

**C L I F F O R D**  
**C H A N C E**



PD3 – PROSPECTUS REGULATION (EU) 2017/1129

SUMMARY CHART OF KEY FEATURES

6 July 2017

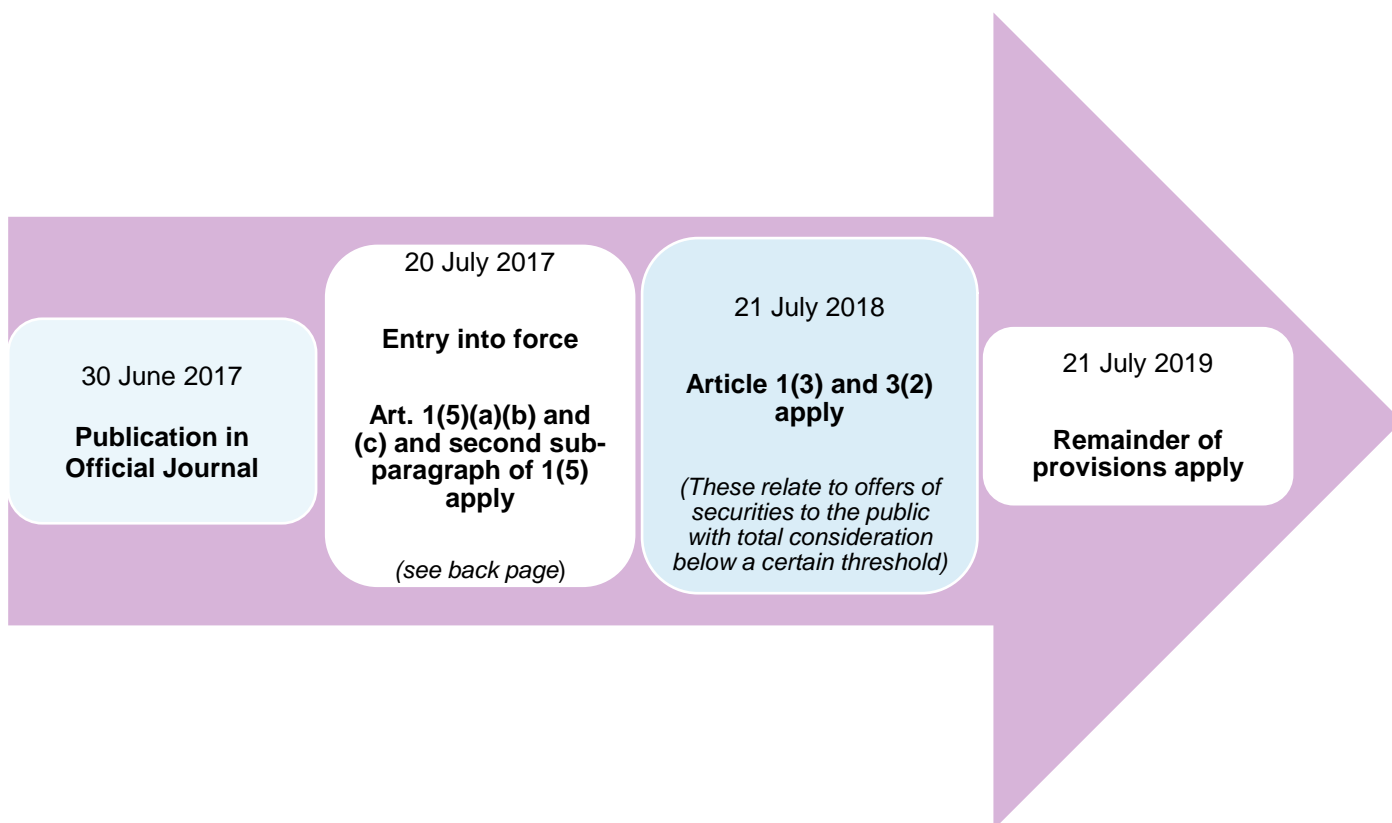
On 30 June 2017, *Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC* (the **Prospectus Regulation**) was published in the Official Journal of the European Union.

The Prospectus Regulation:

- forms part of the EU Capital Market Union (CMU) initiative;
- will enter into force on 20 July 2017;
- will apply from 21 July 2019, although a few provisions apply earlier (Article 49) - see “Timeline” illustration below;
- will replace the Prospectus Directive (Directive 2003/71/EC, as amended)(the **PD**) in full;
- will have “direct effect” (and therefore not need to be implemented by Member States);
- is “Text with EEA relevance”;
- is “Level 1”.

A separate Regulation with more detailed “Level 2” requirements (such as, prospectus disclosure requirements) is yet to be drafted. Under its mandate from the European Commission, ESMA is due to deliver technical advice to the European Commission by 31 March 2018. ESMA issued three consultation papers on 6 July 2017, with a closing date of 28 September 2017. The consultation papers address: format and content of the prospectus (ESMA31-62-532); the EU Growth prospectus (ESMA31-62-649); and scrutiny and approval (ESMA31-62-650).

