

Chapter 3

Approval and publication of prospectus

3.1 Approval of prospectus

Criteria for scrutiny and approval of prospectus

3.1.1

UK

Chapter V of the *PR Regulation* sets out requirements regarding scrutiny and approval of the *prospectus* and review of the *universal registration document*:

Article 35

Scope of the scrutiny

For the purposes of the scrutiny of the prospectus and the review of the universal registration document, references to the prospectus shall mean the prospectus or any of its constituent parts, including a universal registration document whether submitted for approval or filed without prior approval and any amendments thereto as well as supplements to the prospectus.

Article 36

Criteria for the scrutiny of the completeness of the information contained in the prospectus

1. For the purposes of scrutinising the completeness of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus is drawn up in accordance with [the *Prospectus Regulation*] and this Regulation, depending on the type of issuer, the type of issuance, the type of security and the type of offer or admission to trading;
- (b) whether the issuer has a complex financial history or has made a significant financial commitment, as referred to in Article 18.

2. For the purposes of point (b) of paragraph 1, the competent authority may require the issuer to include, modify or remove information from a draft prospectus, taking into account the following:

- (a) the type of securities;
- (b) the information already included in the prospectus and the existence and content of information already included in a prospectus of the entity other than the issuer, as well as the applicable accounting and auditing principles;
- (c) the economic nature of the transactions by which the issuer has acquired, or disposed of, its undertaking or any part of it, and the specific nature of that undertaking;

(d) whether the issuer can obtain with reasonable effort information about the entity other than the issuer.

Article 37

Criteria for the scrutiny of the comprehensibility of the information contained in the prospectus

1. For the purposes of scrutinising the comprehensibility of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus has a clear and detailed table of contents;
- (b) whether the draft prospectus is free from unnecessary reiterations;
- (c) whether related information is grouped together;
- (d) whether the draft prospectus uses an easily readable font size;
- (e) whether the draft prospectus has a structure that enables investors to understand its contents;
- (f) whether the draft prospectus defines the components of mathematical formulas and, where applicable, clearly describes the product structure;
- (g) whether the draft prospectus is written in plain language;
- (h) whether the draft prospectus clearly describes the nature of the issuer's operations and its principal activities;
- (i) whether the draft prospectus explains trade or industry specific terminology.

However, the competent authority shall not be required to consider points (g), (h) and (i) where a draft prospectus is to be used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required by Article 7 of [the *Prospectus Regulation*].

2. For the purposes of the first paragraph, the competent authority may, on a case-by-case basis and in addition to the information referred to in Article 7 of [the *Prospectus Regulation*] and Article 33 of this Regulation, require that certain information provided in the draft prospectus be included in the summary.

Article 38

Criteria for the scrutiny of the consistency of the information contained in the prospectus

For the purposes of scrutinising the consistency of the information in a draft prospectus, the competent authority shall consider all of the following:

- (a) whether the draft prospectus is free of material discrepancies between the different pieces of information provided therein, including any information incorporated by reference;
- (b) whether any material and specific risks disclosed elsewhere in the draft prospectus are included in the risk factors section;

(c) whether the information in the summary is in line with information elsewhere in the draft prospectus;

(d) whether any figures on the use of proceeds correspond to the amount of proceeds being raised and whether the disclosed use of proceeds is in line with the disclosed strategy of the issuer;

(e) whether the description of the issuer in the operating and financial review, the historical financial information, the description of the issuer's activity and the description of the risk factors are consistent;

(f) whether the working capital statement is in line with the risk factors, the auditor's report, the use of proceeds and the disclosed strategy of the issuer and how that strategy will be funded.

Article 39

Scrutiny of the information contained in the prospectus of specialist issuers

The competent authority may require additional information to be included in the prospectus based on the activities of the specialist issuers falling under one of the categories set out in Annex 29.

Article 40

Additional criteria for the scrutiny of the completeness, consistency and comprehensibility of the information contained in the prospectus

Where necessary for investor protection, the competent authority may apply criteria in addition to those laid down in Articles 36, 37 and 38 for the purposes of scrutinising the completeness, comprehensibility and consistency of the information in the draft prospectus.

