**The content of the prospectus**

This element outlines the required content of a prospectus

**Introduction**

As established in the element outlining the requirement for a prospectus, a company seeking a listing on the Main Market must publish a prospectus. The content requirements are summarised in this element.

This element addresses:

* Content and format requirements
* Validity
* Publication

**Statutory and Regulatory Content and Format Requirements of a Prospectus**

Comprehensive disclosure obligations apply to companies wishing to list shares.

PRR 1.1.5 lists the following sources that need to be consulted:

1. the UK Prospectus Regulation;

2. Part VI of FSMA;

3. the UK PR Regulation;

4. the PRRs;

5. the ESMA guidelines on risk factors and on alternative performance measures;

6. the FCA Technical Note on disclosure requirements under the UK Prospectus Regulation and Guidance on specialist issuers (TN 619.1) and other relevant Technical and Procedural Notes;

7. the ESMA Q&A on the Prospectus Regulation; and

8. the UK Prospectus RTS Regulation.

The contents of a prospectus will vary according to the nature of the issuing company and the type of security to be listed. In Equity Finance, we concentrate on full prospectuses drawn up for a reasonably sized commercial company which is issuing equity shares.

One of the roles of the company’s lawyers in relation to the preparation of a prospectus is to ensure that the prospectus incorporates all relevant elements required by the relevant statute and regulation: in particular, the UK Prospectus Regulation and the UK PR Regulation (as copied out in large part in the PRRs).

Lawyers also take a lead in helping to ensure the accuracy of the prospectus.

**Format of the prospectus**

A prospectus **may be drawn up as a single document or as three separate documents** (PRR 2.2.1/Art 6(3) UK Prospectus Regulation). If a company chooses to draw up separate documents, the information must be divided into:

* a **registration document** which contains information relating to the issuer (company); and
* a **securities note** which primarily gives details of the securities being offered; and
* a **summary**.

The content requirements for a prospectus remain the same whether it is produced as a single document or in tripartite form. Where the prospectus is produced as a single document, there is no requirement to split the information into three discrete sections although market practice dictates that most prospectuses are arranged in a fairly standard order and the summary must be a standalone section.

**Tripartite prospectuses – and standalone registration documents**

It is unusual for companies to produce tripartite prospectuses: historically, the driver has generally been the ability to have a standalone summary document which is relatively brief which can be used in the marketing of the issue to retail investors.

However, in recent years, under the FCA's COBS Rules, an issuer in an IPO must publish either an approved standalone registration document or an approved prospectus before any research on the company can be released as part of the marketing process. An issuer is unlikely to have finalised details of its offer of securities at the time of announcing its potential intention to float, and these details are essential to the publication of a full prospectus. Therefore, in practice, the FCA's rules on research publication mean that, where connected research is expected to be published, a standalone registration document will almost invariably be published as a first step in an IPO timetable.

Once the standalone registration document has been approved and published, an issuer has two options in relation to its subsequent requirement to publish a full prospectus.

It may simply issue an approved securities note and a summary, in order to create a tripartite prospectus (see PRR 2.2.2/Art.10(1), UK Prospectus Regulation); if needed, this would be accompanied by a supplement to the registration document containing any significant new factors (see also PRR 2.2.2/Art. 10(1), UK Prospectus Regulation).

Or alternatively, the issuer may instead produce a full prospectus as a single document, which would effectively build on and expand the published registration document with any missing sections (such as the summary). Most issuers adopt this second approach: the final prospectus effectively supersedes the original registration document.

**Diagram:** made up of two columns. First column is headed ‘**Initial**’. Under this heading it reads ‘Standalone registration document’. There is a + between this text and the text in the right hand column which is headed ‘**Subsequent**’. The text in the right hand column reads ‘Securities note + Summary’. There is a line under all of this text with ‘OR’ next to it. Under this line (in the ‘Initial’ column) it reads ‘Standalone registration document’ and in the ‘Subsequent’ column it reads ‘Full prospectus’. Under ‘Standalone registration document’ and ‘Full prospectus’ it says ‘Replaced by’. **End of diagram.**

**The ordering of prospectus content**

The only rules on how a prospectus is ordered are set out in PRR 2.2.4/Art 24 UK Prospectus Regulation.

**Single document**

A prospectus which is composed of a single document must have the following elements in the following order:

* table of contents;
* a summary (where required) (Art. 7 UK Prospectus Regulation);
* risk factors linked to the issuer and the securities being issued (Art. 16 UK Prospectus Regulation). These are included in order to help potential investors assess any risks associated with the company, its business, the industry in which it operates and the shares being offered; and
* any other information referred to in the Annexes to the UK PR Regulation.

