

Chapter 2

Drawing up the prospectus

2.3 Minimum information requirements

Minimum information

2.3.1

UK

Chapter II of the *PR Regulation* provides for the minimum information to be included in a *prospectus*:

Section 1

Minimum information to be included in the registration documents

Article 2

Registration document for equity securities

1. For equity securities, the registration document shall contain the information referred to in Annex 1 to this Regulation, unless it is drawn up in accordance with Articles 9, 14 or 15 of [the *Prospectus Regulation*].
2. By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferable securities equivalent to shares, may be drawn up in accordance with Article 7 of this Regulation for retail securities or Article 8 of this Regulation for wholesale securities:
 - (a) the securities referred to in Articles 19(1) and 20(1) of this Regulation;
 - (b) the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market; and
 - (c) the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.

Article 3

Universal registration document

A registration document that is drawn up in accordance with Article 9 of [the *Prospectus Regulation*] shall contain the information referred to in Annex 2 to this Regulation.

Article 4

Registration document for secondary issuances of equity securities

1. A specific registration document for equity securities that is drawn up in accordance with Article 14 of [the *Prospectus Regulation*] shall contain the information referred to in Annex 3 to this Regulation.

2. By way of derogation from paragraph 1, the registration document for the following securities, where those securities are not shares or other transferable securities equivalent to shares, may be drawn up in accordance with Article 9:

(a) the securities referred to in Articles 19(1) and 20(1) of this Regulation;

(b) the securities referred to in Article 19(2) of this Regulation, where those securities are exchangeable for or convertible into shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market; and

(c) the securities referred to in Article 20(2) of this Regulation, where those securities give the right to subscribe or acquire shares that are or will be issued by an entity belonging to the issuer's group and that are not admitted to trading on a regulated market.

Article 6

Registration document for depository receipts issued over shares

For depository receipts issued over shares, the registration document shall contain the information referred to in Annex 5.

Article 7

Registration document for retail non-equity securities

For non-equity securities other than those referred to in Article 8(2) of this Regulation, the registration document shall contain the information referred to in Annex 6 to this Regulation, unless it is drawn up in accordance with Articles 9, 14 or 15 of [the *Prospectus Regulation*] or contains the information referred to in Annex 1 to this Regulation.

Article 8

Registration document for wholesale non-equity securities

1. For non-equity securities as referred to in paragraph 2, the registration document shall contain the information referred to in Annex 7 to this Regulation, unless the registration document is drawn up in accordance with Articles 9, 14 or 15 of [the *Prospectus Regulation*] or contains the information referred to in Annexes 1 or 6 to this Regulation.

2. The requirement referred to in paragraph 1 shall apply to non-equity securities that comply with one of the following conditions:

(a) they are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in such securities;

(b) they have a denomination per unit of at least than EUR 100 000 or, where there is no individual denomination, can only be acquired on issue for at least EUR 100 000 per security.

Article 9

Registration document for secondary issuances of non-equity securities

A specific registration document for non-equity securities that is drawn up in accordance with Article 14 of [the *Prospectus Regulation*] shall contain the information referred to in Annex 8 to this Regulation, unless it contains the information referred to in Annex 3 to this Regulation.

Article 10

Registration document for asset-backed securities

By way of derogation from Articles 7 and 8, a registration document that is drawn up for asset-backed securities, shall contain the information referred to in Annex 9.

Section 2

Minimum information to be included in the securities note

Article 12

Securities note for equity securities or units issued by collective investment undertakings of the closed-end type

1. For equity securities or units issued by collective investment undertakings of the closed-end type, the securities note shall contain the information referred to in Annex 11 to this Regulation, unless it is drawn up in accordance with Articles 14 or 15 of [the *Prospectus Regulation*].

2. By way of derogation from paragraph 1, the securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferable securities equivalent to shares, shall be drawn up in accordance with Article 15 of this Regulation for retail securities or Article 16 of this Regulation for wholesale securities.

Article 13

Securities note for secondary issuances of equity securities or of units issued by collective investment undertakings of the closed-end type

1. A specific securities note for equity securities or units issued by collective investment undertakings of the closed-end type that is drawn up in accordance with Article 14 of [the *Prospectus Regulation*] shall contain the information referred to in Annex 12 to this Regulation.

2. By way of derogation from paragraph 1, the specific securities note for the securities referred to in paragraphs 1 and 2 of Article 19 and paragraphs 1 and 2 of Article 20 of this Regulation, where those securities are not shares or other transferable securities equivalent to shares, shall be drawn up in accordance with Article 17 of this Regulation.

Article 14

Securities note for depository receipts issued over shares

For depository receipts issued over shares, the securities note shall contain the information referred to in Annex 13.