Article 41

Proportionate approach in the scrutiny of draft prospectuses and review of the universal registration document

1. Where a first draft of a prospectus that is submitted to the competent authority is substantially similar to a prospectus that the competent authority has already approved, and where that draft prospectus highlights all changes made to that approved prospectus, the competent authority shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to scrutinise those changes and any other information affected by them.

2. For the purposes of scrutinizing a universal registration document filed without prior approval that has already been reviewed, or an amendment to such a document, the competent authority shall only be required to apply the criteria laid down in Article 36, 37 and 38 to those parts of the universal registration document or the amendment that have not been reviewed.

3. Where a first draft of a prospectus that incorporates information by reference to a document that has been approved—

(a) before IP completion day in accordance with [the *EU Prospectus Regulation*] or in accordance with the UK law which implemented [the *PD*] by a competent authority (as defined in [the *EU Prospectus Regulation*] as it had effect immediately before IP completion day); or

(b) on or after IP completion day, by the competent authority in accordance with [the *Prospectus Regulation*],

the competent authority shall only be required to apply the criteria laid down in Article 38 of this Regulation to scrutinise that information.

4. When applying paragraphs 1, 2 or 3, the competent authority shall request the issuer, offeror or person asking for admission to trading on a regulated market to confirm that all information in the final draft of the prospectus or universal registration document is up-to-date and contains all the information referred to in the Annexes to this Regulation applicable to that prospectus or universal registration document.

5. Where subsequent drafts of the prospectus are submitted to the competent authority, that competent authority, when scrutinising such subsequent drafts, shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to changes made to the preceding draft and to any other information affected by those changes.

Article 42

Submission of an application for approval of a draft prospectus or filing of a universal registration document or of amendments thereto

1. All drafts of a prospectus shall be submitted to the competent authority in searchable electronic format via electronic means.

When submitting the first draft of the prospectus, the issuer, offeror or person asking for admission to trading on a regulated market shall provide the competent authority with a contact point for the competent authority to submit all notifications in writing and by electronic means.

2. The following information shall also be submitted to the competent authority in searchable electronic format via electronic means:

(a) the list of cross references, where requested by the competent authority in accordance with Article 24(5) of this Regulation, or when submitted on own initiative;

(b) where no list of cross reference is requested, a document that identifies any items set out in the Annexes to this Regulation that, due to the nature or type of issuer, securities, offer or admission to trading, have not been included in the draft prospectus;

(c) any information that is incorporated into the prospectus by reference as referred to in Article 19 of [the *Prospectus Regulation*], unless such information has already been approved by or filed with the same competent authority in searchable electronic format;

(d) any reasoned request to the competent authority to authorise the omission of information from the prospectus as referred to in Article 18 of [the *Prospectus Regulation*];

(g)an appendix where required by Article 26(4) of [the *Prospectus Regulation*], unless no summary is required pursuant to the second subparagraph of Article 7(1) of that Regulation;

(h)a confirmation that, to the best of the knowledge of the issuer, all regulated information which was required to be disclosed under the UK law which implemented [the *Transparency Directive*], where applicable, and under Regulation (EU) No 596/2014 of the European Parliament and of the Council, has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose that regulated information commenced, whichever is the shorter, where the issuer is submitting for approval a draft universal registration document or filing a universal registration document without prior approval and seeks to obtain the status of frequent issuer;

(i)where a universal registration document is filed without prior approval, an explanation as to how a request for amendment or supplementary information as referred to in the second subparagraph of Article 9(9) of [the *Prospectus Regulation*] has been taken into account in the universal registration document;

(j)any other information requested by the competent authority for the purposes of the scrutiny and approval of the prospectus or the scrutiny, review and approval of the universal registration document.

3.Where a universal registration document that is filed without prior approval is annotated in the margin in accordance with Article 24(6), it shall be accompanied by an identical version without annotations in the margin.

4.Where a universal registration document is filed without prior approval or where a universal registration document is amended, the information referred to in points (a), (b), (c), (d), (h) and (i) of paragraph 2 shall be submitted at the time when the universal registration document is filed with the competent authority whilst the information referred to in point (j) of paragraph 2 shall be submitted during the review process. In all other cases, the information referred to in paragraph 2 shall be submitted together with the first draft of the prospectus submitted to the competent authority or during the scrutiny process.

