen to drastically change the number of prospectuses prepared by issuers that can apply it, as there is no limit to the size of the offer.

Summary document

A summary document should contain key information and must include, *inter alia*, a description of use of proceeds from the offer, risk factors specific to the issuer, the terms of the offer and a statement of continuous compliance with ongoing reporting and disclosure obligations in accordance with relevant laws and regulations. Such document must be submitted to the Swedish Financial Supervisory Authority for registration at the same time as it is made available to the public, and thus does not need to be reviewed or approved by the authority.

Subscription Rights

If subscription rights are connected to an issuance of new shares/securities covered by the exemption for the offer to the public or the admission to trading on a regulated market, the exemption should also be applicable to subscription rights representing the preferential right of existing shareholders to subscribe for the securities covered by the exemption.

New prospectus types and voluntary prospectuses

EU Follow-on prospectus

A new type of prospectus is introduced, a so-called "EU Follow-on prospectus". The EU Follow-on prospectus will be applicable to several categories of issuers whose securities have been admitted to trading on a regulated market or SME growth market continuously for at least 18 months, or offerors of such securities. The prospectus type replaces the current simplified prospectus for secondary issuances and the previously

temporarily used EU Recovery prospectus. The prospectus type can be used if no prospectus exemption is applicable in the case of a secondary issuance, and can also be used if an issuer does a list change from an SME-classified MTF to a regulated market, provided that its shares have been continuously admitted to trading on an SME growth market for at least the previous 18 months. The disclosure requirements are lighter and covers for example only one year of financial information and excludes the need for an operating financial review (OFR).

EU Growth issuance prospectus

The EU Growth prospectus regime is revised and an updated prospectus type, a so-called "EU Growth issuance prospectus", is introduced. The information requirements for the prospectus type are intended to be lighter and make the listing documentation for SMEs less complex and onerous to enable SMEs to achieve cost savings. The prospectus shall be drawn up as a single document (based on one annex) containing the relevant information.

Provided they do not have securities admitted to trading on a regulated market, the following persons will be able to draw up an EU Growth issuance prospectus (i) SMEs; (ii) other issuers whose securities are or will be admitted to trading on an SME growth market; and (iii) issuers other than the previous two, where the total aggregated amount in the Union of the securities offered to the public is less than EUR 50 000 000 calculated over a twelve-month period, and provided that those issuers do not have any securities traded on an MTF and that the average number of employees during the previous financial year was no more than 499.

Voluntary Prospectuses

The voluntary nature of the prospectus types implicate that an issuer may choose one of the available prospectus types (as applicable) when an offer to the public or admission to trading on a regulated market requires a prospectus. The new framework provides that where an issuer is entitled to use an EU Follow-on prospectus or an EU Growth issuance prospectus, the purpose of which is to make the execution of the transaction in question more efficient and less onerous in terms of time and cost, and there are no other material considerations against the use of either of these prospectuses, the issuer's choice among the prospectus types available to the issuer should be protected, and neither advisors nor competent authorities should drive issuers towards drawing up a full standard prospectus unless this is explicitly required.

Content, format and publication of prospectuses

Historical financial information

Standard prospectuses now require only two years of financial information (instead of three).

Incorporation by reference

Prospectuses for equity securities must either contain the information set out in the issuer's management report or incorporate it by reference. For example, an OFR will no longer be required under the updated Annex to the Prospectus Regulation. The scope of other information that can be incorporated by reference has also been extended.

Risk factors

The requirement to rank the most material risk factors first in each category is replaced by a requirement to list the most material risk factors, in each category, in a manner which is consistent with the issuer's assessment of the materiality of those risk factors based on the likelihood of their occurrence and the expected magnitude of their negative effects. The change will probably have a limited practical effect, but the ranking element for the issuer disappears.

A new provision is introduced, according to which the prospectus must not contain risk factors that are generic. However, it is primarily a technical clarification, in line with both current ESMA recommendations and the SFSA's practice.

