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Annex V
Civil liability regimes in EEA Member States in relation to the Prospectus Regulation

Member State responses to the Prospectus Civil Liability questionnaire

Introduction

Under Article 48(2a) of the Prospectus Regulation[1], the European Commission is called upon to assess whether further harmonisation of the provisions on prospectus liability is warranted. If so, the Commission is to consider amendments to the liability provisions set out in Article 11 of the Prospectus Regulation. Under Article 48(2a) of said Regulation, the Commission is to deliver a report by 31 December 2025.

On this basis, on 6 June 2024, the Commission mandated ESMA to provide technical advice on civil liability regarding the information given in prospectuses to include an assessment and recommendations on whether further harmonisation should be considered. The mandate further specifies that ESMA should take into account all relevant provisions of the Prospectus Regulation, in particular Articles 11 and 48(2a), all relevant recitals of the Amending Regulation and the report on prospectus liability regimes in Member States which it published in 2013.

On this basis, ESMA has delivered its Final Report on Technical advice concerning civil prospectus liability to the European Commission.

This Annex V of that Final Report contains descriptions of the civil prospectus liability regimes in the Member States of the EEA. It is based on an annex to a report ESMA published in 2013, 'Comparison of liability regimes in Member States in relation to the Prospectus Directive' – Annex III: 'Individual responses from EEA States – Comparison of liability regimes in Member States in relation to the Prospectus Directive'[2]. This 2013 report was based on questionnaires about the national prospectus liability regimes (civil liability, criminal liability, administrative liability etc.) which the National Competent Authorities of EEA Member States filled in. For the purposes of the present document, these National Competent Authorities provided an update of their responses regarding their civil prospectus liability regimes as per 31 December 2024.

The information provided by competent authorities about their Member States' civil prospectus liability regimes has no legal effect. Competent authorities do not present or represent any interpretation of or official position by ESMA, EEA governments or the competent authorities regarding existing laws, regulations or other forms of national legislation. This document should not and cannot be relied upon for any purpose other than providing a high-level comparison of different EEA States' civil prospectus liability regimes. In particular, the information provided by the competent authorities about their Member States' liability regimes should not be relied upon as a substitute for, or as guidance on, any aspect of the supervisory practices of the competent authorities or regulatory systems of the EEA States. This document and the information provided by the competent authorities are subject to and do not prejudge the actual positions from any other national authorities and in particular the relevant EEA States' competent courts which are exclusively competent to decide upon civil liability matters in relation to prospectuses.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC
[2] ESMA/2013.619, 30 May 2013.

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1 Austria

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

There are specific prospectus liability provisions in Article 22 of the Capital Market Act 2019 (CMA).

Additionally, the general liability provisions according to civil law apply, important starting point for liability being the breach of precontractual duties to inform the investor (*culpa in contrahendo*), see answer to question 4 below.

Art. 22 para. 8 says: Claims for damages arising from violations of other legal provisions or from breaches of contract shall remain unaffected by these provisions.

However, the relationship between the general civil liability for damages and the special statutory prospectus liability (CMA) is often interpreted by doctrine and case law as *lex specialis*, so that only the special statutory prospectus liability under the CMA applies.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

According to Art. 22, para. 1, fig. 1 – 5 of the CMA the following shall be liable for damages towards every investor that have arisen as a result of the investors placing their trust in the details contained in the prospectus or in a supplement thereto (Article 23 of Regulation (EU) 2017/1129), which are significant with regard to the assessment of securities:

1. the issuer for any incorrect or incomplete information arising from their own negligence or the negligence of their staff or other persons whose services were used to draw up the prospectus,
2. the person applying for admission to trading on a regulated market as well as the guarantor, for incorrect or incomplete information that has occurred due to their own fault or through the fault of their staff or other persons whose activity was used for drawing up the prospectus,
3. (only relevant for national prospectuses outside of the scope of the PR)
4. any person, who has accepted the contract declaration of the investor in their own name or on behalf of others, and the broker of the contract, provided that the person involved performs the brokering of securities on a commercial basis and they or their staff have recognised the incorrectness or incompleteness of the details as defined in fig. 1 or in the scrutiny, or are unaware of this due to gross negligence, and
5. The auditor of the financial statements, who being aware of the incorrectness or incompleteness of the details as defined in fig. 1 and knowing that the annual

financial statement that he has confirmed is a document that is essential for the scrutiny of the prospectus, has provided an audit opinion for an annual financial statement.

Liability pursuant to fig. 4 shall only exist towards those investors, whose contract declaration was received by a liable party or where the liable party mediated their purchase of securities or investments. Anyone who makes an offer that is subject to the obligation to publish a prospectus in Austria without the consent of the issuer in accordance with Article 5 of Regulation (EU) 2017/1129 shall be liable towards investors, who have accepted during the offering or invitation to subscribe, instead of the issuer in accordance with fig. 1, provided that the issuer did not know that the prospectus was the subject of an offer pursuant to Article 2 of Regulation (EU) 2017/1129 and used without his consent. Further, the issuer must have informed the FMA about the unlawful use of the prospectus without delay, after having gained knowledge of the unlawful usage.

Art 22, para 2: In the case of securities with issuers from third countries, liability pursuant to para. 1 fig. 1 shall also fall on the party placing the offer which is subject to the obligation to publish a prospectus in Austria.

Art 22, para 12: The offeror shall also be liable towards the investors as well as the persons listed in para. 1 fig. 4, whether due to their own fault or through the fault of their staff or other persons whose activity was used for the distribution of securities, for information that is contradictory to the information in the prospectus or other erroneous information contained in a supplement, where they were causal for the damage.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Where several parties are liable, then they shall be jointly and severally liable. Their liability shall not be mitigated by virtue of the fact that others are also liable for compensation of the same damages (see Art. 22 para 3 CMA).

According to general civil law several damaging parties are subject to joint and several liability in case the damage was caused jointly and wilfully or in case it is impossible to define which proportion of the damage was caused by the individual damaging party.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

See answer to question 2. above.

