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Approval of the Listing Act - Developments relevant to capital market transactions

On 24 April 2024, the European Parliament adopted a package of regulations (collectively, the “**Listing Act**”)¹, the main objective of which is to increase the attractiveness and accessibility of European capital markets for companies. This is intended both to reduce the bureaucratic burdens and costs incurred by issuers already listed and to facilitate and encourage initial access to these markets to issuers, in particular small and medium-sized enterprises (“**SMEs**”).

The main developments introduced by the Listing Act are as follows:



The **Prospectus Regulation**² is amended to facilitate the listing process by reducing costs and administrative burdens.



The **Market Abuse Regulation**³ is amended to ease some of the burdens on issuers and other market participants arising from this regulation.



A new directive on **multiple-vote shares** in companies applying for the first time for admission to trading on a multilateral trading facility (“**MTF**”) is adopted, in order to allow controlling shareholders to retain control even after admission⁴.



The **MiFID II**⁵ is amended to increase the quantity and quality of information on European Union (“**EU**”) SMEs available to investors, while making the regime for admission to trading on EU trading venues more flexible.



The **MiFIR**⁶ is amended to introduce technical changes to bring the MiFIR in line with certain developments in the Listing Act.

The Listing Act shall be now adopted by the EU Council, before its publication in the OJEU.

The scope of these legislative measures in each of the areas, as well as their practical implications, are briefly set out below.

¹ The three pieces of legislation are (i) Regulation of the European Parliament and of the Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises (ii) the Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC and (iii) the Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market.

² Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

⁴ Directive of the European Parliament and of the Council on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market (the “**New MVSS Directive**”).

⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).

⁶ Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

1. Main amendments to the Prospectus Regulation

1.1. Measures to facilitate listings

1.1.1. Exemption from the obligation to publish an issuance prospectus for the amount of the offer.

| Current Regime | New Regime |
|--|--|
| Offers to the public of securities below EUR 1 million are excluded from the application of the Prospectus Regulation. | The EUR 1 million threshold will be eliminated. |
| Member States may exempt from the obligation to publish a prospectus offers below another amount, between EUR 1 million and up to EUR 8 million (calculated over a 12-month period). Spain opted to exempt from the obligation to publish a prospectus the offers below EUR 8 million (EUR 5 million in case of credit institutions). | The threshold for exemption from publishing a prospectus will be generally set at EUR 12 million (calculated over a 12-month period), although Member States may decide to reduce it to EUR 5 million, provided that the offer does not require passporting. Member States will have the option (but not the obligation) to require the issuers the publication of a simplified document (with content similar to the summary of a prospectus). |

1.1.2. Exemption from the obligation to publish an issuance prospectus for issuances of fungible securities.

| Current Regime | New Regime |
|----------------|---|
| N/A | Offers of fungible securities with securities that have been admitted to trading on a regulated market or an SME growth market are exempted from the prospectus requirement provided that (i) they represent less than 30% of the volume of the securities already admitted to trading on the same market over a period of 12 months; (ii) the issuer is not involved in insolvency or restructuring proceedings; and (iii) the issuer files with the competent authority a document in electronic form, not exceeding 11 pages, to be published at the same time. |
| N/A | Offers of fungible securities with securities that have been admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities are exempt from the prospectus requirement, provided that (i) the securities are not issued in connection with an acquisition by way of an exchange offer, a merger or a division; (ii) the issuer is not involved in insolvency or restructuring proceedings; and (iii) the issuer files with the competent authority a document in electronic format not exceeding 11 pages, which must be published at the same time. |

1.1.3. Exemption from the obligation to publish a prospectus for the admission to trading of securities fungible with other securities already admitted to trading.

| Current Regime | New Regime |
|---|--|
| Admission of securities to trading on a regulated market is exempt from the prospectus requirement provided that: (i) they are fungible with securities already admitted to trading on the same regulated market; and (ii) they represent, over a 12-month period, less than 20% of the volume of the securities already admitted to trading. | The 20% threshold is raised to 30%. |
| The admission to trading on a regulated market of shares resulting from the conversion or exchange of other securities or from the exercise of rights conferred by such securities is exempted from the prospectus requirement provided that such shares: (i) are fungible with shares already admitted to trading on the same regulated market; and (ii) represent, over a 12-month period, less than 20% of the volume of shares of the same class already admitted to trading. | The 20% threshold is raised to 30%. |
| N/A | Admission to trading of fungible securities is exempted from the prospectus requirement for securities that have been admitted to trading on a regulated market continuously for at least the 18 months preceding the offer of the new securities, provided that (i) the securities are not issued in connection with a takeover by way of exchange offer, merger or demerger; (ii) the issuer is not involved in insolvency or restructuring proceedings; and (iii) the issuer files with the competent authority a document in electronic form not exceeding 11 pages, which must be published at the same time. |

- These measures will enter into force 20 days after the publication of the Regulation.

