

# Prospectus and Transparency Directives: Countries start to implement changes

EEA member states have until 1 July 2012 to implement Directive 2010/73/EU (the Directive amending the Prospectus and Transparency Directives), but some member states are choosing to implement certain provisions in advance of the deadline. Some of the changes take immediate effect. So far, there is no uniformity on either the selected changes or the effective dates. Accordingly, over the next few months, careful assessment will be necessary, country by country, when preparing prospectuses, planning cross-border offers of securities or undertaking passporting. This briefing marks the first of a series to monitor implementation.

## The Netherlands

The Netherlands has chosen to implement one change from the amending Directive six months in advance of the deadline. The "wholesale" denomination will be increased from Euro 50,000 to Euro 100,000 from **1 January 2012**. Implementation is via the Financial Markets Amendment Act 2010 (*Wijzigingswet financiële markten 2010*), which makes changes to the relevant provisions in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).

Apart from the implementation of the PD amending Directive, some other changes to the Financial Supervision Act have been made through the Amendment Act, including (i) a requirement to include a 'health warning' in marketing material and prospectuses for offerings of securities which are exempt from prospectus requirements under the PD (other than offerings to qualified investors); and (ii) an extension of the scope of the aforementioned denomination change beyond securities caught by the PD regime.

## United Kingdom

The UK has implemented two changes in advance of the deadline. With effect from **31 July 2011** the UK will:

- raise the threshold for an offer of securities for which a prospectus is required from Euro 2.5 million to Euro 5 million (or equivalent); and
- raise the minimum number of investors for which a prospectus is required from 100 to 150 investors per EEA state.

Implementation is via the Prospectus Regulations 2011, which make changes to the relevant provisions in the Financial Services and Markets Act 2000. The UK's focus with these changes has been described as being to improve access to finance for small businesses. Accordingly, they are unlikely to have a significant impact on mainstream capital markets practice, but the increase to 150 people may prove useful in some circumstances.

## Key Issues

Implementation ahead of 1 July 2012

The Netherlands

United Kingdom

Italy

Czech Republic

Further information

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## Italy

As yet, there is no primary legislation in Italy to implement the amending Directive changes. Nonetheless, the domestic regulator, the CONSOB has announced that it will make use of its broad powers to make secondary legislation. The CONSOB launched a consultation in May 2011 to amend Regulation No. 11971 of 14 May 1999, by introducing changes regarding:

- the available exemptions from the obligation to publish a prospectus;
- simplified prospectuses;
- prospectus summaries; and
- the validity, publication and passporting of prospectuses.

Some of the proposed Italian changes are similar to those adopted by the UK – such as, increasing the 100 person exemption to 150 people and increasing the minimum threshold for which a prospectus is required to Euro 5 million. In addition, the CONSOB is proposing: an amended the definition of qualified investor, to align it with the MiFID Directive 2004/39/EC; increasing the maximum permitted amount of plain vanilla non-equity securities issued in a continuous or repeated manner by credit institutions from Euro 50 million to Euro 70 million; and, broadening the exemption for offers to employees.

The consultation closed in June and implementation is likely to occur in the third quarter of 2011.

## Czech Republic

Changes to both the Prospectus Directive and Transparency Directive were implemented in the Czech Republic pursuant to Law 188/2011 on **15 July 2011**, with immediate effect. Changes include increasing the wholesale threshold to Euro 100,000 for both the Prospectus and Transparency Directives.

In the case of the Transparency Directive, the Czech law varies the grandfathering cut-off date contained in Directive 2010/73/EU. Whereas, in Directive 2010/73/EU, the grandfathering period for the Transparency Directive "wholesale exemption" was only available for securities with a denomination of Euro 50,000 (or equivalent) which were admitted to trading on a regulated market "...before 31 December 2010, for as long as such debt securities are outstanding...", the Czech legislation extends this date to 15 July 2011, with a cut-off date of 2021.

## Further information

Further information can be found in the following Clifford Chance briefings or legislation:

- **The Netherlands:** [Clifford Chance briefing: New Dutch regulation may discourage cross-border securities offerings into the Netherlands](#)
- **UK:** Prospectus Regulations 2011 - [http://www.legislation.gov.uk/ukxi/2011/1668/pdfs/ukxi\\_20111668\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/1668/pdfs/ukxi_20111668_en.pdf); Explanatory Memorandum - [http://www.legislation.gov.uk/ukxi/2011/1668/pdfs/ukxiem\\_20111668\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/1668/pdfs/ukxiem_20111668_en.pdf)
- **Italy:** CONSOB consultation, 6 May 2011: [http://www.consob.it/main/documenti/Regolamentazione/lavori\\_preparatori/consultazione\\_emittenti\\_2011\\_0506.htm](http://www.consob.it/main/documenti/Regolamentazione/lavori_preparatori/consultazione_emittenti_2011_0506.htm) ; Press release: [http://www.consob.it/main/documenti/english/en\\_newsletter/2011/year\\_17\\_n-19\\_09\\_may\\_2011.htm](http://www.consob.it/main/documenti/english/en_newsletter/2011/year_17_n-19_09_may_2011.htm)
- **Czech Republic:** Law 188/2011: <http://aplikace.mvcr.cz/sbirka-zakonu/>

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