"*Culpa in contrahendo*", i.e. the precontractual duty to inform the investor, starts from the premise that beginning with the first (precontractual) contact between the parties an obligation by law arises imposing the duty of information, protection and prudence on them. There is a duty of information whenever, according to the principles of fair trading, the other party may expect to be informed. The right to claim damages may arise from the intentional or negligent infringement of these duties.

According to jurisprudence, prospectus information is to be understood as a legally structured, standardized precontractual duty of information.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

According to Art. 22 CMA (see answer to question 2. above) the persons mentioned in para.1 fig. 1, 2 and 5 are also liable in case of slight negligence. However, a stricter degree of fault under the CMA can, as a more specific rule, override a more extensive civil liability (see question 1 above).

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The issuer´s and prospectus auditor´s liability is independent from a contractual relation to the investor. However, as far as we know, Austrian courts have not yet clarified prospectus liability in connection with the distinction between the purchase of securities as part of a public offering and the purchase via the secondary market.

Liability according to Art. 22, para. 1, fig. 4 CMA (see answer to question 2 above) is restricted to the investor whose contract declaration was accepted or who was the beneficiary of the broker services.

Liability for "*culpa in contrahendo*", i.e. the precontractual duty to inform the investor, according to general civil law requires a first (precontractual) contact between the parties.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

See below

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Answers to question 7 and 8:

No prospectus specific rules of burden of proof exist, thus both plaintiff and respondent must claim and prove the circumstances furthering their own legal position. Hence, the party asserting a claim bears the burden of allegation and the burden of proof for all facts supporting the claim. Conversely, the party contesting the claim has to plead and prove all circumstances it disagrees to.

In a normal case, the investor bears the burden of proof to assert the damage and causality necessary to establish liability. In principle, the aggrieved party has also to prove the fault of the damaging party. If, however, the aggrieved and the damaging party are already in a special relationship under the law of obligations or if a legislative provision which entitles the

aggrieved party to receive damages when violated was breached, the damaging party has to prove that the fault does not lie with him or her (reversal of the burden of proof).

Specific principles of prospectus law according court rulings require that the investor proves that he has relied on specific material (erroneous) information in the prospectus, whereby the overall picture presented by the prospectus must also be taken into account.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Prospectus claims are subject to the rules of litigious civil procedure. According to these rules, the courts' power of decision is in general restricted to substantive motions and the related submissions of the parties (see Art. 405 Code of Civil Procedure).

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The investor's recoverable damages are those that were caused by the breach of trust. He or she must be put in the position he or she would be in, if the wrong had not affected his or her decision. However, the investor does not have to be put into the position as if the incompleteness or misstatements were true, i.e. as if the prospectus was complete and/or correct.

According to Art. 22 para. 6 CMA, the legal liability towards each investor is limited to the amount representing the purchase price, plus fees and interest starting from the payment of the purchase price, provided that the damaging behaviour was not intentional. If the securities have been acquired gratuitously (without payment) the last paid purchase price, plus fees and interest starting from the payment of the purchase price is decisive.

The limitation of liability contained in Art. 22 para. 6 CMA does not apply to liability based upon general civil law (but see above Q1 poss. *lex specialis*).

According to established case law, the hypothetical alternative investment that the investor would have subscribed to if he had not purchased the security to which the prospectus relates must also be taken into account. Investors should not take speculative advantage of a general price decline at the expense of the issuer.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

According to Art. 22 para. 4 CMA, the liability cannot be ex ante excluded or limited to the detriment of investors.

In principle, liability based upon general civil law can be limited contractually. However, the Consumer Protection Act prohibits exclusion or limitation of liability for intent or gross negligence towards consumers. Towards non-consumers an exclusion of liability could be potentially unconscionable and therefore void.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

According to Art. 22 para. 7 CMA, investors have to file claims with the competent court within ten years starting with the end of the offering period for which the prospectus was used. Otherwise, their claims are precluded by the statute of limitations.

Claims based upon general civil law are precluded within three years from notice of damage and the damaging party. The statute of limitations can be suspended (for example due to settlement negotiations) or interrupted (for example by filing the claim to the court).

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The civil liability for prospectuses is neither exempted from the scope of the Rome I Regulation nor of the Rome II Regulation. The Rome II Regulation explicitly mentions liability *ex culpa in contrahendo* (Art. 2 para. 1) and governs unfair competition (Art. 6). Prospectus liability as contractual liability is subject to the provisions of the Rome I Regulation determining the applicable law.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Arbitration and mediation can be contractually agreed. However, as far as the Ministry of Justice and the Financial Market Authority are aware, no institutionalized arbitration board or mediation committee for disputes over prospectus liability exists in Austria.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

1. Austria has transposed DIRECTIVE (EU) 2020/1828 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2020 on representative actions for the protection on 18 July 2024. The transposition has been carried out without the restriction to the legal acts enumerated in the Directive as per Annex I of the Directive (i.e. applicable to any consumer liability claims).
2. In addition, practice has developed a further type of collective action (referred to as “the Austrian-style class action”) based on Austrian civil and civil procedural law. The damaged investors assign their claims for damages to an SPV (normally an ad hoc established association) for the purpose of debt collection. The SPV is usually (but not mandatorily) supported by a litigation funder. The investors/assignors in this case are procedural witnesses and the association is the party to the litigation.

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2 Belgium

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

A public offer that occurs without prospectus (duly approved by the competent authority) is considered null and void.

The prospectus is treated as pre-contractual information. Therefore, if a prospectus containing false or misleading information has been published, the misled investor can sue the person(s) responsible for the prospectus in tort (Article 6.5 of the new Belgian Civil Code). The plaintiff must prove that the information was false or misleading and must prove his damages. Nonetheless, where the investor can demonstrate that the said information could influence the market materially (Article 26, §2 of the Law of 11 July 2018, the 'Prospectus Law'), there is a presumption that the damages in question are due to this false or misleading information. The onus is on the person(s) responsible for the prospectus to demonstrate that the damages were caused by something else.