1.2. Standardisation and simplification of prospectuses

- Prospectuses should, as a general rule, follow standardised formats, with information following a standardised sequence (according to criteria to be developed by ESMA and adopted by the Commission by means of delegated acts). In the case of shares, a limit of 300 pages is set (excluding the summary and information incorporated by reference or additional information required where the issuer has a complex financial history or has made a significant financial commitment).
- The delegated acts to be adopted by the Commission regarding the standardised format and the information to be included in the prospectus should take into account whether issuers of equity securities

are subject to sustainability reporting in accordance with the CSRD⁷ and whether the marketing of non-equity securities offered to the public or admitted to trading on a regulated market takes into account environmental, social or governance (“ESG”) factors or pursues ESG objectives.

- With regard to risk factors⁸, it is provided that the most material risk factors should be listed in each category in a manner that is consistent with the assessment carried out by the issuer, and should not include generic risk factors, which only serve as disclaimers or do not clearly show the specific risk factors of which investors should be aware.
- Two new prospectus templates are created, the “*EU Follow-on prospectus*” and the “*EU Growth issuance prospectus*”⁹. The main features of the two new prospectus templates are set out in the table below:

| | EU Follow-on prospectus | New EU Growth issuance prospectus |
|---|--|--|
| Objective scope | <p>Both public offers and admissions to trading on regulated markets (where no other exemption applies¹⁰).</p> <p>Includes admission to trading on a regulated market when it has already been admitted to trading on an SME growth market¹¹.</p> <p>Available for equity and non-equity securities.</p> | <p>Public offers, provided that the issuer has no securities admitted to trading on a regulated market.</p> <p>Available for equity and non-equity securities.</p> |
| Subjective scope | <p>Issuers that have had their securities admitted to trading on a regulated market or an SME growth market for at least 18 months (or offerors of such shares).</p> | <p>SMEs, other issuers of securities admitted to trading on SME growth markets (or offerors of securities issued by them) and other issuers provided that (i) the amount offered is less than EUR 50 million calculated over a 12-month period; (ii) such issuers do not have securities traded on a multilateral trading facility; and (iii) the average number of employees during the previous financial year did not exceed 499.</p> |
| Format and sequence of information | <p>Standardised. Maximum 50 pages for shares.</p> | <p>Standardised. Maximum 75 pages in case of shares.</p> |

- In relation to prospectuses drawn up under the laws of third countries, deemed equivalent, and approved by the relevant supervisory authority, the requirement for approval by the competent authority of the home Member State for admission to trading on a European regulated market or the making of a public

7 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

8 They will enter into force 20 days after they are published in the OJEU.

9 These new templates replace the previous “simplified prospectus”, the “EU recovery prospectus” (in force until 31 December 2022) and the “EU growth prospectus”. In all cases, a transitional regime is established for prospectuses approved under the regimes that are being replaced.

10 Issuers may also, on a voluntary basis, draw up and publish an EU Follow-on prospectus for secondary issuances benefiting from one of the exemptions.

11 With the exception of issuers holding only non-equity securities admitted to trading on a SME growth market, which may not use this prospectus for admission to trading of equity securities on a regulated market for equity securities.

offer in the European Union is removed (filing with that authority will be sufficient). It establishes general equivalence criteria and empowers the Commission to adopt a delegated act to specify such criteria.

- The measures concerning the new prospectus templates and the standardisation and simplification of prospectuses will enter into force between 15 and 18 months after the entry into force of the Regulation.