5.Where a frequent issuer informs the competent authority that it intends to submit an application for approval of a draft prospectus in accordance with the second sentence of the first subparagraph of Article 20(6) of [the *Prospectus Regulation*], that frequent issuer shall do so in writing and by electronic means.

The information referred to in the first subparagraph shall indicate the Annexes to this Regulation relevant for that draft prospectus.

Article 43

Changes to a draft prospectus during the approval procedure

1.Each version of the draft prospectus submitted after the first draft prospectus shall highlight all changes made to the preceding draft and shall be accompanied by an unmarked draft. The competent

authority shall accept marked extracts of the preceding draft prospectus where only limited changes have been made.

2. Where the competent authority, in accordance with Article 45(2) of this Regulation, have notified the issuer, offeror or person asking for admission to trading on a regulated market that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency as referred to in Article 20(4) of [the *Prospectus Regulation*], the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the outstanding issues notified by the competent authority have been addressed.

3. Where changes made to a draft prospectus are self-explanatory or clearly address the outstanding issues notified by the competent authority, an indication of where the changes have been made to address the outstanding issues shall be considered sufficient explanation for the purposes of paragraph 2.

Article 44

Submission for approval of the final draft of the prospectus

1. The final draft of the prospectus shall be submitted for approval together with all the information referred to in Article 42(2) that has changed compared to the previous submission, with the exception of the information referred to in points (a) and (h) of that Article. The final draft of the prospectus shall not be annotated in the margin.

2. Where no changes have been made to the information referred to in Article 42(2), the issuer, offeror or person asking for admission to trading on a regulated market shall confirm so in writing and by electronic means.

Article 45

Acknowledgment of the receipt of an application for approval of a draft prospectus, or of the filing of a universal registration document or of an amendment thereto, and processing of an application for approval of a draft prospectus

1. The competent authority shall acknowledge receipt of the initial application for approval of a draft prospectus or of the filing of a universal registration document as referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or of an amendment to that universal registration document in writing and by electronic means as soon as possible and no later than by close of business on the second working day following the receipt of the application or filing.

Upon receipt of the initial application for approval of a draft prospectus and of the filing of a universal registration document, or of an amendment thereto, the competent authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market of the following:

- (a) the reference number of the application or of the filing;
- (b) the contact point within the competent authority to which queries regarding the application or the filing may be addressed.

2. Where the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, the competent authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market thereof in writing and by electronic means. Where the universal registration document referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or an amendment to that universal registration document, does not meet the standards of completeness, comprehensibility and consistency or where amendments or supplementary information are needed, the competent authority shall inform the issuer thereof in writing and by electronic means. Where the shortcoming must be addressed without undue delay, as required by the third subparagraph of Article 9(9) of [the *Prospectus Regulation*], the competent authority shall inform the issuer thereof.

3. The competent authority shall notify the issuer, offeror or person asking for admission to trading on a regulated market about its decision regarding the approval of the draft prospectus in writing and by electronic means as soon as possible and by no later than by close of business of the day on which that decision is taken.

Time limits for approval of prospectus

3.1.2

UK

Article 20(2) to (6) of the *Prospectus Regulation* sets out the time limits for the approval of a *prospectus*:

Article 20

Scrutiny and approval of the prospectus

...

2. The competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.

Where the competent authority fails to take a decision on the prospectus within the time limits laid down in the first subparagraph of this paragraph and paragraphs 3 and 6, such failure shall not be deemed to constitute approval of the application.

3. The time limit set out in the first subparagraph of paragraph 2 shall be extended to 20 working days where the offer to the public involves securities issued by an issuer that does not have any securities admitted to trading on a regulated market and that has not previously offered securities to the public.

The time limit of 20 working days shall only be applicable for the initial submission of the draft prospectus. Where subsequent submissions are necessary in accordance with paragraph 4, the time limit set out in the first subparagraph of paragraph 2 shall apply.

4. Where the competent authority finds that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval and/or that changes or supplementary information are needed:

(a) it shall inform the issuer, the offeror or the person asking for admission to trading on a regulated market of that fact promptly and at the latest within the time limits set out in the first subparagraph of paragraph 2 or, as applicable, paragraph 3, as calculated from the submission of the draft prospectus and/or the supplementary information; and

(b) it shall clearly specify the changes or supplementary information that are needed. In such cases, the time limit set out in the first subparagraph of paragraph 2 shall then apply only from the date on which a revised draft prospectus or the supplementary information requested are submitted to the competent authority.