If the investor can demonstrate that his/her consent was obtained deceitfully due to the information contained in the prospectus, he/she may have the contract annulled.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

As required by Article 11 of the Prospectus Regulation, the prospectus must mention the identity of the persons that are responsible for it (i.e. for its whole content). These persons must be identified by their name and function, or, in the case of legal persons, their name and registered office. Only the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor can be mentioned as being responsible for the whole content of the prospectus.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Yes, these persons are jointly and severally responsible for the whole prospectus.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

These persons are responsible for any damage caused by false or misleading information in the prospectus.

If a public offer occurs without a duly approved prospectus, the offeror or the issuer (the person that made the offer without prospectus) is also responsible for any damages caused to the investors. The obligation to draft and publish a prospectus rests on the person who makes the offer (issuer or offeror).

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Responsibility is based on tort (Article 6.5 of the new Belgian Civil Code). Any act of a person which causes damages to another makes him by whose fault the damages occurred liable to make reparation for the damages. Negligence may also lead to liability. Intent is not required.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

There must be a causal relation between the false or misleading information and the damages suffered, so that only original purchasers can sue (i.e. those who have invested on the basis of the information contained in the prospectus), unless in case the person responsible for the prospectus consents to its use for the subsequent resale of securities in accordance with Article 5 of the Prospectus Regulation.

In theory, if financial intermediaries are misled by the prospectus and as a result suffer damages, they can also sue the person(s) responsible for it.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Prospectus liability requires that the securities have been acquired during the public offer period. The investor must demonstrate that the prospectus lacks information or includes false or misleading information, as well as his damages. Belgian law provides for a presumption that these damages are due to the lacking, false or misleading information in question. The investor must only demonstrate that the absence of such information or its false or misleading nature, is such that a positive environment in the market could be created or the purchase price of the investment instruments could be positively influenced (Article 26, § 2 of the Prospectus Law).

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

In order to avoid liability, the defendant may demonstrate that the investor did not suffer any damages. The defendant may also reverse the above-mentioned presumption of causal relation if he can demonstrate that the damages suffered were caused by something other than the lacking, false or misleading information contained in the prospectus.

The defendant may also demonstrate that the information in the prospectus is not false or misleading. In theory even non-material prospectus deficiencies may lead to civil liability, but in practice, if the deficiency is not material, the defendant should be able to demonstrate that the damages were not caused by the deficiency in question.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Judges are not bound by the legal qualifications or rules to which the parties refer. Nevertheless, judges can not take *ultra petita* decisions. It means that they are bound by what the parties ask them. Nevertheless judges must bring up public order questions on their own initiative. These principles are not specific to prospectus liability (general principles).

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Where liability is based on tort (in opposition to contractual liability), all damages can be recovered (under contractual liability only damages that could be expected are recoverable).

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

No. The Prospectus Law prohibits such a possibility.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The time limit to file a claim in tort is 5 years. This 5-year prescription begins to run when the person who suffered the damages has been informed about his/her damages (or their aggravation) and about the identity of the person(s) responsible. Nevertheless, no claim can be filed 20 years after the damages occurred.

Prescription can be suspended or interrupted under Belgian civil law. Prescription is interrupted amongst other things by a summons to court or an order for payment (cf. Article 2242-2250 of the old Belgian Civil Code). No specific rule applies to prospectus liability.

Each person responsible mentioned under question 2 is subject to the same time limit.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Under Article 114 of the Belgian Private International Law Code, claims resulting from a public issue of securities are governed, at the choice of the security holder, by the law applicable to the legal entity (i.e. the issuer) or by the law of the State where the public issue took place.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

No alternative mechanism has been put in place in Belgian law in order to claim damages. Nevertheless, out-of-court settlements are possible, as well as arbitration or ADR mechanisms.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes, Directive (EU) 2020/1828, which in Annex I, point (60) refers to the Prospectus Regulation as one of the European Law texts which, when infringed upon, may give rise to representative actions, has been transposed in Belgian law, more in particular in Title 2 of Book XVII of the Belgian Economic Law Code.

3 Bulgaria

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Under national law civil liability may arise as a result of tort - Every person must redress the damage he has guiltily caused to another person

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

According to Public Offering of Securities Act (POSA) (art. 89e) - the prospectus shall be drawn up and published according to the requirements set out in Regulation (EU) 2017/1129, the chapter six of the POSA and their implementing acts. A prospectus shall not contain any untrue, misleading or deficient data.

The prospectus shall be signed by the issuer and the offeror or by the person asking for admission of the securities to trading on a regulated market, as well as by the guarantor of the securities, where applicable, which declare that the prospectus conforms to the requirements set out in Regulation (EU) 2017/1129, the chapter six of the POSA and their implementing acts.

The prospectus clearly identifies the persons (referred to in next question) by name and position or, respectively, by business name, registered office and address of the place of management, who declare that to the best of their knowledge, the information contained in the prospectus is accurate and complete.

The persons who signed the prospectus will be responsible (in any case) for damages caused by tort, according national law.

Q3. Are the persons under the previous question subject to joint and/or several liability?

According to Public Offering of Securities Act (art. 89e) - the members of the management body of the issuer and the procurator, as well as the offeror, the person asking admission of the securities to trading on a regulated market, and the guarantor of the securities are jointly responsible for any detriment as may be inflicted by reason of any untrue, misleading or deficient particulars in the prospectus The persons referred to in article 18 of the Accountancy Act are jointly responsible with the persons referred to in sentence one for any detriment as may be inflicted by any untrue, misleading or deficient particulars in the financial statements of the issuer, and the registered auditors are jointly responsible with the said persons for any detriment as may be inflicted by the financial statements thereby audited.