The company is free to determine the order in which the information required by the Annexes is presented in the prospectus (subject to Arts. 37 and 38 UK PR Regulation referred to on the following pages).

**Tripartite document**

Where a prospectus is composed of separate documents, each of the registration document and securities note must have the following elements in the following order:

• table of contents;

• risk factors (Art. 16 UK Prospectus Regulation);

• Any other information referred to in the Annexes to the UK PR Regulation.

The company is free to determine the order in which the information required by the Annexes is presented in each of the registration document and securities note (subject to Arts. 37 and 38 UK PR Regulation referred to below.

PRR 3.1.1UK/Art. 37 UK PR Regulation sets out a number of points that the FCA must consider when scrutinising a prospectus. These include matters such as whether related information is grouped together and whether the draft prospectus has a structure that enables investors to understand its contents, as well as whether the prospectus is written in plain language. The FCA is also required to consider whether there are material discrepancies between different parts of the prospectus (PRR 3.1.1UK/Art. 38 UK PR Regulation).

**General prospectus content requirements**

PRR 2.1.1/Art. 6(1), UK Prospectus Regulation imposes an overarching general disclosure obligation with which each full equity prospectus must comply. This general disclosure requirement provides that a prospectus must contain the ‘**necessary information**’ which is material to an investor for making an informed assessment of:

* the **assets** and **liabilities**, **profits** and **losses**, **financial position and prospects** of the issuer (and any guarantor of the securities – though this would not generally be relevant in a full equity prospectus); and
* the **rights** attaching to the relevant securities; and
* the **reasons** for the issuance and its **impact** on the issuer.

The exact information to be included may vary, depending on the nature of the issuer, the type of securities and the circumstances of the issuer. However, in every case, the information must be written and presented in an easily analysable, concise and comprehensible form (PRR 2.1.1/Arts. 6(1) and (2), UK Prospectus Regulation).

These provisions are also cross referenced in s. 87A FSMA.

This general content requirement is the governing principle behind all of the disclosure in a full equity prospectus, and all of the specific disclosure requirements referred to below remain subject to the general obligation. Consequently, it may be necessary to add to the prospectus something which is not specifically required by the PRRs/UK PR Regulation, and a lawyer should have particular regard to the general disclosure requirement when undertaking due diligence on the issuer and drafting/verifying the prospectus.

The fundamental principle is to work out the information which a potential investor needs to enable them to make an ‘informed assessment’ of the matters listed above.

**Specific prospectus content requirements**

In addition to the general obligation of disclosure, the UK PR Regulation contains specific minimum disclosure obligations which are set out in Annexes to the regulation.

In determining which of the Annexes are relevant to its prospectus, an issuer should consult PRR 2.3.1/Chap. II UK PR Regulation. For a full equity prospectus, PRR 2.3.1/Art. 2, UK PR Regulation provides that the registration document must contain the information referred to in Annex 1 of the UK PR Regulation, and PRR 2.3.1/Art. 12, UK PR Regulation provides that the securities note must contain the information referred to in Annex 11 of the UK PR Regulation.

A full ESCC prospectus that is being published as a single document would therefore have to comply with both Annex 1 and Annex 11.

The two additional Annexes that are potentially relevant to a ESCC prospectus are Annex 20, which sets out the requirements for the presentation of ‘pro forma information’, and Annex 22, relating to the consent to be given by an issuer where the prospectus is going to be used by financial intermediaries:

* Under PRR 2.3.1/Art.18 UK PR Regulation, if the issuer has a complex financial history (e.g. it has made one or more significant acquisitions in the last three years), or has made a significant financial commitment (broadly, it has committed to a transaction that will alter its size by 25% or more), the prospectus will usually need to include additional information on the acquisition targets and pro forma information illustrating how the issuer’s historic financial information would be affected by the transaction.

PRR 2.3.1/Art. 23 UK PR Regulation requires the information in Annex 22 to be included in a prospectus if consent is being given to intermediaries to place shares with their clients on the basis of the prospectus, as occurs when an issuer utilises an ‘intermediaries offer’ to distribute its shares into the hands of retail investors.

**Contents of summary**

In addition to the general content requirements for the prospectus as a whole, and the specific content requirements for the registration document and securities note, there are a set of additional content requirements that relate specifically to the summary, whether published as a separate document forming part of a tripartite prospectus, or as an integral part of a single prospectus. In either case, the summary must have a maximum length of seven sides of A4-sized paper when printed, must be presented and laid out in a way that is easy to read (using characters of readable size), and must be written in language that is clear, non-technical, concise and comprehensible for investors (PRR 2.1.4/Art. 7(3) UK Prospectus Regulation).