Standardized format

The format and sequence of information in prospectuses is standardized through updated requirements in the Prospectus Regulation. In addition, the Commission is empowered to adopt or amend existing delegated acts setting out further details. The European Securities and Markets Authority ("ESMA") is also empowered to develop draft implementing technical standards to specify the template and format of prospectuses, including font size and style requirements, depending on the type of prospectus and the type of investors targeted and is also expected to develop guidelines on comprehensibility and on the use of plain language to ensure that the information provided is concise, clear and user friendly.

The total length of a standard prospectus will be limited to 300 pages, the EU Follow-on prospectus to 50 pages and the EU Growth issuance prospectus to 75 pages. This excluding the summary, information incorporated by reference and any additional information to be provided if the issuer has complex financial history, has made a significant financial commitment or in the event of a significant gross change.

However, the page limits, standardized format and sequence do not apply to prospectuses for admission to trading on a regulated market, where securities are to be admitted to trading on a regulated market in the EU and are simultaneously offered or privately placed with investors in a third country, where an offer document is drawn up in accordance with the law, rules or market practices of such third country (see more on third country prospectuses in the section below).

Language

Prospectuses shall from now on be allowed to be drawn up in a language customary in the sphere of international finance, irrespective of whether the offer or admission to trading is domestic or cross-border. However, a Member State should be allowed to opt out and instead require that the prospectus for an offer of securities to the public or an admission to trading on a regulated market which is sought only in that Member State is drawn up in a language accepted by the competent authority of that Member State. The Financial Supervisory Authority has in light of this announced on their website that the changed language requirements will allow prospectuses to be drawn up in English in cross-border situations.

Prospectuses in electronic format

There is no longer a requirement to provide paper copies of prospectuses to investors per request. Instead, prospectuses are required to be provided only in electronic format per request.

Sustainability disclosures

Sustainability disclosure aspects have been taken into account in the Listing Act. The summary of the prospectus must, *inter alia*, include a statement on whether the issuer's activities are associated with economic activities that qualify as environmentally sustainable under the EU Taxonomy Regulation.

Furthermore, issuers offering equity securities to the public or seeking admission to trading of equity securities on a regulated market as a starting point for the periods covered by historical financial information shall, in the prospectus, incorporate by reference the management report of the company and the group and, where applicable, also the sustainability report.

Third country prospectus and cooperation arrangement with third countries

The amendments also aim to facilitate access to the capital markets within the EU for third country issuers by amending the 'equivalence regime' and clarifying what the equivalence requirements are, thereby allowing the use of third country prospectuses deemed equivalent to prospectuses under the Prospectus Regulation, subject to certain conditions and cooperation arrangements between EU and third country supervisory authorities.

A third country issuer will have the possibility to offer securities to the public in the EU or apply for admission to trading on a regulated market following the publication of a prospectus drawn up and approved in accordance with national legislation of a third country 'third country prospectus', provided that certain conditions are met. These conditions include, *inter alia*, that:

- The Commission has adopted an implementing act establishing that the regulatory and supervisory system of a third country ensures that a third country prospectus complies with legally binding requirements which are equivalent to the requirements under the Prospectus Regulation;
- the third country issuer has registered the prospectus with the competent authority of its home Member State; and
- The prospectus complies with the language requirements and all relevant advertising/marketing complies with the corresponding requirements of the Prospectus Regulation.

As regards cooperation agreements for enhanced cooperation, the amendments to the Listing Act aim to ensure effective supervision and enforcement. The amendments require competent authorities of the Member States or ESMA to establish (or intensify) cooperation arrangements with relevant supervisory authorities in third countries. These cooperation arrangements should also ensure an effective exchange of information and professional secrecy equivalent to that regulated by the Prospectus Regulation.

The Listing Act explicitly excludes cooperation agreements with third countries that are on the EU list of non-cooperative tax jurisdictions or those jurisdictions that have strategic deficiencies in their anti-money laundering and countering the financing of terrorism.

Want to know more about how the Listing Act affects your business? Please contact **Peder Grandinson**, **Emma Norburg**, **Richard Folke** or **Emma Brolund** in DLA Pipers Equity Capital Markets team.

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