See the answers of the above question.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

See the answers of above questions. The persons who signed the prospectus and who are responsible for its preparation, are liable for damages caused by tort.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The above said persons are liable, regardless of the form of fault.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Any person who has suffered damage is entitled to sue for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Plaintiff must prove that the damage was the direct result of wrongful and culpable conduct of the defendant.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The respondent in order to avoid liability must prove that he was not aware of the incompleteness or misstatement in the prospectus and that this lack of awareness was not the result of negligence, the deficiency in the prospectus is immaterial and therefore did not influence the price of the security; a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Compensation is payable for all material damages which are the direct and immediate consequence of any untrue or misleading information in the prospectus. According to the national law, non-pecuniary damages are determined by the court of justice.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Civil liability is mandatory for the persons under above questions for information prepared by them.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

According to the national law, with the expiration of five years are lapsed any claims for which the law does not provide another term. The responsible persons mentioned under question 2 are subject to the same time limit.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

It is a matter of law enforcement. In cases of international public offerings of securities, the applicable law concerning civil liability for the content of the prospectus is the law of the country where the damage occurs. Therefore, if the damage occurs in Bulgaria, Bulgarian courts will apply the Bulgarian law, including the provisions of the POSA.

However, if the damage occurs in another EU Member State, the courts may apply the relevant national law, unless an exception applies or the parties have explicitly chosen a different applicable law.

The Bulgarian Code of Private International Law (CPIL) contains provisions for resolving conflicts of laws. According to the CPIL, in the absence of a choice of applicable law, the law of the country where the harmful event occurred applies.

Therefore, in cases of international public offerings, the applicable law regarding civil liability for the content of the prospectus will be determined based on the place where the damage occurred, unless the parties have chosen a different applicable law. In this respect, the Bulgarian law complies with the EU regulations.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

The civil court is not the only way to receive restitution of losses. The court settlement is also a possible way to receive restitution of losses.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

A class action may be brought on behalf of persons who are harmed by the same infringement where, according to the nature of the infringement, the circle of the said persons cannot be defined precisely but is identifiable.

Any persons who claim that they are harmed by an infringement under previous sentence, or any organisations responsible for the protection of injured persons or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for establishment of the harmful act or omission, an action for the wrongfulness of the said act or omission, and an action for the blame.

Any persons who claim that the collective interest thereof has been harmed or is likely to be harmed by an infringement referred in previous sentence, or any organisation responsible for the protection of injured persons, of the harmed collective interest or for protection against such infringements, may bring, on behalf of all injured persons, an action against the infringer for cessation of the infringement, for rectification of the consequences of the infringement of the harmed collective interest, or for compensation for the damages inflicted on the said interest.

4 Croatia

ESMA – Prospectus Liability Questionnaire – Croatian Financial Services Supervisory Agency

INTRODUCTORY NOTE

The answers provided by the Croatian Financial Services Supervisory Agency (hereinafter: HANFA) to this questionnaire have no legal effect, they do not present or represent any interpretation of or official position by HANFA regarding existing laws and regulations of Croatian legislation. Therefore, this document should not and cannot be relied upon for any purpose other than for the purposes for which it was prepared. In particular, the answers provided by HANFA to this questionnaire should not be relied upon as a substitute for, or as guidance on, any aspect of the supervisory practices of HANFA or regulatory system of Croatia.

HANFA answers to the questionnaire aim to provide an overview of special liability regimes defined by the Capital Market Act.

Any answer to this questionnaire is subject to and does not prejudge of the actual positions from any other Croatian national competent authorities and in particular the relevant Croatian competent jurisdictions which should be exclusively competent to decide upon civil liability matters in relation to a compensation of damages related to the prospectus.

In light of the extensive scope of certain questions or/and their generic terms, the answers provided by HANFA to this questionnaire should not be considered as providing an exhaustive and detailed description of all potentially applicable legal provisions as regards the matters discussed in this questionnaire.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Regarding HANFA answers to this questionnaire in relation to “Civil liability”, these answers focus exclusively on the civil liability provisions prescribed by the Capital Market Act (hereinafter: CMA).

The provisions of CMA that define prospectus liability do not exclude claims for repair of damage due to breach of contract or other regulations (Article 411 Paragraph 12).

The rules of civil procedure in particular obligations act shall be applied in an appropriate manner to issues related to the repair of damages that are not regulated by the provisions of CMA.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer’s directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please

indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

An investor who has acquired securities on the basis of a prospectus in connection with the issue, offer or listing of securities on a regulated market may request the repair of damage suffered due to the information in the prospectus being inaccurate or incomplete from the responsible persons.

Pursuant to the Article 411 Paragraph 1 of CMA the following persons are responsible for accuracy and completeness of the information in the prospectus:

1. the issuer, if it is about the issue of new securities, or the offeror, if it is about the offer of existing securities;
2. persons who assume responsibility for the accuracy and completeness of the information in the prospectus or parts of the prospectus; and
3. guarantor, if any, but only in the part of the prospectus that refers to the guarantor.

The above stated persons must be clearly listed in the prospectus by personal name and function, if it is a natural person, and by company and registered office, if it is a legal person.

Pursuant to the Article 411 Paragraph 3 of CMA the prospectus must contain a statement from each of the responsible persons, that, according to their knowledge, the information in the prospectus is in accordance with the facts and that no information that could affect its meaning has been omitted from the prospectus.

As stated above, responsible persons can be held liable for the whole content of the prospectus or only for certain parts of it, except issuer or offeror.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Pursuant to the Article 411 Paragraph 4 of CMA the responsibility of several persons for damage is joint and their responsibility is not reduced by the fact that other persons are liable for the same damage.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons referred to in Article 411 Paragraph 1 of CMA (stated in answer to question 2) are liable for the damage caused to the investor due to the fact that the information essential for the evaluation of the securities is incorrect or incomplete, when the inaccuracy or incompleteness of the information in the prospectus was caused by their fault and for the damage caused when prospectus was not published in a timely manner or was not published.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Pursuant to the Article 1049 of the Obligations Law guilt (referred in the Article 411 Paragraph 1 of CMA as stated in the answer above) exists when the harm is caused by the perpetrator intentionally or through negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

CMA in Article 411 defines who is entitled to sue for damages in case the information in the prospectus is incorrect or incomplete. These persons are:

- The Investor who is the current holder of the securities has the right to demand from the responsible person to buy back the securities without delay at the price at which the investor acquired them, and at most up to the amount for which that quantity of these securities was originally issued, if it is a question of the issue of securities, or offered, if it is an offer of existing securities. In addition, the investor has the right to require the responsible person to reimburse him without delay for the usual costs associated with the acquisition.
- An Investor who is no longer the holder of securities has the right to demand from the responsible person to pay him without delay the difference between the price at which the investor acquired the securities and the price at which he sold them. When calculating the difference, the price at which the investor acquired the securities is limited to the amount for which that quantity of these securities was originally issued, in the case of the issue of securities, or offered, in the case of the offer of existing securities. In addition, the investor has the right to demand from the responsible person to reimburse him without delay the usual costs associated with the acquisition and disposal.

