

## UK Prospectus Regime Review Outcome – Summary

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On 1 March 2022, HM Treasury released its response to the UK Prospectus Regime Review following the conclusion of the consultation period in September 2021. The Government's response confirms that it will be taking forward important reforms to the UK's regime for the public issuance of securities and admission to trading on capital markets. The Government intends to replace the regime currently contained in the UK Prospectus Regulation and will legislate to do so when parliamentary time allows.

The QCA's response to the UK Prospectus Regime Review can be found [here](#).

This note provides an overview of the background to the review, a summary of the changes that will be made, and the QCA's position.

### Background

The [UK Prospectus Regime](#) Review (UK PRR) was published by HM Treasury on 1 July 2021. The consultation takes forward the recommendations presented in Lord Hill's Listing Review, namely that the Government conducts a fundamental review of the UK's prospectus regime.

The consultation aims to achieve four key objectives:

- facilitate wider participation in the ownership of public companies;
- improve the efficiency of public capital raising by simplifying regulation and removing the duplications that currently exist in the UK prospectus regime;
- improve the quality of information that investors receive; and
- improve the agility of regulation in this area.

In light of this, HM Treasury sought views on a range of issues in relation to prospectuses. These matters are summarised below:

- Its overall approach to reform, including that admissions of securities and the public offer rules are dealt with separately.
- Proposed new rules on admissions to trading on regulated markets, including whether the FCA should be granted discretion to set rules on whether or not a prospectus is required when securities are admitted to trading.
- Prospectus content and ancillary powers for the FCA so the replacement regime will operate effectively, including on the potential removal of the requirement to review prospectuses.
- How HMT can encourage the inclusion of more forward-looking information, including on liability issues.
- How a revised regime would impact companies trading on MTFs.
- The revised scope of the UK's public offering rules, including the 150-person threshold and the qualified investor exemption.
- Public offers by overseas companies.

### Summary of changes

After considering the feedback received during the consultation period, HM Treasury will be taking forward many of the proposed changes outlined in the consultation paper. The Government will replace the existing regime currently contained in the UK Prospectus Regulation and will be required to legislate to do so. The changes are intended to simplify the regulatory regime, making it more agile and effective, as well as facilitating wider participation in the ownership of public companies.

As part of these changes, the Government will delegate a greater degree of responsibility to the FCA to set out the detail of the new regime through rules. This will only take effect once the FCA has consulted on and implemented its new rules under its expanded responsibilities.

The key changes include:

#### **1. Admissions to trading on regulated markets**

The concept of the prospectus will be retained as an important part of the regulation of public offers of securities admitted to trading on regulated markets. The FCA will be granted with enhanced responsibilities, allowing the FCA to specify in its rulebook if and when a prospectus is required, including for a further issuance by a company already listed. The FCA's greater responsibilities will give it the power to determine whether to require a UK prospectus for a secondary listing or whether to rely on an overseas prospectus.

The FCA will also be able to make rules to determine what a prospectus should contain and address the manner and timing of publication. The new regime will also give the FCA the discretion to decide whether prospectuses must be reviewed and approved by it prior to publication.

#### **2. A new architecture for public offerings of securities in the UK**

While the FCA will be able to require prospectuses for admissions to trading on regulated markets, prospectuses will not be a feature of the public offerings regime. In the new system, there will be a general prohibition on public offerings of securities against which there will be exemptions.

Monetary thresholds contained in the current UK Prospectus Regulation will be re-stated into sterling at 1 for 1.

#### **3. The "necessary information" test**

Under the new regime, investors who can evidence that they have sustained losses from false or misleading information in, or the omission of information from, a prospectus will be able to seek compensation through the courts as they are able to do so now. However, the Government intends to retain a single statutory "necessary information" test for the preparation of a prospectus, with three alterations:

- The Government does not intend to include denomination as a factor which would permit differing disclosure for non-equity securities.
- The Government intends to clarify that necessary information may vary according to whether an offer of securities is an admission to trading or a secondary issuance.
- A modified necessary information test will apply to debt securities.

#### **4. Facilitating forward-looking information**

The Government intends to raise the threshold for liability that applies to certain categories of forward-looking information to ensure that a person responsible for the preparation of a prospectus is liable to pay compensation only if:

- The person knew the statement to be untrue or misleading;
- Was reckless as to whether it was untrue or misleading; or
- In the case of an omission, if that person knew the omission to be a dishonest concealment of a material fact.

The FCA will be given responsibility for specifying the categories of forward-looking information to which the new liability threshold will or will not apply.

#### **5. Junior markets**

The Government intends to add to the list of exemptions offers of securities which are or will be admitted to trading on certain multilateral trading facilities (MTFs), such as AIM or AQSE. The Government also intends to develop a mechanism so that admission documents published in accordance with the rules of the relevant MTFs are treated as a type of prospectus.

#### **6. Scope of the new public offerings regime**

The existing obligations under the Prospectus Regulation apply to offers of ‘transferable securities’ and this will continue under the new public offerings regime. Certain offerings of securities will continue to be entirely out of scope of the new public offerings regime.

#### **7. Private companies**

The Government will maintain the right of companies to offer securities to the public without admitting them to a stock market. The Government will also seek to increase the capital raising options available to private companies. As such, the Government remove the current requirement for an FCA-approved prospectus on offers over €8million to be published. Instead, securities will be allowed to be offered to the public provided the offer is made through a platform operated by a firm specifically authorised for the purpose.

#### **8. Public offerings from overseas**

The Government will develop a new regime of regulatory deference for offers into the UK of securities listed on certain overseas stock markets. This will allow offerings to be extended into the UK on the basis of offering documents prepared in accordance to the rules of overseas jurisdictions and markets.

### **QCA position**

Overall, the QCA broadly welcomes the outcome of HM Treasury’s UK Prospectus Regime Review and appreciates the speed and efficiency of concluding the review. In particular, the QCA welcomes the separation of the regulation of admission of securities to trading and the regulation of public offers of securities, as well as the addition to the list of exemptions offers of securities which are or will be admitted to trading on certain MTFs.

Furthermore, we welcome the intention to develop a mechanism that would allow admission documents that are published in accordance with the rules of MTFs (such as AIM or AQSE) to be treated as a type of prospectus.

The QCA very much welcomes the direction of travel and has been working closely with the FCA recently, which will become ever more important as it is handed its increased responsibilities. HM Treasury's review of the prospectus regime, while understandably important, is very much a first step in the reform of the regime. Many of the changes that are yet to occur, including those that the QCA has advocated for, to ensure the prospectus regime is an agile and efficient one that is suitable for companies of all sizes, will be delegated to the FCA who will consult on further changes in due course.

The QCA's focus going forward will be on working with the FCA to ensure that the needs of small and mid-sized quoted companies are taken into account and proportionate rules are developed regarding the prospectus regime. In terms of next steps, we will have a particular focus on the FCA's new responsibilities including:

- Determining when a prospectus is required, including for secondary issuances by an existing listed company;
- Determining what a prospectus should contain, as well as the manner and timing of publication;
- Eliminating, or, at a minimum, limiting, the circumstances in which prospectuses must be reviewed and approved by the FCA prior to their publication;
- Determining whether to require a UK prospectus for a secondary listing or whether to rely on an overseas prospectus; and
- Clarifying the link between forward-looking information and the raised threshold for liability.