



ESMA report: a framework for third country prospectuses equivalence. July 2011.

ESMA published, answering a request of the ISA (Israel Securities Authority), on the 23th of march, a document which contains a framework to assess the equivalence of third countries documentation related to securities (shares, bonds etc) public offers, issues and admissions to trading (from now on, prospectuses) with those prospectuses issued according to the Directive 2003/71 requirements. According to article 20.1 of the Prospectuses Directive, the Competent Authority of a member state may approved a prospectus from a third country subject to three conditions: first, the documentation has been drawn up in accordance with the legislation of the third country accompanied by a written confirmation from the issuer; second, the prospectus must have been drawn up following international standards including those form IOSCO; and third, all the information contained in the prospectus -including financial information- has to be equivalent to that required in the prospectuses Directive.

The framework adopted by ESMA allows that the prospectuses drawn up in accordance with the legislation of the third country could, jointly with a wrap added that includes complementary information, constitute a resulting prospectus that meets the requirements of the Directive and, in consequence could be passported to the rest of the EU. ESMA will publish an specific statement for each country which will contain a list of the items which will need to be included in a wrap to the prospectus, so that third country issuers can approach the competent authority in the home member state to make use of the arrangement; the home member state will scrutinise the prospectus and the wrap and, if it is satisfied that the requirements are met, will approve the third country prospectus and the wrap together as a prospectus under the prospectus Directive, although this arrangement does not remove any of the requirements under the Prospectus Directive and the competent authority still could require additional information or changes in the information contained in the wrap or in the prospectus.

This framework could not be available where ESMA is not satisfied as to the adequacy of a third country securities Commission's powers or that country's legal and regulatory framework for securities issuances. Third country securities commission should normally provide ESMA with an assessment of its prospectus regime with the requirements in prospectus Directive as this body is in the best position to make this comparison.

ESMA disposes the information that has to be included in the wrap after have classified the different items the prospectus Regulation requires in: A, items about substantive information where equivalence requires that the disclosure must appear in the form set out in the prospectus Regulations's annexes; and B, items about other information where equivalence requires that the disclosure may appear in a different form from that set out in the prospectus Regulation's annexes because it reasonable to think that investors would nevertheless be able to make the informed assessment they would make if the disclosure would appeared in the form set out in the prospectus Regulations's annexes. Up to now, ESMA has classified items contained in annexes I, II and III of the prospectus Regulation that are referred to shares.

The categorisation of items described in this statement is designed to be used by ESMA in considering applications from third countries to decide, once analysed the prospectus, which additional information should

be included in the wrap and how should that information be described.

ESMA will periodically review any statements that it makes concerning the contents of wraps for third country prospectuses and, also in the light of significant changes in the prospectus regime of the third country.

The Annex to this statement sets out the items categorisation in either A or B disposed in long tables of the whole of items in Annexes I, II and III of the prospectus Regulation.

If you want to read the whole ESMA statement, please click on:
<http://www.esma.europa.eu/popup2.php?id=7517>