Article 15

Securities note for retail non-equity securities

For non-equity securities other than those referred to in Article 8(2) of this Regulation, the securities note shall contain the information referred to in Annex 14 to this Regulation, unless a specific securities note is drawn up in accordance with Articles 14 or 15 of [the *Prospectus Regulation*].

Article 16

Securities note for wholesale non-equity securities

For non-equity securities as referred to in Article 8(2) of this Regulation, the securities note shall contain the information referred to in Annex 15 to this Regulation, unless it contains the information referred to in Annex 14 to this Regulation or unless a specific securities note is drawn up in accordance with Articles 14 or 15 of [the *Prospectus Regulation*].

Article 17

Securities note for secondary issuances of non-equity securities

A specific securities note for non-equity securities that is drawn up in accordance with Article 14 of [the *Prospectus Regulation*] shall contain the information referred to in Annex 16 to this Regulation.

Section 3

Additional information to be included in the prospectus

Article 18

Complex financial history and significant financial commitment of issuers of equity securities

1. Where the issuer of an equity security has a complex financial history, or has made a significant financial commitment, additional information with respect to an entity other than the issuer shall be included in the prospectus, as referred to in paragraph 2.

2. With respect to an entity, other than the issuer, additional information shall be all information referred to in Annexes 1 and 20 to this Regulation that investors need to make an informed assessment as referred to in Article 6(1) and Article 14(2) of [the *Prospectus Regulation*], as if that entity were the issuer of the equity security.

Such additional information shall be preceded by a clear explanation of why that information is needed for investors to make an informed assessment and shall specify the effects of the complex financial history or of the significant financial commitment on the issuer or on the issuer's business.

3. For the purposes of paragraph 1, an issuer shall be considered as having a complex financial history where all of the following conditions are fulfilled:

- (a) at the time of drawing up the prospectus, the information referred to in the relevant Annexes does not represent the issuer's undertaking accurately;
- (b) the inaccuracy referred to in point (a) affects the ability of investors to make an informed assessment as referred to in Article 6(1) and Article 14(2) of [the *Prospectus Regulation*];
- (c) additional information relating to an entity other than the issuer is needed for investors to make an informed assessment as referred to in Article 6(1) and Article 14(2) of [the *Prospectus Regulation*].

4. For the purposes of paragraph 1, a significant financial commitment is a binding agreement to undertake a transaction that

is likely to give rise to a variation of more than 25 % relative to one or more indicators of the size of the issuer's business.

Article 19

Securities that are exchangeable for or convertible into shares

1. Where securities are exchangeable for or convertible into shares that are admitted to trading on a regulated market, the securities note shall contain as additional information the information referred to in item 2.2.2 of Annex 17.

2. Where securities are exchangeable for or convertible into shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are not admitted to trading on a regulated market, the securities note shall also contain the following additional information:

- (a) the information referred to in items 3.1 and 3.2 of Annex 11 in respect of that issuer or of that entity belonging to the issuer's group;
- (b) the information referred to in Annex 18 in respect of the underlying share.

3. Where securities are exchangeable for or convertible into shares that are or will be issued by a third party issuer and that are not admitted to trading on a regulated market, the securities note shall contain as additional information the information referred to in Annex 18.

Article 20

Securities giving rise to payment or delivery obligations linked to an underlying asset

1. For securities other than those referred to in Article 19 that give the right to subscribe or to acquire shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are admitted to trading on a regulated market, the securities note shall contain as additional information the information referred to in Annex 17.

2. For securities other than those referred to in Article 19 that give the right to subscribe or acquire shares that are or will be issued by the issuer or by an entity belonging to that issuer's group and that are not admitted to trading on a regulated market, the securities note shall also contain the following additional information:

- (a) the information referred to in Annex 17 except for the information referred to in item 2.2.2 of that Annex;
- (b) the information referred to in Annex 18 in respect of the underlying share.

3. For securities other than those referred to in Article 19 that are linked to an underlying other than shares referred to in paragraphs 1 and 2 of this Article, the securities note shall contain as additional information the information referred to in Annex 17.

Article 21

Asset backed securities

For asset-backed securities, the securities notes shall also contain the additional information referred to in Annex 19.

Article 22

Guarantees

For non-equity securities that include guarantees, the securities notes shall also contain the additional information referred to in Annex 21.

Article 23

Consent

Where the issuer or the person responsible for drawing up a prospectus consents to its use as referred to in the second subparagraph of Article 5(1) of [the *Prospectus Regulation*], the prospectus shall contain the following additional information:

(a)the information referred to in items 1 and 2A of Annex 22 to this Regulation where the consent is provided to one or more specified financial intermediaries;

(b)the information referred to in items 1 and 2B of Annex 22 to this Regulation where the consent is given to all financial intermediaries.