## TIMELINE - ENTRY INTO FORCE AND APPLICATION



## PD3 – KEY FEATURES (COMPARED WITH PD)

<b>Wholesale</b>	<p>A “wholesale” distinction remains.</p> <p>A minimum denomination of Euro 100,000 (or equivalent) is a trigger for:</p> <ul style="list-style-type: none"> <li>○ an exemption from the need for a prospectus for an offer to the public; and</li> <li>○ a different prospectus disclosure standard – plus an exemption from a prospectus summary – when admitting to trading.</li> </ul> <p>The “wholesale” disclosure will also be available for bonds admitted to trading on a restricted “professionals only” market or segment and no resale to non-qualified investors</p>
<b>“Basics”</b>	<ul style="list-style-type: none"> <li>■ “Approved prospectus” for public offer or admission to trading on EU regulated market.</li> <li>■ Definition of “offer to the public” unchanged; “advertisement” now a “communication”.</li> <li>■ Home Member State concept / criteria for selection stay same as in PD.</li> <li>■ Passporting concept remains (as does the translation of summary requirement).</li> <li>■ 12 month life span; Prospectus supplements and investor withdrawal rights remain.</li> <li>■ Tri-partite prospectuses and base prospectuses are still available.</li> <li>■ No additional prospectus required for resale if written consent to use.</li> </ul>
<b>Content</b>	
Summary	<ul style="list-style-type: none"> <li>■ 7 pages, maximum (extra pages where range of securities or guarantors);</li> <li>■ “<i>accurate, fair, clear and not misleading</i>”; “<i>read as an introduction to the prospectus</i>”;</li> <li>■ Prescribed format in four sections; maximum of 15 risk factors;</li> <li>■ Base Prospectuses only require issue-specific summaries (not a general one for Base);</li> <li>■ “PRIIPs” (Reg (EU)1286/2014) “key information document “ (KID) can be used instead;</li> <li>■ Host Member State can require translation.</li> </ul>
Risk factors	<ul style="list-style-type: none"> <li>■ Presented in limited number of categories.</li> <li>■ In each category, the most material risk factors shall be mentioned first.</li> </ul>
Incorp. by ref.	<ul style="list-style-type: none"> <li>■ Broader categories will be permitted.</li> </ul>
General disclosure	<ul style="list-style-type: none"> <li>■ “<i>necessary information which is material for ... making an informed assessment..</i>”</li> <li>■ “<i>Easily analysable, concise and comprehensible</i>”.</li> <li>■ Unclear, as yet, what Level 2 prospectus disclosure and content requirements will be.</li> <li>■ Recital 47 suggests no specific tax disclosure required, just a general warning .</li> </ul>
<b>Exemptions from prospectus: <u>Public offer</u></b>	<p>As well as the Euro 100,000 denomination, some exemptions in Article 1(4) include (among others):</p> <ul style="list-style-type: none"> <li>■ Addressed to investors who acquire for a total consideration of Euro 100,000;</li> <li>■ “Qualified investors”;</li> <li>■ Fewer than 150 persons per EEA state;</li> <li>■ Employee share schemes (with proviso);</li> <li>■ Securities offered in connection with a takeover by means of an exchange offer or allotted in connection with a merger or division (with proviso).</li> </ul>
<b>Exemptions from prospectus: <u>Admission to trading</u></b>	<p>Exemptions in Article 1(5) include (among others):</p> <ul style="list-style-type: none"> <li>■ Securities fungible with securities already admitted to trading on same regulated market, provided represent, over a period of 12 months, less than 20% of securities already admitted;</li> <li>■ Shares resulting from conversion or exchange - subject to similar 20% cap, but with exceptions for some scenarios (e.g. grandfathering; certain 2014/59/EU (BRRD) resolution steps – see <i>extract on back page of this summary</i>);</li> <li>■ Employee share schemes;</li> <li>■ Securities offered in connection with a takeover by means of an exchange offer or allotted in connection with a merger or division (with proviso);</li> <li>■ Shares offered or allotted free of charge to existing shareholders.</li> </ul>
<b>New concepts</b>	<ul style="list-style-type: none"> <li>■ Simplified (reduced) disclosure for SMEs and an “EU Growth” prospectus.</li> <li>■ Simplified (reduced) disclosure for certain secondary issuance after 18 months’ admission.</li> <li>■ “Universal registration document” with shorter approval times for frequent issuers and approval waiver available after filing for 2 consecutive years.</li> </ul>

## **Article 1(5) – subparagraphs (a)(b)(c) and second sub-paragraph**

“... The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:

(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market;

(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;

(c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU...”

..

“...The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) of the first subparagraph shall not apply in any of the following cases:

(a) where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares;

(b) where the securities giving access to the shares were issued before 20 July 2017;

(c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;

(d) where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive 2009/138/EC of the European Parliament and of the Council, and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC...”

## **Useful links**

Regulation (EU) 2017/1129 – [Official Journal dated 30 June 2017](#) (Includes a Correlation table at the end, compared against the PD)

European Commission [mandate](#) to ESMA on Level 2 measures, 28 February 2017 (Updated [1 June 2017](#)); ESMA [Press Release](#) dated 6 July 2017; ESMA [consultations](#) dated 6 July 2017, closing 28 September 2017 and comprising:

[Draft technical advice on format and content of the prospectus](#) (ESMA31-62-532);

[Draft technical advice on content and format of the EU Growth prospectus](#) (ESMA31-62-649); and

[Draft technical advice on scrutiny and approval of the prospectus](#) (ESMA31-62-650).

Europa [Prospectus Directive](#) page; Eur-Lex page ([Procedure 2015/0268/COD](#)).

Clifford Chance [Financial Markets Toolkit](#); Clifford Chance Prospectus Directive and Transparency Directive [Topic Guide](#); Clifford Chance “European Legislative Process Explained” [Topic Guide](#).

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