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Highlights of the new Luxembourg prospectus law

Today, the Luxembourg parliament has adopted the final text of the bill of law (the “**New Prospectus Law**”) implementing into Luxembourg domestic law Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the “**Prospectus Regulation**”). The Prospectus Regulation provides for new prospectus options.

1. Entry into force and transitory regime

As of 21 July 2019 the New Prospectus Law will repeal and replace the Luxembourg law of 10 June 2005 on prospectuses for securities (the “**2005 Law**”).

However, prospectuses and/or simplified prospectuses approved in accordance with the 2005 Law prior to 21 July 2019 shall continue to be governed by the 2005 Law until the end of their validity, or until twelve months have elapsed after 21 July 2019, whichever occurs first.

2. Option to exempt offers of securities to the public from the obligation to publish a prospectus pursuant to the Prospectus Regulation (Part II of the New Prospectus Law)

The Luxembourg legislator has opted to exempt offers of securities to the public with a total consideration of less than EUR 8,000,000 in the European Union over a period of 12 months from the obligation to publish a prospectus in accordance with the Prospectus Regulation. The amount of such total consideration set by the Luxembourg legislator corresponds to the maximum amount that was allowed to be exempted pursuant to the option provided for by the Prospectus Regulation.

However, if the total consideration of an offer amounts to at least EUR 5,000,000 an information note will have to be drawn up and made available to investors pursuant to the relevant provisions of Part II of the New Prospectus Law. The list of minimum information to be included in the information note is expressly set out in the New Prospectus Law.

Although issuers wishing to make use of this exemption shall notify the Luxembourg competent authority, the *Commission de Surveillance du Secteur Financier* (“**CSSF**”), prior to any such offer, no formal approval of the information note by the CSSF will be required.

This new exemption could prove helpful for start-ups and SMEs seeking to raise capital without the burden of having to publish a prospectus compliant with the Prospectus Regulation.

3. Major changes to the existing domestic prospectus regime (Part III of the New Prospectus Law)

3.1. Obligation to publish an alleviated prospectus (*prospectus allégé*)

Offers of securities to the public falling outside of the scope of the Prospectus Regulation shall be made pursuant to the domestic prospectus regime as outlined in Part III of the New Prospectus Law. This domestic prospectus regime is in broad lines comparable to the simplified prospectus regime currently existing under the 2005 Law.

To align the domestic prospectus regime with the newly introduced exemption under the Prospectus Regulation regime (as described under item ii. above), the Luxembourg legislator has decided to apply the same thresholds to the domestic regime, i.e.:

- offers of securities to the public with a total consideration of less than EUR 8,000,000 are exempted from the obligation to publish an alleviated prospectus;
- offers of securities to the public with a total consideration of at least EUR 5,000,000 (and less than EUR 8,000,000) are exempted from the obligation to publish an alleviated prospectus, but an information note shall be drawn up in accordance with the content requirements set out in Part III of the New Prospectus Law. Prior notification of the CSSF is required;
- offers of securities to the public with a total consideration of at least EUR 8,000,000 are not exempted from the obligation to publish an alleviated prospectus. An alleviated prospectus will have to be drawn up and approved by the CSSF pursuant to Part III of the New Prospectus Law.

3.2. Alleviated prospectus on a voluntary basis

Inspired by the voluntary prospectus regime introduced by the Prospectus Regulation, the New Prospectus Law will allow issuers (e.g. the Luxembourg State) otherwise exempted from the obligation to publish an alleviated prospectus to draw up and publish such prospectus on a voluntary basis in accordance with the provisions of the New Prospectus Law. The same voluntary regime will be applicable to those offers to the public that are otherwise exempted.

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