As a general matter, PRR 2.1.2/Arts. 7(1) and (2) UK Prospectus Regulation provides that a summary must contain the ‘key information’ that investors need in order to understand the nature and the risks of the issuer and the relevant securities, and is to be read together with the other parts of the prospectus to aid investors when considering whether to invest. In setting out this key information, the summary must be accurate, fair and clear, and not misleading – and it must be consistent with the other parts of the prospectus. As a matter of policy, the summary is principally designed to benefit retail investors, who may not read the full prospectus.

In terms of more specific content, the summary is required (see PRR 2.1.4/Art. 7(4) UK Prospectus Regulation) to be made up of the following four sections:

* An introduction, containing warnings
* Key information on the issuer
* Key information on the securities
* Key information on the offer of securities to the public and/or admission to trading on a regulated market

PRR 2.1.4/Arts. 7(5) to (8) UK Prospectus Regulation then sets out the main points to be covered in each of these four sections, setting out the required headings for sub-sections in each one.

**Incorporation by reference**

An issuer is permitted to incorporate certain information into its prospectus by reference to other documents which have been previously or simultaneously published electronically (see PRR 2.7.1/Art. 19(1) UK Prospectus Regulation). The types of documents to which a prospectus may cross-refer include any other document approved by or filed with the FCA, any annual and interim financial statements, and any regulated information required to be disclosed to the market. In practice, IPO prospectuses tend to include all the relevant information, rather than incorporating by reference.

An issuer incorporating information by reference must ensure accessibility of the information to investors – in particular, it must provide a cross-reference list in the prospectus, along with hyperlinks to the documents containing the relevant information – and must also submit the documents in searchable electronic form to the FCA with the first draft of the prospectus (PRR 2.7.1/Arts. 19(1) and (2) UK Prospectus Regulation).

Notwithstanding the above, a summary is not permitted to contain cross-references – either to other parts of the prospectus, or to incorporate information from other documents by reference (PRR 2.1.4/Art. 7(11) UK Prospectus Regulation).

**Omission of information**

Under PRR 2.8.1, the FCA can, in certain limited circumstances, authorise the omission of certain information from a prospectus if it considers disclosure of the information to be:

* contrary to the public interest;
* seriously detrimental to the issuer and omission is not likely to mislead the public with regard to facts or circumstances; or
* of minor importance only.

An issuer may therefore apply to the FCA in writing requesting to omit information under PRR 2.8.2 identifying the specific information concerned and the reasons for its omission citing one or more of the grounds summarized above.

Such an application should be made at the latest to the FCA with the submission of the first draft prospectus pursuant to PRR 3.1.1/Art.42(2)(d) UK PR Regulation, but in practice an issuer is likely still to approach the FCA at an even earlier stage if such an omission is required. It is very unusual for the FCA to grant dispensation from any of the specific content requirements referred to above.

**Validity of a prospectus**

Pursuant to PRR 5.1.1/Art 12(1) UK Prospectus Regulation, a prospectus is valid for 12 months after it is approved, provided that the issuer produces a supplementary prospectus if required. An approved registration document is also valid for use as a constituent part of a prospectus for the same period of 12 months, during which it could have a securities note and summary added to make a tripartite prospectus (PRR 5.1.1/Art. 12(2) UK Prospectus Regulation).

**Publication of a prospectus**

A prospectus must be published in the timeframe required by PRR 3.2.1/Art. 21(1) UK Prospectus Regulation and in accordance with the methods set out in PRR 3.2.2/Arts. 21(2)-(4) UK Prospectus Regulation. This must be done by publication in electronic form, generally on the issuer’s website.

Under PRR 3.2.4/Art. 10(2) UK Prospectus RTS Regulation however, measures must be taken on websites used for the publication of a prospectus to avoid targeting residents of countries where shares are not being offered to the public.

**Summary**

* Comprehensive disclosure obligations apply to companies wishing to list shares.
* A prospectus which is a single document will generally have a table of comments, a summary, risk factors linked to the issuer and the securities being issued, and then any other information.
* As well as detailed rules, there is an overarching general disclosure obligation to disclose the ‘necessary information’ which is material to an investor for making an informed assessment of the:
  + financial position and prospects of the issuer
  + rights attaching to the relevant securities; and
  + reasons for issuance and its impact on issuer.
* An issuer is permitted to incorporate certain information into its prospectus by reference to other documents which have been previously or simultaneously published electronically.