Legal successors of the investor are authorised to sue for damages. The amount relevant for determining the amount of the claim for damage repair is taken as the amount for which the legal ancestor acquired securities.

In case prospectus was not published on time or was not published at all, pursuant to the Article 415 of CMA following persons are entitled to sue for the damages:

- The investor who is the current holder of the securities has the right to demand from the responsible person to buy back the securities without delay at the price at which the investor acquired them, and at most up to the amount for which that quantity of these securities was originally issued, if it is a question of the issue of securities, or offered, if it is an offer of existing securities. In addition, the investor has the right to require the responsible person to reimburse him without delay for the usual costs associated with the acquisition.
- An investor who is no longer the holder of securities has the right to demand from the responsible person to pay him without delay the difference between the price at which the investor acquired the securities and the price at which he sold them. When calculating the difference, the price at which the investor acquired the securities is limited to the amount for which that quantity of these securities was originally issued, in the case of the issue of securities, or offered, in the case of the offer of existing securities. In addition, the investor has the right to demand from the responsible person to reimburse him without delay the usual costs associated with the acquisition and disposal.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve-month validity,

the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

According to the general principle the plaintiff has to prove all circumstances supporting his own legal position.

In case restitution for damages because information in the prospectus was incorrect or incomplete the plaintiff must prove inaccuracy or incompleteness of the information in the prospectus and that it was caused by the fault of the responsible persons (intention or negligence must be proven).

Moreover, the plaintiff has to prove the purchase price, the selling price and the purchase costs. In addition, he has to prove that legal transaction of acquisition was concluded after the publication of the prospectus, within six months after:

1. completion of the offer of securities, if it is a liability based on the prospectus in connection with the public offer of securities or
2. the listing of securities on the regulated market, if it is a liability based on the prospectus in connection with the listing of securities on the regulated market.

In case of a failure to publish a prospectus, the plaintiff has to prove the purchase price, the selling price and the purchase and selling costs. Also, the plaintiff must prove that legal transaction of acquisition concluded before the publication of the prospectus within six months after:

1. completion of the offer of securities or
2. listing of securities on the regulated market.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Persons referred to in Article 411, paragraph 1 of CMA (responsible persons) are not liable to the investor for damages if they prove at least one of the following facts:

1. that they did not know about the irregularity or incompleteness of the information in the prospectus and that the ignorance is not based on their intention or extreme carelessness;
2. that the securities were not acquired on the basis of the prospectus;
3. that the state of affairs to which the inaccuracy or incompleteness of the information in the prospectus refer did not contribute to the reduction of the market price of the securities;
4. that the investor, when acquiring the securities, knew or must have known about the inaccuracy or incompleteness of the information in the prospectus;
5. that the correction of incorrect information or the addition of incomplete information was published before the investor concluded the legal transaction of acquiring securities, through the amendment of the prospectus in accordance with Regulation

(EU) no. 2017/1129 or in an appropriate manner in accordance with other provisions of CMA, at least in the same place or in the same way in which the prospectus was published.

Liability for damage in case prospectus was not published on time or was not published pursuant to the Article 415 Paragraph 5 of CMA does not exist if the investor knew or should have known about the obligation to publish the prospectus when acquiring the securities.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Pursuant to Article 7 of the Civil Procedure Act parties are obliged to state the facts on which they base their claims and to propose evidence to establish these facts.

The court is authorised to establish facts that the parties did not present and to present evidence that the parties did not propose only if it suspects that the parties are seeking to dispose of claims that they cannot dispose of (disposal of parties that are in conflict with mandatory regulations and rules of public morality-Article 3 Paragraph 3 of the Civil Procedure Act), unless otherwise specified by law.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Please see the answer to the question 6.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Pursuant to Article 411 Paragraph 10 of CMA, liability for damage cannot be excluded or limited in advance to the detriment of the investor.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Requests for repairing damages based on the provisions of Article 411 of the CMA expire one year from the date the investor became aware of the inaccuracy or incompleteness of the information in the prospectus, and in any case three years from the date of publication of the prospectus.

Requests for repairing damages in case prospectus was not published in a timely manner or was not published pursuant to the Article 415 Paragraph 6 of the CMA expire one year from the day the investor learns that the prospectus, contrary to provisions of Article 3 of Regulation (EU) no. 2017/1129, was not published in a timely manner or was not published, and in any case at the end of a period of three years from the date of the end of the offer, if the prospectus related to the public offer of securities was not published in a timely manner or was not published, or from the listing, if the prospectus related to the listing of securities on the regulated market was not published in a timely manner or was not published.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Provisions of CMA regarding prospectus liability pursuant to the Article 411 Paragraph 14 and Article 415 Paragraph 4 of the CMA apply to offers and/or listings of securities issued by issuers based outside the Republic of Croatia on the regulated market in the Republic of Croatia and in another member state, and it is possible to request compensation for damages if the securities were acquired on the basis of a legal transaction concluded in the Republic of Croatia or an investment services that are fully or partially provided in the Republic of Croatia.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Judicial proceeding before a civil court, settlements and arbitration are ways to receive restitution of losses.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Class action is available and associations of investors have legal capacity to file claims on behalf of their members.

5 Cyprus

CYPRUS SANCTIONING REGIME IN ACCORDANCE WITH CYPRUS PROSPECTUS LAW (referred to as 'the Law')

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Yes. Civil liability may arise from Cyprus Prospectus Law, as well as from other civil liability regimes (e.g. Cyprus Tort Law, Cyprus Contract Law).

