



UK PROSPECTUS REGIME REVIEW

Issued 24 September 2021

ICAEW welcomes the opportunity to comment on the consultation *UK Prospectus Regime Review*, published by HM Treasury on 1 July 2021, a copy of which is available from this [link](#).

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KEY POINT**A considered, holistic approach to reforms**

1. While we are supportive of efforts to improve the functioning of the UK's markets, we urge careful assessment of the interaction of these proposals with those of the FCA for the listing regime, and of the extent of deregulation they collectively introduce. Additional justification for a considered approach to such large-scale reforms include concerns of possible market overheating, and possible levels of business' distress that may arise as COVID-19 financial support measures are lifted.

ANSWERS TO SPECIFIC QUESTIONS***Q1 Do you agree with our overall approach to reforming the UK prospectus regime?***

2. Yes, we agree. Moreover, while we are supportive of efforts to improve the functioning of the UK's markets, we urge careful assessment of the interaction of these proposals with those of the FCA for the listing regime, and of the extent of deregulation they collectively introduce. Additional justification for a considered approach to such large-scale reforms include concerns of possible market overheating, and levels of post-pandemic business' distress that may arise as COVID-19 financial support measures are lifted.

Q2 Do you agree with the key objectives that we are seeking to achieve?

3. Yes we consider they are appropriate.

Q3 Do you have any views on the underlying purpose of a prospectus when seeking admission to a regulated market?

4. We recognise the perspectives on the purpose of a prospectus set out in Chapter 3 of the consultation paper and agree with the practical statement of purpose described in 3.7.

Q4 Do you agree the FCA should have discretion to set rules on when a further issue prospectus is required?

5. We agree that the FCA should have rulemaking powers and the flexibility to establish exemptions from the requirement to publish a prospectus, provided that such powers are exercised within a regulatory perimeter that has been subject to public consultation and impact analysis. The approach to and conditions for granting exemptions should be published to promote certainty, to eliminate asymmetry of information amongst market participants, and to prevent undue inferences being drawn by the market if an exemption is not granted.

Q5 Do you agree the Government should grant the FCA sufficient discretion to be able to recognise prospectuses prepared in accordance with overseas regulation in connection with a secondary listing in the UK?

6. Yes, we agree the FCA should be able to recognise such prospectuses - as part of a transparent equivalence process. The process should also describe the deference mechanism for situations where the overseas regulation does not require a prospectus or similar document.

Q6 Do you agree with our approach to the 'necessary information test'?

7. We generally agree with this approach as it is aligned with the purpose of a prospectus (Question 3) and is based on the existing test in PRR 2.1.1 (Article 6 of the Prospectus Regulation).

8. Specific consideration should also be given to other commonly-encountered requirements and practices, such as for offerings that have a US tranche.
9. We wonder whether the test for necessary information which, while suitable for professional or experienced investors, may not be as useful for the potential wider public investors, should be calibrated to meet the objective of wider public ownership.

Q7 Do you agree the FCA should have discretion to set out rules on the review and approval of prospectuses?

10. Yes, on the basis that the overall standard of preparation for a prospectus (the ‘necessary information test’) will be kept in statute, and provided that the FCA’s discretion is subject to the same caveats as in our response to Question 4.

Q8 Do you have any comments on what ancillary powers the FCA will need in order to ensure admissions of securities to Regulated Markets function smoothly? (See list of potential powers in Annex A.)

11. The list of potential powers is comprehensive.

Q9 Do you agree with our proposed change to the prospectus liability regime for forward looking information?

Q10 Do you think that our proposed changes strike the right balance between ensuring that investors have the best possible information, and investor protection?

12. We concur with the feedback in 5.10 of the consultation paper that companies appear more comfortable with making disclosures of such information in their annual reports than in prospectuses. We question whether changing the liability attached to forward-looking information in prospectuses will be sufficient on its own to encourage more disclosures of high quality.
13. Attaching different standards of liability to different sets of information in a prospectus could create confusion for users and, of more concern, be perceived as permitting different standards of preparation. Prospective information must be prepared with care and diligence. The theme behind ICAEW’s **Guidance for preparers of prospective financial information**, which is widely referred to by market participants, is that high-quality, useful information is achieved through process, controls, and openness about the basis of preparation. In our view, the proposed disclosures in 5.17, that are intended to make clear which standard of liability applies, should also refer to the standard of preparation.
14. A balance also needs to be maintained between providing forward-looking financial information that is useful for investors in a prospectus and including commercially sensitive information that would make public listing less attractive to certain companies.

Q12 Do you agree there should be a new exemption from the public offer rules for offers directed at existing holders of a company’s securities?

15. We agree there should be such an exemption for fundraising.

Q13 Do you agree we should retain the 150 person threshold for public offers of securities and the ‘qualified investors’ exemption? Do you have any comments on whether they operate effectively?

16. Yes, we agree they should be retained for now.
17. It will be possible to reconsider the threshold, including with reference to other regulated overseas markets that have greater thresholds, after the package of reforms has been adopted and when the extent of broader participation in public offerings can be measured.

Q14 Does the exemption for employees, former employees, directors and ex-directors work effectively?

18. Our members have not highlighted problems with the functionality of this exemption.

Q15 Which option for accommodating the right of private companies to offer securities to the public do you favour?

19. Removing the requirement for a prospectus may make it easier for companies to offer securities to the public but doing so protects what is, arguably, the riskiest market. An appropriate mechanism for accommodating such public offers should include minimum standards of disclosure and due diligence as well as verification. This, together with the associated costs, means that some companies should not offer securities to the public.

Q16 Which of the options above do you prefer [for overseas listed companies]? (Please state reasons)

Q17 Do you have any further thoughts or considerations over how a new deference mechanism (Option 2) should operate?

20. Neither Option 1 nor Option 2 had clear majority support among our members.

Q19 Do you agree there should be no mechanism to allow public offerings of securities by overseas unlisted companies? (Please state reasons)

21. Yes, we agree – in addition to the reasons in our response to Q15, it would be difficult to establish the existence, and consider the adequacy, of rules, processes and systems in place to give protection to investors.