5. Where the issuer, the offeror or the person asking for admission to trading on a regulated market is unable or unwilling to make the necessary changes or to provide the supplementary information requested in accordance with paragraph 4, the competent authority shall be entitled to refuse the approval of the prospectus and terminate the review process. In such case, the competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market of its decision and indicate the reasons for such refusal.

6. By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2 and paragraph 4 shall be reduced to five working days for a prospectus consisting of separate documents drawn up by frequent issuers referred to in Article 9(11). The frequent issuer shall inform the competent authority at least five working days before the date envisaged for the submission of an application for approval.

A frequent issuer shall submit an application to the competent authority containing the necessary amendments to the universal registration document, where applicable, the securities note and the summary submitted for approval.

Applying for approval

3.1.3

R

If the order of disclosure items in the *prospectus* does not coincide with the order set out in the Annexes to the *PR Regulation*, an *applicant* must provide the *FCA* with a cross-reference list identifying the pages where each disclosure item can be found in the *prospectus*.

[Note: Articles 24(5) and 25(6) of the *PR Regulation*]

3.1.4

R

An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval, for which it is responsible, contains:

- (1) the necessary information as required under article 6 of the *Prospectus Regulation*; and
- (2) the information items required in the Annexes of the *PR Regulation*, as appropriate to its application.

3.1.5

R

An *applicant* must take all reasonable care to ensure that any *prospectus* submitted for approval for which it is responsible is, to the best of its

knowledge, in accordance with the facts and contains no omission likely to affect its import.

Timeframe for submission

3.1.6

R

- (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):
 - (a) a completed Form A.
 [Note: Article 42(2)(j) of the *PR Regulation*. This form is available on the *FCA* website, see <https://www.fca.org.uk/markets/primary-markets/forms> .]
 - (b) the relevant fee; and
 [Note: ■ FEES 3 sets out the relevant fee payable to the *FCA*.]
 - (c) the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in article 42(2) of the *PR Regulation*.
- (2) The date referred to in paragraph (1) is:
 - (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
 - (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an offer; or
 - (c) as soon as practicable in the case of a *supplementary prospectus*.
- (3) The applicant must submit the final version of the draft *prospectus* and the additional information set out in article 44 of the *PR Regulation* to the *FCA* before midday on the day on which approval is required to be granted.
 [Note: Article 44 of the *PR Regulation* is reproduced for the convenience of readers in ■ PRR 3.1.1UK.]

Copy of resolution to be kept

3.1.7

R

An *applicant* must keep a copy of the board resolution allotting or issuing the *transferable securities* for six years after the application for approval of the *prospectus* for those *transferable securities*.

3.1.8

G

[deleted]

Decision-making procedures

3.1.9

R

The *FCA* will follow the *executive procedures for statutory notice decisions* and *statutory notice associated decisions* if it:

- (1) proposes to refuse to approve a *prospectus*; or
- (2) decides to refuse to approve a *prospectus* after having given the *applicant* a written notice.

[Note: ■ DEPP 4 sets out the *executive procedures for statutory notice decisions and statutory notice associated decisions.*]

Prospectus not to be published until approved

3.1.10 **UK** Article 20(1) of the *Prospectus Regulation* provides:
Article 20

Scrutiny and approval of the prospectus

1.A prospectus shall not be published unless the competent authority has approved it, or all of its constituent parts in accordance with Article 10.

Prospectus comprising separate documents

3.1.11 **R** If the *prospectus* is not a single document but comprises separate documents:

- (1) an application for approval may relate to one or more of those separate documents; and
- (2) a reference in this section to a *prospectus* is, unless the context otherwise requires, to be taken to be a reference to the document or documents to which the application relates.

3.1.12 **EU** [deleted]

3.1.13 **R** (1) [deleted]
(2) [deleted]

Service of Notice Regulations

3.1.14 **G** Regulation 7 of the Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the *FCA*. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the *FCA* for approval because of the provisions set out in ■ PRR 3.1.1UK.