The explanations given in the following Questions focus on Cyprus Prospectus Law as the other civil liability regimes do not cover specifically prospectus issues– their provisions are wider.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Yes.

In accordance with the Law, the persons signing the prospectus are responsible for the information contained in it, and these namely are:

(1) the issuer, offeror or person asking for the admission of securities to trading on a regulated market,
(2) if the offeror or the person asking for the admission of securities to trading have the form of a legal person, the three (3) executive members of the Board of the issuer or the person asking for admission of securities to trading, and at all times, the President of the Board and the Managing Directors,
(3) any persons stated in the prospectus as responsible for providing the information presented in it,
(4) the underwriter responsible for the drawing up of the prospectus (in the case of a public offer, or a first admission to trading on a regulated market).

The persons who submitted the summary note and any of its translations, and asked for its publication or its notification, bear civil liability only if the said note is misleading, inaccurate or inconsistent when read together with the main part of the prospectus.

Any person who, within his professional duties, issues any type of statements which constitute a basis for the preparation of the prospectus or taken into account for the preparation of the prospectus, must exercise due care in order to ensure the accuracy, completeness and clarity of the said statements.

Also, the parties mentioned in (1), (2) and (3) above and the person who issues any type of statements for the preparation of the supplement, are also responsible for the information contained in the supplement to the prospectus. The underwriter responsible for the drawing up of the prospectus is responsible only if he signs the supplement.

Q3. Are the persons under the previous question subject to joint and/or several liability?

All natural and legal persons signing the prospectus are jointly and severally liable for loss the investors sustained as a result of any omissions or imprecisions in the prospectus.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The following persons:

(1) the issuer, offeror or person asking for the admission of securities to trading on a regulated market,
(2) if the offeror or the person asking for the admission of securities to trading have the form of a legal person, the three (3) executive members of the Board of the issuer or the person asking for admission of securities to trading, and at all times, the President of the Board and the Managing Directors,
(3) any persons stated in the prospectus as responsible for providing the information presented in it, have a duty as to the accuracy, completeness, clarity and update of the prospectus so as to give a true, full and objective information to investors, and are liable for losses as a result of any omissions or imprecision in the prospectus.

The underwriter responsible for the drawing up of the prospectus has a duty to ensure accuracy, completeness, clarity and update of the prospectus aiming at the true, fair and objective information given to the investors, and also to ensure the legality of the publishing procedure of the prospectus and of the public offer of securities.

The underwriter responsible for the drawing up of the prospectus is liable against the investors, who acquired securities based on erroneous, deficient or insufficient information contained in the prospectus, in respect of every damage that those investors sustained as a result of the falling of the price of the securities, after the deficiencies in the prospectus were revealed.

Furthermore, the person who, within his professional duties, issues any type of statements which constitute a basis for the preparation of the prospectus or taken into account for the preparation of the prospectus, is responsible against the investors for every loss they may sustain in case the prospectus contained inaccuracies or material omissions due to deficiencies in the said statements and primarily due to imprecisions or material omissions contained therein.

Additional to the above, any person can be held liable for damages if an offer of securities to the public is made in Cyprus without the publication of a prospectus which has been approved by the Cyprus Securities and Exchange Commission (CySEC) or notified to CySEC by a competent authority of another member state.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Negligence / Intent.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Investors who responded to the public offer and purchased securities based on the prospectus. National legislation does not prescribe specific parties that are eligible to file a suit for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Circumstances to be proven by the plaintiff are not prescribed in the national legislation. As a matter of common law, the plaintiff must prove a causal link and damage (for example the losses suffered, the plaintiff relied on the misleading prospectus for the investment decision). In an action for damages, intent is not an element that the plaintiff is required to prove in order to succeed in his case.

According to national legislation, in an action for damages where the respondent raises the issues as a preliminary objection, the plaintiff may be required to prove that the action is filed within two (2) years of the issuance of the securities or of their admission to trading on a regulated market. Where the two (2) year period elapses, for the action to proceed the plaintiff will be required to prove fraud.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

In a claim for damages against persons signing the prospectus, the burden of proof lies with the persons signing the prospectus (the respondents) for:

(a) the accuracy, completeness, clarity and update of the prospectus, or
(b) lack of liability as to any errors in the prospectus.

Additional, with regard to the underwriter responsible for the drawing up of the prospectus, there is a rebuttable presumption as to the lack of liability, provided that the content of the prospectus was the subject of legal and financial due diligence examination exercised at the request of the underwriter, through independent legal advisors and auditors.

Also, the underwriter responsible for the drawing up of the prospectus, in order to avoid liability, must prove that he is not responsible for the deficiencies contained therein.

The persons who submitted the summary note and any of its translations, and asked for its publication or its notification, in order to avoid liability, must prove that the said note is not misleading, inaccurate or inconsistent when read together with the main part of the prospectus - no liability arise solely on the basis of the summary note.

The person who, within his professional duties, issued any type of statements which constitute a basis for the preparation of the prospectus or taken into account for the preparation of the prospectus, in order to avoid liability, he must prove, as the author of the statements, that he is not responsible for the deficiencies contained in the prospectus.

With regard to the examples mentioned in the question, all of those could be circumstances that can be alleged in Court.

Specific circumstances to be proven by the respondent, as the examples mentioned in the question, are not prescribed in the national legislation.

In an action for damages, a respondent can avoid liability if he demonstrates that no fault was committed on his behalf (no breach of the obligations imposed by the Law), or that the plaintiff suffered no damage/loss or that there is no causal link.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No. The judge can only consider evidence provided by the parties.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The decision to award damages rests exclusively to the Court. The Court may decide to award actual damages/loss of profit. National law does not provide on the quantification of compensation.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

With the exemption of persons who submitted the summary note and any of its translations and of the underwriter responsible for the drawing up of the prospectus, provisions in the Law about civil liability are mandatory.

Persons who submitted the summary note and any of its translations, expressly limit their liability by including a warning in the summary note that are liable only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

At the drawing up of the prospectus published for a public offer and for a first admission to trading on a regulated market, there is an underwriter responsible for the drawing up of the prospectus, signing the prospectus.

