

Prospectus for the Public Offering of Securities in Europe

The Prospectus Directive is one of several directives on financial matters intended to create a unified European market with respect to financial markets and services. The Prospectus Directive, complemented by the Prospectus Regulation, sets forth unified European rules for the content and approval of prospectuses to be made public in the event of a public offering of securities in a Member State of the European Union or the European Economic Area. It introduces a single European passport for a prospectus that has been approved by the competent authority of a Member State, permitting this prospectus to be used for the public offering of securities in other Member States without the need to obtain approval in each state.

The Prospectus Directive sets forth the general rules and requirements for the preparation, approval and distribution of prospectuses and defines the content, format and publication of the prospectus to be made available in the event of a public offering of securities or admission to trading on a regulated market. The Prospectus Regulation, which complements the Prospectus Directive, defines the minimum information that must be included in the prospectus and its related documents.

This book discusses the Prospectus Directive and the Prospectus Regulation and their implementing rules in each Member State of the European Union and the European Economic Area. It provides companies and advisors with useful insight into the legal framework and the underlying principles applicable to prospectuses for the public offering of securities and the admission of securities to trading on regulated markets in the European Union and the European Economic Area.

This book is divided into two parts. Part one analyses the Community rules laid down in the Prospectus Directive and the Prospectus Regulation. The second part contains chapters discussing the laws of each Member State, each in accordance with a common format and contributed by a practitioner from that state. The annex to this book lists the implementing legislation in each Member State.

DIRK VAN GERVEN is a Brussels partner with the Benelux law firm of NautaDutilh and a member of the Brussels and New York Bars. He has extensive experience in all areas of corporate and financial law, including securities regulation. He is in charge of continuing legal education for the Dutch-speaking Bar Association of Brussels and has published widely in the fields of corporate and financial law. Since 2003, he has been a member of the supervisory board of Belgium's Banking, Finance and Insurance Commission.

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Volume I

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Preface

When offering securities to the public or requesting the admission of securities to trading on a regulated market in the European Union, the offeror or entity requesting admission must prepare a prospectus providing information about the securities being offered and the issuer. When securities are offered to the public, national law requires that the prospectus be reviewed and approved by the national financial supervisory authority. Until recently, the rules in each Member State were quite different, meaning that deciding on which market to offer securities, or request admission to trading, required a detailed comparative study. Furthermore, a simultaneous offering in several Member States entailed the application of different rules and approval of the prospectus by several supervisory authorities. In order to unify these rules and designate a single competent authority to approve prospectuses, the Council adopted the Prospectus Directive on 4 November 2003. The deadline for transposition of this directive into national law by the Member States was 1 July 2005. All Member States, including Bulgaria and Romania, have adapted their national legislation accordingly.

The main achievements of the Prospectus Directive are without a doubt (i) harmonisation of the applicable rules; (ii) the designation of a single competent authority to approve prospectuses; and (iii) the introduction of a European passport, allowing the same prospectus to be used throughout the European Union and the European Economic Area without new approval in each Member State being required. The Prospectus Directive reflects the desire of the European Commission to create a single passport for the publication of prospectuses for the offering of securities in the EU, and is part of a broader plan to create a single market for financial services, as confirmed at the March 2000 European Council meeting in Lisbon.

A book providing a comprehensive analysis of the European legal framework and the implementing legislation in each Member State of the European Union and the European Economic Area is a useful tool for companies seeking to finance their activities by issuing securities to the public. It will also prove helpful to their advisors and intermediaries involved in the offering of securities or the admission of securities to trading on a regulated market. This book has two volumes. Part one of the first volume explains the legal framework and Community rules laid down in the Prospectus Directive

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and the Prospectus Regulation. The second part focuses on the rules implementing the Prospectus Directive in each Member State; the Prospectus Regulation does not require implementation as it is directly applicable in the Member States. Volume one contains reports from fifteen Member States. The remaining reports will be published in the second volume.

Finally, I would like to thank the contributors to this book, esteemed practitioners from law firms throughout Europe, all of whom are well positioned to discuss the rules applicable in their respective countries. My thanks also go to those whose names are not mentioned in the reports but whose work was essential to the success of this project, namely Katherine Raab, Bianca Porcelli and Claire Platteuw, all of whom work at NautaDutilh.

Dirk Van Gerven
Brussels, 10 January 2008