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CHANGES TO THE PROSPECTUS LAW AND THE TRANSPARENCY LAW

The Luxembourg Law of 10 July 2005 implementing the Prospectus Directive (the “**Prospectus Law**”) as well as the Law of 11 January 2008 implementing the Transparency Directive (the “**Transparency Law**”) are about to be amended upon implementation of Directive 2010/73/EC¹ (the “**Amendment Directive**”). On 26 June 2012 the Luxembourg Parliament adopted the bill of law implementing the Amendment Directive which has been published in the Official Gazette on 5 July 2012.

The main changes concern the Prospectus Law and comprise the following:

- the inclusion of the concept of “Key Information” which shall be inserted in the summary of the Prospectus. “Key Information” is defined as “*essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered to them or admitted to trading on a regulated market*”. “Key Information” shall include the following elements: (i) short description of the risks associated with and essential characteristics of (x) the issuer and any guarantor, including the assets, liabilities and financial position and (y) the investment in the relevant security, including any rights attaching to the securities, (ii) general terms of the offer including estimate and expenses charged to the investor by the issuer or the offeror or (iii) details of the admission to trading and (iv) reasons for the offer and use of proceeds;
- introduction of a requirement for standardisation of the format and the content of the summary and the prospectus generally. In this respect it should be noted that the European Commission has already issued the Commission Delegated Regulation n°486/2012 of 30 March 2012 amending regulation 809/2004/EC on content requirements which has become applicable on 1 July 2012;
- amendment of the definition of “qualified investors”. The new definition refers to the terms used in Directive 2004/39/EC on markets and financial instruments (“**MIFID Directive**”) by making a cross reference to those persons or entities which are described

¹Directive 2010/73/EC amends Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (the « **Prospectus Directive** ») and 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the “**Transparency Directive**”).

in points (1) to (4) of Annexe II of the MIFID Directive as well as the persons or entities who are, on request, treated as professional clients in accordance with Annexe II of the MIFID Directive or recognised as eligible counterparties in accordance with Article 24 of the MIFID Directive unless they have requested that they be treated as non-professional clients;

- amendment of certain thresholds determining whether an offer will be in scope or out of scope of the Prospectus Directive and thus of Part II of the Prospectus Law which implements the provisions of the Prospectus Directive. It should be noted that an offer which may be out of scope of Part II of the Prospectus Law may nevertheless still be in scope of Part III (regulating among others, certain offers which are out of scope of the Prospectus Directive) and thus requiring the preparation of a simplified prospectus. Pursuant to these amendments, Part II of the Prospectus Law will not apply to (i) securities included in an offer where the total consideration for the offer in the European Union is less than EUR 5 000 000, which shall be calculated over a period of 12 months or (ii) to non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the Union is less than EUR 75 000 000, which shall be calculated over a period of 12 months, provided that those securities (x) are not subordinated, convertible or exchangeable and (y) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;

- amendment of various thresholds in relation to the available exemptions to establish a prospectus. One may note in particular the following modifications of thresholds for available exemptions in the context of offers to the public : (i) the exemption to publish a prospectus in case an offer is made to less than 100 investors other than qualified investors per Member State is modified to give the possibility to make an offer on an exempted basis to 150 investors (other than qualified investors) per Member State; (ii) the exemption pursuant to which it is not required to publish a prospectus for securities having a nominal amount of at least EUR 50,000 is amended to increase the threshold to EUR 100,000 (the “nominal amount exemption”);

- the use by financial intermediaries of the prospectus established by the issuer is clarified;

- clarification of the validity period of a prospectus by stating that a prospectus shall be valid for 12 months after its approval for offers to the public or admission to trading on a regulated market, provided that the prospectus is completed by any supplements required. Prior to this amendment the starting point was the publication date of the prospectus which was not necessarily the approval date which gave rise to some uncertainties;

- the requirement to prepare the annual document pursuant to Article 14.1 of the Prospectus Law summarising all publications made over the preceding year is abolished, and

- it will now be necessary to have an electronic publication of the approved prospectus.

The Transparency Law will also be amended by increasing the “nominal amount exemption” threshold from EUR 50,000 to EUR 100,000 to align such an exemption with the threshold set out in the Prospectus Law mentioned above. The Amendment Directive, however, provides for a grandfathering clause for any securities having a denomination of EUR 50,000 and issued prior to 31 December 2010.

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