There is a rebuttable presumption as to the lack of liability of the underwriter responsible for the drawing up of the prospectus, if the content of the prospectus was the subject of legal and financial due diligence examination of the issuer, at the request of the underwriter, through independent legal advisors and auditors.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Yes.

Any claim against the persons signing the prospectus (except the underwriter responsible for the drawing up of the prospectus), bears a statutory bar of two (2) years from the date the securities were made available or were admitted to trading on a regulated market, as the case may be.

In case of malicious intention by the persons signing the prospectus (except the underwriter responsible for the drawing up of the prospectus), the statutory bar of two (2) years does not apply in respect of the persons who have acted maliciously, but a limitation period of six years instead.

Any claim against the underwriter responsible for the drawing up of the prospectus bears a statutory bar of one (1) year from the date the securities are allotted or of their admission to trading on a regulated market.

In case of malicious intention by the underwriter responsible for the drawing up of the prospectus, the statutory bar does not apply, but a limitation period of six years instead.

Any claim against the person who issued statements which constituted a base for the preparation of the prospectus or taken into account for the preparation of the prospectus, bears a statutory bar of one (1) year from the date of the securities were made available or, as the case may be, of their admission to trading on a regulated market.

In case of malicious intention by the author of the statements, the statutory bar does not apply, but a limitation period of six years instead.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Depending on the particular facts of each offering, there are several laws that would deal with this matter and these include the Civil Wrongs Law Cap. 148, the Companies Law Cap. 113 and the Cyprus Prospectus Law. There are no statutory provisions for solving conflicts of laws but these are dealt with according to common law principles.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes. Judicial proceeding before a civil court is the only way to receive restitution of losses.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

No class action is available.

6 Czech Republic

General comments

While there are academic articles and commentaries on the subject of prospectus liability, in the Czech Republic, there is no case law available. The opinion below is an expert opinion but should not be relied upon as legal advice, nor as the authoritative interpretation of the applicable laws.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise?

No. There is only one civil law liability regime. However, the liability can stem from breach of different law provisions (e.g. Capital Market Undertaking Act, Civil Code, Business Corporations Act).

If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

n/a

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Under Capital Market Undertaking Acts these parties are: an issuer, offeror, person asking for admission to trading on regulated market, guarantor.

Under general provisions of the Civil Code and Business Corporations Act the liable company can ask its directors (or those who are responsible) for recovery of damages.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Abovementioned persons (issuer, offeror, person asking for admission to trading on regulated market, guarantor) are jointly and severally liable for the prospectus.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Abovementioned persons are liable for untrue information provided in the prospectus and for missing material information in the prospectus.

Private liability for public offer without the prospectus may be based on general liability rules.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict

liability)?

Abovementioned persons are liable for intent or negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Both, primary market original purchasers and secondary market investors are entitled to sue for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff must prove all of the abovementioned circumstances apart from fault (culpability). The acquisition may arguably happen outside the period of the validity of the prospectus, provided that the damage (such as sale at a loss) was incurred during this period due to material misstatement in the prospectus.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The respondent must prove any abovementioned circumstances to avoid his/her liability.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Yes, a judge can use under certain circumstances the evidence which was not presented by the parties.

Q10. What damages are recoverable?

Recoverable damages are: (i) actual damages (suffered loss) and (ii) loss of profit.

Does the law provide specific provisions on the quantification of compensation?

No.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Regarding prospectus the relevant provisions on civil liability are mandatory (there is no possibility to limit liability).

Q12. Is there a time limit to file the claim?

Yes, 3 years (subjective) and 10 years (objective).

Can it be suspended or interrupted?

Yes, the time limit is suspended by filing motion with the court.

When does the prescription begin?

The period of prescription begins on the next day after the damage due to misstatement in the prospectus was incurred.

Is each responsible person mentioned under question 2 subject to the same time limit?

Yes.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings?

There are no specific conflict of laws rules on the prospectus liability in the Czech law. General rules on non-contractual damage would apply.

Is there any provision to solve conflicts of law?

No specific provision.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses?

Yes (other than voluntary restitution by the liable persons).

If other, please explain.

n/a

Q15. Is a class action available?

Class actions are generally not available under the Czech law, the only relevant regulation of class actions is currently represented by consumer actions against undertakers.

If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

n/a

7 Denmark

Prospectus Liability Questionnaire from ESMA – answers from the Danish FSA

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Civil liability for prospectuses is incurred on basis of the general Danish contractual rules. The principles of Danish contractual law will be explained in connection with the following questions.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

There are no rules stating specifically who can be held responsible under civil liability – it is determined based on general contractual rules and principles. This means any person (natural or legal) can be held responsible if they have acted liable. This implies that the issuer (and the management in the issuer), normally, will be liable since the prospectus is signed by them. Other parts are only liable for the part of the prospectus they are responsible for.

Q3. Are the persons under the previous question subject to joint and/or several liability?

If several persons are liable for the same part of the prospectus, they will be jointly and severally liable.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons (natural or legal) are liable for all breaches of duties. There are no specific rules concerning this. Liability is based on *culpa* meaning that the persons must have acted intentionally or negligently. Furthermore, the other conditions for liability must be fulfilled - see also answer to question 7 regarding the conditions for liability.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict

liability)?

Liability is based on *culpa*. Persons (natural or legal) are liable when they are negligent – and therefore also when they have intent. However, a case from the Danish Supreme Court shows that the company (the legal person) issuing the securities is not as likely to be found negligent as the management of the company. Lawyers, accountants and other advisors are under a strict professional liability assessment of negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

All persons (legal or natural) who have had a financial loss can sue for damages. Both the original purchaser and a subsequent investor must prove foreseeability and causation (see also the answer to the question below regarding foreseeability and causation).