1.3. Other relevant amendments

- Certain amendments introduced by Regulation (EU) 2021/337, as part of the Capital Markets Recovery Package following the COVID-19 crisis, are made permanent, including the EUR 150 million threshold for the exemption from the prospectus for public offer or admission to trading on a regulated market for non-equity securities issued in a continuous or repeated manner by credit institutions.
- The universal registration document regime is simplified, reducing from two tax years to one the requirement for approval by the competent authority to obtain frequent issuer status and to benefit from the possibility to file subsequent universal registration documents without prior approval.
- The minimum period between the publication of the prospectus and the end of the offer for an initial public offering of a class of shares on a regulated market is reduced from six to three days.
- The deadline for the exercise of the investor's withdrawal right in the event that a supplement to the prospectus is published is extended from two to three days.
- A number of rules are established to encourage the incorporation of information by reference, as well as specific deadlines for the review process of the new types of prospectuses by the competent authority.

2. Main amendments to the Market Abuse Regulation

2.1. Share buy-back programmes

- The Market Abuse Regulation sets out a number of requirements for issuers to carry out buy-back programmes of their own shares without engaging in prohibited conduct such as insider dealing or market manipulation.
- The new regime simplifies the reporting requirements associated with such programmes. In particular, it provides that where shares are admitted to trading on several markets, notifications only need to be made to the competent national authority of the most relevant market in terms of liquidity. In addition, information only needs to be disclosed to the public in an aggregate form, without details of transactions.
- These measures will enter into force 20 days after the publication of the Regulation.

2.2. Market sounding

- The current definition of market sounding is extended to include the communication of information to potential investors, not only prior to the announcement of the transaction, but also in cases where there is no specific announcement.
- It is clarified that the market sounding regime is only an option for disclosing market participants on a safe-harbour basis.
- For those who communicate information in these contexts (even if they do not intend to benefit from safe-harbour protection), the obligations to analyse and record whether or not inside information has been communicated, and to inform recipients when it is no longer considered inside information, are extended.
- These measures will enter into force 20 days after the publication of the Regulation.

2.3. Delayed inside information disclosure regime

- The scope of the obligation to disclose inside information in protracted processes is narrowed¹², and it is established that it does not cover intermediate steps and, in any case, should not cover the communication of mere intentions, ongoing negotiations or (depending on the circumstances) processes of negotiations.
- Legal clarity is increased as to what information should be disclosed and when in such protracted processes:
 - » information should only be made public in relation to the circumstances or event that the protracted process is intended to bring about (final event);
 - » until such time, confidentiality of information in relation to intermediate steps must be ensured; and
 - » the Commission is empowered to establish a non-exhaustive list of “final events” that would trigger the disclosure obligation and the time at which they are deemed to have occurred.
- Concerning the delayed inside information disclosure regime:
 - » greater clarity is introduced on the specific conditions under which disclosure of inside information may be delayed, establishing that they do not apply to intermediate steps in a protracted process; and
 - » the Commission is empowered to establish a non-exhaustive list of situations in which the issuer may not delay disclosure of inside information because of its inconsistency with a previous communication on the same matter.
- These measures will enter into force 18 months after the entry into force of the Regulation.

2.4. Insider lists

- The more simplified format currently applicable to SME growth market issuers is extended to all insider lists at the request of Member States, and ESMA is required to review the implementing technical standards in this regard.
- This measure will enter into force 20 days after the publication of the Regulation.

2.5. Persons discharging managerial responsibilities (“PDMR”)

- The minimum threshold for PDMRs and persons closely associated with them to report transactions on their own account relating to shares and other securities and instruments of that issuer is increased from €5,000 to €20,000. There is also the possibility for Member States, in light of national market conditions, to increase this threshold up to €50,000, or to decrease it to €10,000.
- Further transactions are included among the exemptions from the prohibition on carrying out transactions during closed/lock-up periods¹³, including employees’ schemes whose object is financial instruments other than shares and transactions that are solely dependent on external factors or do not involve active investment decisions by PDMRs¹⁴.
- These measures will enter into force 20 days after the publication of the Regulation.

¹² Multi-stage events, e.g. a merger or contractual agreements.

¹³ 30 calendar days prior to the publication of the financial reports.

¹⁴ Such as, for example, transactions or activities involving irrevocable agreements or discretionary asset management mandates entered into prior to the closed period, duly authorised corporate actions not implying advantageous treatment, or even acceptances of inheritances, gifts, donations, and the exercise of previously contracted derivatives or futures.

