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HM Treasury
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By email: UKProspectusRegime@hmtreasury.gov.uk

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Dear Sirs

UK Prospectus Regime Review - response to consultation

We welcome the opportunity to comment on HM Treasury's consultation on the potential reform of the UK prospectus regime.

As you know, The Chartered Governance Institute is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead 'effective governance and efficient administration of commerce, industry and public affairs' working with regulators and policy makers to champion high standards of governance and providing qualifications, training and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, which includes company secretaries, our members have a uniquely privileged role in companies' governance arrangements including corporate reporting and the preparation of the prospectus. Our members are therefore well placed to understand the issues raised by this consultation document.

In preparing our response we have consulted, amongst others, with members of the Chartered Governance Institute's Company Secretaries Forum, a group of company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. However, the views expressed in this response are not necessarily those of any individual members of any of this group, nor of the companies they represent.

Our response to the questions raised in the consultation are set out below. Where appropriate we have explained the reasons behind our responses and we have set out our thoughts on the relative merits, as we see them, of the potential options set out in the consultation.

Reponses to questions in the consultation

1. **Do you agree with our overall approach to reforming the UK prospectus regime**?

   Yes. We agree that the current regime is duplicative and unnecessarily complex. The two-stage process outlined in the consultation seems logical and appropriate.

2. **Do you agree with the key objectives that we are seeking to achieve?**

   Yes, although maintaining investor confidence in the regime must remain the fundamental objective. We believe that can still be maintained, with appropriate regulatory oversight, whilst still achieving the stated aims of facilitating wider participation, removing duplications, improving the quality of information and ensuring that regulation is more agile and dynamic. The need to keep investor confidence at the forefront of any reforms is a central theme of our overall response to the consultation.

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

   As noted above, we see investor confidence as fundamental and the prospectus does provide a mechanism through which investors can hold issuers to account for misstatements and the omission of key information. We agree that an appropriate amount of legal liability (on issuers and their directors) does 'focus the mind' and results in care being taken over what is said and what is included. While we agree with, and support, the stated objectives of the consultation, maintaining appropriate levels of legal liability on the part of issuers and their directors (whether through the mechanism of a prospectus or otherwise) should also be front and centre of any reforms. That said, we agree it is important that 'legal liability' on the part of issuers and their directors should be proportionate and should not act as a disincentive to capital raising.

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

   Yes. We believe that this will help achieve the stated objectives and, above all, ensure that the regime is more agile and dynamic.

5. **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?**

   Yes.

6. **Do you agree with our approach to the 'necessary information test'?**

   Yes. In particular we agree that an overarching standard of preparation for a prospectus should be maintained in statute. We think the current 'necessary information' test is well understood and is clear and comprehensible. We also agree that what constitutes 'necessary information' depends on the circumstances and that a 'one size fits all' approach would be unhelpful. We agree that any clarifying provisions should be tailored as necessary depending on whether they apply to an IPO or a secondary issue.

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

   We agree that the FCA should have the discretion to set the rules in this regard, subject to the point we make above about not taking the eye off the ball of 'investor confidence' and the ability to hold issuers and their directors to account. We have some reservations about the suggestion that the current requirement to review prospectuses is removed. While we support the idea that the FCA should be given flexibility to set policy in this area, it should not come at the expense of investor confidence. We would support maintaining the current system of the FCA reviewing prospectuses it approves for the degree of confidence this instils.

8. **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.)**

   We do not have any views at this stage.

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

   On the face of it, having a 'negligence standard' for liability in relation to information in a prospectus on which investors will be relying for investment decisions does not seem an unreasonable starting point, particularly for an IPO where investment decisions will be based almost entirely on the information within the prospectus. We therefore have some reservations about this suggestion. However, we can see the logic in having a single test and bringing the prospectus liability regime into line with the Companies Act and other wider securities laws, although there is equally a case to say that liability for the information in an IPO prospectus (compared, say, to a secondary listing) should demand a higher standard of care because the degree of investor reliance will inevitably be higher.

   Nevertheless, if the change is made, we do not see why the lower standard of liability should apply only to 'forward looking information' under Section 90. That would mean that differing standards of legal liability would still exist which takes away much of the benefit in levelling the playing field and having a single, easily understood test for all information issued by companies to the markets. Likewise, requiring that all 'forward looking statements' be explicitly labelled as such in order to benefit from the lower liability standard would be time consuming and add complexity and again would undermine much of the benefit of having a simpler regime. It would also mean that the higher

standard of liability would still apply to forward looking information if, through mere oversight, it was not appropriately labelled as such. In any event, investors should be capable of understanding what is forward-looking in nature and what is a statement of fact without the need for labelling.

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

    As noted above, we do have reservations about lowering the legal liability threshold in relation to information in prospectus on an IPO in particular.

    We agree that if any changes are made, the presumption of reliance on the part of an investor in relation to information in a prospectus should be maintained.

11. **Which option for addressing companies admitted to MTFs do you favour and why?**

    On balance, we think recognising MTF admission documents as a form of prospectus and bringing them within the scope of section 90 FSMA is the better approach. We think that would strike the right balance between reform and maintaining investor protection, particularly on an IPO. We agree that the current system in which MTFs set their admission criteria and rules subject to FCA rules and oversight should be preserved if this option is chosen. Likewise, we agree that MTFs should retain the option to require the FCA to review and approve documents should that obligation be retained for Regulated Market companies.

12. **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?**

    Yes.

13. **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?**

    We do not have firm views either way. As noted in the consultation paper, any numeric threshold will have its pros and cons and be a compromise. We agree that the other proposed reforms would give companies significantly more flexibility and therefore should be the priority.

14. **Does the exemption for employees, former employees, directors and ex- directors work effectively**?

    We do not have a particular view on this, although we agree that it makes sense to establish powers to vary exemptions by secondary legislation. There may be merit therefore in seeing how any wider changes to the regime bed down before reviewing the exemptions at a later date.

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

    We have focussed primarily on the proposed reforms that would affect public companies and therefore do not offer a view on this section.

16. **Which of the options above do you prefer? (Please state reasons)**

    N/A

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

    There seems little merit in keeping the status quo if the current regime is rarely if ever used and option 3 (an outright prohibition) seems overkill. On that basis we agree that further exploring option 2 is the right approach. We agree with the statement (9.14) that any such mechanism would need to balance UK competitiveness with consumer (investor) protection as well as the integrity of the UK markets. Any loss of the ability for UK investors to seek compensation through the UK courts would be a concern. For that reason we agree there should be no mechanism to allow public offerings of securities by overseas unlisted companies.

If you would like to discuss any of the above comments in further detail, please contact me.

Yours faithfully

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