

New exemptions align Jersey's prospectus rules with familiar UK/EU exemptions

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On 19 October 2021, changes to the definition of “prospectus” in the Jersey Companies Law will come into force. These changes will exclude certain categories of debt and equity invitations from being a prospectus for Jersey law purposes with the effect that such invitations will no longer require approval from the Jersey Registrar of Companies and will not give rise to a public prospectus “filing” obligation for Takeover Code purposes. The changes are welcomed in many areas, including restructuring and high yield, and further enhance Jersey’s standing as a leading jurisdiction for use in capital markets transactions.

The current prospectus rules

The current Jersey definition of “prospectus” has often meant that a securities offer by a Jersey company is a prospectus for Jersey law purposes, even where an exemption from the obligation to produce an approved prospectus is available in other jurisdictions in which the offer will be circulated. This is because the only safe harbour within the definition has been a “restricted circle of persons” exemption that applies if, amongst other things, the number of persons (whether in Jersey or elsewhere) to whom the invitation is communicated does not exceed 50.

What is changing?

The Companies (Amendment of Law) (No. 2) (Jersey) Order 2021 (the “**Amending Order**”), made on 12 October 2021, comes into force on 19 October 2021. The Amending Order introduces new safe harbours which align Jersey’s prospectus exemptions much more closely with those in the UK and the EU. In particular, there are new exemptions for offers: (a) to qualified investors/professional investors (where “qualified investors” takes its meaning from the EU Prospectus Regulation); and (b) relating to securities with a minimum denomination of at least EUR 100,000 (or an equivalent amount in another currency), and the number of persons (other than qualified investors and professional investors) who will constitute a ‘restricted circle of persons’ has been increased to 50 in Jersey and 150 elsewhere.

The definition of “prospectus” to be amended by the Amending Order only relates to securities of a Jersey company. The prospectus regime that applies to foreign companies is separate and is not covered by this briefing note.

Conclusion

The changes are an important step in modernising Jersey’s prospectus regime while still maintaining its integrity and its fundamental role in protecting investors. The new exemptions balance the imperative to protect retail investors with the need to remove disproportionate burden where an offer of securities is made to sophisticated investors.

The Jersey exemptions are based on similar exemptions under UK and EU prospectus rules. They will, therefore, be familiar to capital markets participants and their advisers and will allow for transaction efficiencies in cross border capital markets transactions.

Carey Olsen worked closely with the Government of Jersey in the development of the new definition of “prospectus” and is well placed to provide advice on its scope. If you have any queries in relation to the application of the new exemptions, please do not hesitate to contact us.

For further information or professional advice please contact your usual Carey Olsen lawyer.

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