



PD3 – the new Prospectus Regulation and its implications for Irish asset-backed securities issuance

Regulation (EU) 2017/1129 (the Prospectus Regulation or PD3) has been in full force since 21 July 2019. The Prospectus Regulation is seen as an important step in harmonising the European Capital Markets Union and has repealed and replaced the existing framework under Directive 2003/71/EC amended by [Directive 2010/73/EU](#) (the Prospectus Directive). In general, the Prospectus Regulation was introduced to make the offer of securities less burdensome for Issuers in general and SMEs in particular. ESMA has published an update to its Prospectus Q&A, which the Central Bank of Ireland (the Central Bank) has acknowledged. The Central Bank has yet to publish any guidance on the new regime, in the United Kingdom however, the FCA has updated its Handbook through Prospectus Regulation Rules Instrument 2019 to align with PD3.

Ireland remains a very popular jurisdiction for structured finance transactions, including those funded through the debt capital markets¹ and accordingly, although the Prospectus Regulation is far-reaching in its scope across types of issuer, the nature of securities to be issued and investors targeted, this article will focus on how PD3 is likely to affect the basis on which asset-backed securities are offered by Irish special purpose vehicle issuers, admitted to trading on Ireland's regulated market or both. Consequently, we will

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¹ According to the Association for Financial Markets in Europe, Irish vehicles have issued €1.4 billion in public asset-backed securities deals in 2019 so far. <https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Securitisations%20Data%20Report%20Q%202019-3.pdf>.

concentrate on the new elements necessary for asset-backed securities prospectuses to be approved by the Central Bank.

Broadly, PD3 outlines that risk factors should be disclosed such that they are: (i) specific to the issuer or securities in the Prospectus; (ii) material, taking into account the likelihood and potential consequences of the risk; (iii) grouped into categories and sorted by magnitude of materiality; (iv) consistent with the rest of the Prospectus and corroborated; and (v) concise and direct. Whether an ABS risk factor might be considered specific, material with a specific magnitude of materiality, part of a group, consistent, corroborated, concise and direct is discussed very usefully and in some detail by Clifford Chance in their recent article on the Prospectus Regulation².

Although the legislation only came into force recently, the effect on the Central Bank's position on asset-backed securities prospectuses can already be observed. Prospectuses approved by the Central Bank after the implementation of the Prospectus Regulation have incorporated more focused and concise disclosure of risk factors. Moreover the disclosure of general risk factors, which may have been considered superfluous and irrelevant has been discarded. As before, risk factors are divided into those relating to the issuer and those relating to the securities. Notably, risk factors are now more carefully grouped by category, order of significance with cross-referencing to other sections of the document to show relevance and corroboration, particularly the *Structure and Cash Flows* section. Granted, the prescription against discussion of mitigating factors and general risk factors has removed some text. However, the new emphasis on cross-referencing and corroboration does not necessarily make for a more concise or less repetitive document.

A key aim of the Prospectus Regulation was to encourage more succinct and readily understandable, investor-friendly documents when it has been commented by institutional investors that the only people who read securitisation prospectuses are the lawyers who write them. Making offering documents for structured finance transactions more accessible is a laudable objective. Nevertheless, producing them to meet an increasing body of regulatory requirements remains a challenge when the deals and the market for them are by their very nature sophisticated and complex.

² https://www.cliffordchance.com/briefings/2019/07/risk_factors_in_securitisationprospectusesunde.html

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