[Note: ■ PRR App 2 contains a link to the Annexes to the *PR Regulation*.]

Article 23a

Historical financial information

1.In relation to any financial year beginning on or before the day on which IP completion day falls, issuers established in the United Kingdom must present their historical financial information in accordance with—

(a)International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union;

(b)if those standards are not applicable, UK accounting standards.

2.In relation to any financial year beginning on or before the day on which IP completion day falls, issuers established in an EEA State must present their historical financial information in accordance with—

(a)International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union; or

(b)if not applicable, national accounting standards of that EEA State.

3.In relation to any financial year beginning on or before the day on which IP completion day falls, issuers established outside the United Kingdom and the EEA States must present their historical financial information in accordance with one of the following accounting standards—

(a)International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union;

(b)International Financial Reporting Standards provided that the notes to the audited financial statements that form part of the historical financial information contain an explicit and unreserved statement that these financial statements comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;

(c)Generally Accepted Accounting Principles of Japan;

(d)Generally Accepted Accounting Principles of the United States of America.

(e)Generally Accepted Accounting Principles of the People’s Republic of China;

(f)Generally Accepted Accounting Principles of Canada;

(g)Generally Accepted Accounting Principles of the Republic of Korea.

4.In relation to a financial year beginning after the day on which IP completion day falls, issuers established in the United Kingdom, must present their historical financial information in accordance with—

(a)[UK-adopted IFRS]; or

(b)if those standards are not applicable, UK accounting standards.

5.In relation to a financial year beginning after the day on which IP completion day falls, issuers established in a country outside the United Kingdom must present their historical financial information in accordance with—

(a)[UK-adopted IFRS];

(b)one of the accounting standards referred to in Article 23a(3); or

(c)national accounting standards of a country that are equivalent to UK-adopted international accounting standards in accordance with a determination made by the Treasury in regulations under Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to [the PD] and [the *Transparency Directive*].

6.For an issuer established in a country outside the United Kingdom, if such financial information is not prepared in accordance with the required standards, the financial statements must be restated in compliance with [UK-adopted IFRS].

Final offer price and amount of securities not included in prospectus

2.3.2

UK

Article 17 of the *Prospectus Regulation* provides for where the final offer price and amount of *transferable securities* are not included in the *prospectus*:

Article 17

Final offer price and amount of securities

1.Where the final offer price and/or amount of securities to be offered to the public, whether expressed in number of securities or as an aggregate nominal amount, cannot be included in the prospectus:

(a)the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and/or amount of securities to be offered to the public has been filed; or

(b)the following shall be disclosed in the prospectus:

(i)the maximum price and/or the maximum amount of securities, as far as they are available; or

(ii)the valuation methods and criteria, and/or conditions, in accordance with which the final offer price is to be determined and an explanation of any valuation methods used.

2.The final offer price and amount of securities shall be filed with the competent authority and made available to the public in accordance with the arrangements set out in Article 21(2).

Risk factors

2.3.3

UK

Article 16(1) to (3) of the *Prospectus Regulation* provides for the format and content of the risk factors to be included in a *prospectus*:

Article 16

Risk factors

1.The risk factors featured in a prospectus shall be limited to risks which are specific to the issuer and/or to the securities and which are material for taking an informed investment decision, as corroborated by the content of the registration document and the securities note.

When drawing up the prospectus, the issuer, the offeror or the person asking for admission to trading on a regulated market shall assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact.

Each risk factor shall be adequately described, explaining how it affects the issuer or the securities being offered or to be admitted to trading. The assessment of the materiality of the risk factors provided for in the second subparagraph may also be disclosed by using a qualitative scale of low, medium or high.

The risk factors shall be presented in a limited number of categories depending on their nature. In each category the most material risk factors shall be mentioned first according to the assessment provided for in the second subparagraph.

2.Risk factors shall also include those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities in the event of

bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with the UK law which implemented [RRD].

3. Where there is a guarantee attached to the securities, the prospectus shall contain the specific and material risk factors pertaining to the guarantor to the extent that they are relevant to the guarantor's ability to fulfil its commitment under the guarantee.

[Note: ESMA guidelines on risk factors drafted pursuant to article 16(4) of the EU Prospectus Regulation.]

Hyperlinks

2.3.4

UK

Article 10(1) of the *Prospectus RTS Regulation* addresses hyperlinks within prospectuses:

Article 10

Publication of the prospectus

1. Where a prospectus, whether a single document or consisting of separate documents, contains hyperlinks to websites, it shall include a statement to the effect that the information on the websites does not form part of the prospectus and has not been scrutinised or approved by the competent authority. That requirement shall not apply to hyperlinks to information that is incorporated by reference.