3. Amendments introduced by the new MVSS Directive

3.1. Main objective

- Enable companies to use multiple-vote share structures (“**MVSS**”) to allow their controlling shareholders to retain control of the business after accessing MTFs, including SME growth markets.

3.2. Purpose and scope

- Common minimum regulation for companies: (i) that apply for admission to trading on MTFs, including SME growth markets, and (ii) whose shares are not admitted to trading on MTFs or regulated markets.
- Definition of multiple-vote shares: “*shares belonging to a distinct and separate class and that carry higher voting rights than another class of shares with voting rights on matters to be decided at the general meeting of shareholders*”.
- Other control enhancing mechanisms, such as non-voting shares, shares with a veto right on certain decisions and loyalty shares, are outside the scope of application.

3.3. Adoption or modification of an MVSS and safeguards

- It should be ensured that companies that are not listed on MTFs can adopt or amend MVSSs that allow them to apply for admission to trading on an MTF (including at a point in time prior to the application for admission to trading).
- The exercise of the additional voting rights attached to multiple-vote shares may be made conditional upon their admission to trading on an MTF.
- Establishment of mandatory safeguards to provide adequate protection of the interests of shareholders who do not hold multiple-vote shares:
 - » Decisions to adopt an MVSS or to amend such a structure must be taken by the general meeting of shareholders and requires at least a qualified majority in accordance with national law. Where there are different classes of shares, separate votes must be held for each class whose rights are affected.
 - » Limiting the impact of multiple-vote shares on the decision-making processes of the general meeting of shareholders:
 - establishment of a maximum ratio of the number of votes attached to multiple-vote shares to the votes attached to all other shares; or
 - restriction of the exercise of voting rights attached to multiple-vote shares to the adoption of certain corporate resolutions requiring qualified majorities of the votes cast¹⁵.
- Additional safeguards may also be established by Member States, which may include sunset clauses based on transfer, time or events.

3.4. Transparency

- It should be ensured that companies that have MVSS whose shares are or will be admitted to trading on an MTF publish¹⁶ information on their share capital structure, limitations on the transfer of shares and restrictions on the voting rights of shares (including, where applicable, those contained in shareholders’

¹⁵ The appointment and dismissal of members of the administrative, management and supervisory bodies and operational decisions. For the adoption of other resolutions requiring qualified majorities of the votes cast, the following may be required: (i) either a qualified majority of the votes cast and a qualified majority of the share capital represented at the meeting or of the number of shares represented at the general meeting; or (ii) a qualified majority of the votes cast, and a separate vote for each class of shares whose rights are affected.

¹⁶ In the relevant instrument of incorporation or prospectus, and in the annual financial report.

agreements known to the company) and the identity, if known to the company, of the shareholders holding multiple-vote shares representing more than 5% of the voting rights of all the shares in the company and, where applicable, of the natural persons or legal entities that may exercise voting rights on behalf of such shareholders.

3.5. Transposition by Member States into national law must take place no later than two years after its entry into force (20 days after publication).

4. Main amendments to the MiFID II

4.1. Encouraging access to trading on regulated markets in the European Union

In order to facilitate market access, the minimum free float requirement for admission to trading on EU regulated markets is reduced from 25% to 10%. In any case, Member States may allow for alternative ways to measure whether a sufficient number of shares have been distributed to the public, taking into account the characteristics and size of each issuance.

4.2. Research services

- The regime applicable to investment research services is relaxed.
- The market capitalisation threshold for issuers in relation to which investment firms (“IFs”) can handle bundled payments for execution services and research, previously set at EUR 1 billion, is removed.
- For issuer-sponsored research, IFs should ensure that the reports are drafted in accordance with the EU Code of Conduct, which will be developed by ESMA.

4.3. Promoting SME Growth Markets

MTF segments that have a certain level of independence from the rest of the MTF are allowed to become SME Growth Markets.

4.4. Non-objection by the issuer to the trading of its securities

The regime of non-objection by issuers to the admission of their instruments to trading on an SME Growth Market, when they are already traded on another such market, is extended so that this requirement will also apply in cases where admission to trading of the already admitted instrument is sought on another trading venue.

5. Main amendments to the MiFIR

A system of cross-checking of order books is established to facilitate the detection by national competent authorities of market manipulation.

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