

UK Prospectus Regulation review outcome

Introduction

HM Treasury published the [outcome](#) of its review of the UK Prospectus Regulation on 1 March 2022. Whilst it is still too early to say what the precise implications will be for bond markets, ICMA was pleased to see that some of the key suggestions it made in its [response](#) to the [consultation](#) will be taken forward.

The background to the review of the UK Prospectus Regulation is the [UK Listing Review](#), chaired by Lord Hill, which was launched in November 2020 as part of a plan to strengthen the UK's position as a leading global financial centre. Both the UK Listings Review and the consequential HM Treasury consultation on the UK Prospectus Regulation had a strong equity focus. However, the adjustments to the UK Prospectus Regulation will undoubtedly impact bond market participants.

What will change?

The current UK Prospectus Regulation is a close mirror image of the EU Prospectus Regulation, on-shored, with relatively minor amendments, at the end of the Brexit implementation period at the end of 2020. Under the European Union (Withdrawal) Act 2018, the UK Prospectus Regulation and related detailed rules that derive from EU law have a status equivalent to statute and can only be amended via an Act of Parliament.

HM Treasury intends to repeal the UK Prospectus Regulation and related detailed rules entirely and replace them with a new regime comprised of (i) high level fundamental laws that will sit in statute and (ii) powers for the FCA to make detailed regulations. Going forward, the FCA will therefore be able to amend the detailed rules quickly, either to correct errors or to deal with changed circumstances, without requiring primary legislation. This is consistent with the UK Government's broader direction to return responsibility for designing and implementing financial services regulatory requirements to the regulators, following the [Future Regulatory Framework Review](#).

The precise impact of the changes for bond market participants will depend in large part on how the FCA exercises the significant powers that will be granted to it under the UK's new prospectus regime. These powers will include specifying if and when a prospectus is required, what a prospectus should contain, whether it needs to be reviewed and approved prior to publication and other detailed rules currently contained within the UK prospectus regime. It is anticipated that the FCA will consult upon the exercise of these expanded powers in due course.

In addition to the grant of significant new powers to the FCA, a key feature of HM Treasury's proposals is a structural change that will separate the regulation of public offers of

securities on the one hand from the regulation of admissions of securities to trading on the other hand (reflecting the UK's approach to prospectuses before the first EU Prospectus Directive). While this is a striking change in terms of the structure of the UK's prospectus regime, this is not expected to give rise to any new barriers to bond issuers' ability to offer bonds on a pan-European or global basis.

Related to this point, ICMA was pleased to see that HM Treasury intends to set the threshold for the exemption to the UK public offer regime based on minimum denominations at £50,000, and not £100,000. This was a key concern for international bond market participants, noting that bonds with the commonly-used €100,000 minimum denomination would meet the current EU Prospectus Regulation threshold but would not meet a UK regulatory threshold if it were to be set at £100,000. ICMA had emphasised this point in its engagement with HM Treasury; and is pleased to see this concern addressed.

A key area of focus for many of ICMA's members are prospectus content requirements. These requirements have a significant practical impact for bond issuers, underwriters and other market participants. As previously mentioned, the FCA will have the power to specify rules related to prospectus content going forward, and so it is still too early to determine precise implications in this area. However, the overarching test for what must be disclosed (known as the "necessary information" test) will be set out in statute. HM Treasury has indicated that it will make certain adjustments to the current test. There are two changes which will be of particular interest to ICMA members.

First, the UK Government intends to remove minimum denomination as a factor in the "necessary information test" on the basis that this is considered to create an artificial incentive to issue high-denomination securities. Currently, the EU and UK regimes provide for lighter disclosure requirements and an exemption from the obligation to prepare a prospectus summary where a bond has a minimum denomination of €100,000. This lighter ("wholesale") disclosure regime and exemption from the prospectus summary are considered to be helpful for international bond issuers. The removal of the minimum denomination factor from the statutory "necessary information" test is not considered to be concerning in and of itself because the test is still expected to state that the "necessary information" will differ depending on the "type of securities" (thereby allowing for a differentiation between retail and wholesale bonds). As highlighted in ICMA's response to HM Treasury's consultation, it will be important that the FCA considers carefully and consults market participants on how best to implement a disclosure regime that does not introduce unnecessary or disproportionate costs for issuers of wholesale bonds.

The second change that will be of interest to ICMA members is that a modified necessary information test will apply to debt securities which focuses on the issuer or guarantor's *creditworthiness*, rather than *prospects*. ICMA has long

argued that this would be a useful change to the regulatory regime for bond prospectuses; and is pleased to see that HM Treasury will take this forward. It will be interesting to see how the FCA intends to reflect this change when it comes to consider detailed prospectus content requirements. ICMA has previously noted that the annexes to the UK Prospectus Regulation Delegated Regulation (to the extent they are retained by the FCA) would need to be revised, either by deleting the extraneous requirements or preferably by including a general provision stating that the disclosure items in the annexes are needed only to the extent they are necessary to meet the “necessary information” test.

In other areas, HM Treasury is proposing to:

- develop a new regime of regulatory deference for offers into the UK of securities listed on certain designated overseas stock markets, which will permit offers into the UK using an overseas offering document without FCA review and approval;
- include offers of securities which are or will be admitted to trading on certain MTFs to the list of public offer exemptions;
- develop a mechanism by which MTF admission documents will be treated as a type of prospectus, whilst not changing the current system in which MTF operators establish admission criteria and rules subject to FCA rules and oversight; and
- raise the threshold for liability that applies to certain categories of forward-looking information in prospectuses.

None of these changes appear to be problematic, and indeed the regulatory deference and forward-looking information changes are likely to be welcome.

When will it change?

The timing for the implementation of these changes is not yet clear. HM Treasury states that the UK Government will introduce legislation “when parliamentary time allows”. The full suite of reforms will take full effect after the FCA has consulted on, and is ready to implement, new rules under its expanded responsibilities.

Conclusion

It is still too early to draw conclusions as to whether the reform of the UK Prospectus Regulation will deliver “far-reaching and permanent benefits in terms of reducing regulation and encouraging efficient capital raising” that were mentioned in Lord Hill’s review. Much will depend on how the FCA chooses to exercise its expanded powers. At the moment, the direction of travel appears to be broadly welcome: a more flexible regime with some of the features outlined by HM Treasury (such as an effective regulatory deference mechanism) may well be positive.

ICMA plans to continue engaging with HM Treasury, the FCA and members on these important reforms for primary bond markets, focusing in particular on the need to avoid new and unnecessary barriers or increased disclosure requirements for international wholesale bond issuance.



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