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff must prove at least negligence (i.e. prove of intent will also make a person liable) in regard to the information in the prospectus and a financial loss as well as foreseeability. This means that the plaintiff must prove that information in the prospectus was negligent and this was known or should have been known to the defendant, that the plaintiff has incurred a loss, and that the loss was foreseeable given the negligent information. There is an assumption in case law that a proven negligence in the prospectus has causation to a loss incurred because of an investment based on the prospectus.

When making the assessment of liability the principles of fiduciary duty ("loyal oplysningspligt") and the obligation to investigate ("undersøgelsespligt") are taken into account. These are Danish general contractual principles. Fiduciary duty implies that the "seller" (the issuer) loyally must inform of any circumstances of which the seller knows or should know, and which are of relevance to a buyer. On the contrary, the obligation to investigate implies that the buyer is not able to invoke conditions that the buyer fairly could have known from prior investigation – i.e. conditions that the buyer is not aware of due to own imprudence. Simplified, the seller must provide all necessary information in the prospectus, and the buyer must have read (examined) the prospectus sufficiently.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The respondent must prove that the person has not acted negligent, that the plaintiff has no financial loss and/or there is no causation and foreseeability between the negligence and

the loss. It is enough to prove that one of the listed parameters is not met. A case from the Danish Supreme Court shows that an investor is expected to read the entire prospectus. Therefore, the question of negligence must be evaluated against the entire prospectus, cf. the obligation to investigate (explained under question 7).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of)? If yes, please explain.

In civil liability cases there is a principle of negotiation. This means the judge only takes information from the parties into consideration.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Financial loss is recoverable. There are no rules about quantification of compensation.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Civil liability is mandatory. There are no possibilities to exclude.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The general Rule of Limitation sets a time limit of 3 years. It applies to all persons. The deadline starts when the loss occurs. The time limit can be interrupted if the debtor recognises its obligation or when the creditor takes legal action.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

We have no specific rules on choice of law regarding civil liability of prospectus related to international public offerings. General conflict of law rules will apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

The case must be brought before the civil courts unless the parties reach a settlement out of court.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Class actions are available. Class actions are regulated in the Administration of Justice Act, chapter 23a. The law prescribes the conditions which must be met before a class action is possible. One of the conditions is that class action must be the best way to handle the claim. We have examples in Danish case law of such class actions.

It is the court who appoints the representative for the class act. The representative can be an association of investors if being a representative in such matters are within the scope of the association.

8 Estonia

Prospectus Liability Questionnaire (ESMA/2012/CSFC/18 Ann 1) Updated: December 2024 Responses from the Estonian FSA

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

There are specific provisions regarding liability for information contained in a prospectus in the Securities Market Act. In addition, the liability provisions of the civil law apply: breach of pre-contractual duties, contractual liability, the right to cancel a contract if entered into under the influence of a relevant mistake or fraud and tort liability.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

The Securities Market Act no longer contains specific provisions regulating the confirmation of the accuracy and completeness of information in a prospectus by the issuer, the offeror, or the auditor. The removal of these specific provisions from the Securities Market Act means that the regulation of liability and confirmations now derives entirely from Article 11 of the Prospectus Regulation. As a result, the regulatory framework is based on EU law, which is directly applicable and does not require transposition into Estonian legislation.

The obligation to compensate for damages if the prospectus contains information which is significant for the purpose of assessing the value of the securities and such information proves to be different from the actual circumstances, the issuer, offeror or any other person specified as a responsible person in the prospectus of the security shall compensate the owner of the security for damage sustained thereby due to the difference between the actual circumstances and the information presented in the prospectus, provided that the issuer, offeror or any other person specified as a responsible person in the prospectus of the security was or should have been aware of such difference.

The obligation to compensate for damage also rests with the issuer or offeror if a third party is the source of the information presented in the prospectus.

Article 11 of the Prospectus Regulation (EU) 2017/1129 stipulates that the issuer, the offeror, and other persons designated as responsible are liable for the information presented in the prospectus. If the correctness and completeness of information contained in a prospectus is signed by multiple persons, each of the persons may be held liable for certain parts of the prospectus. The liability depends on whether the person was aware or should have been aware of the fact that the information was inaccurate.

The general civil law provisions do not prescribe specific persons who can be held

responsible but in the context of liability for information contained in a prospectus, the issuer and the offeror as the obligated persons to draw up the prospectus may be held liable.

Although the Securities Market Act no longer prescribes the requirement for auditors to provide confirmations in the prospectus, the auditor's liability remains governed by other legal provisions in Estonia and the auditor bears proprietary liability for the direct proprietary damage wrongfully caused to a client or third party by provision of audit service.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The persons may be subject to joint and several liability.

Under the Securities Market Act, the issuer or the offeror are liable for compensation of damages.

The general civil law provisions stipulate that if several persons are liable, on the same or different grounds, to a third party for the same damage caused to the third party, they shall be solidarily liable for payment of compensation. In this case, liability in the relations between these persons shall be divided taking into account all circumstances, in particular the gravity of the non- performance or the unlawful character of other conduct and the degree of risk borne by each person.

If several persons may be liable for damage caused and it has been established that any of the persons could have caused the damage, compensation for the damage may be claimed from all such persons. In this case, compensation for damage may be claimed from each person to an extent in proportion to the probability that the damage was caused by the person concerned. A person obligated to compensate for damage shall be released from liability if the person proves that the damage was not caused thereby.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons are liable for compensation of damages if the prospectus contains information which is significant for the purpose of assessing the value of the securities and such information proves to be different from the actual circumstances or in case of omission of material information in the prospectus.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

- Under the Securities Market Act prospectus liability provisions, if the prospectus contains information which is significant for the purpose of assessing the value of the securities and such information proves to be different from the actual circumstances, the issuer, offeror or any other person specified as a responsible person in the prospectus of the security shall compensate the owner of the security for damage sustained thereby due to the difference between the actual circumstances and the information presented in the prospectus, provided that the issuer or offeror was or should have been aware of such difference. This also applies if the prospectus is incomplete due to the omission of relevant facts, provided that the incompleteness of the prospectus results from the issuer or the

offeror hiding of the facts.

- The obligation to compensate for damage also rests with the issuer, offeror or any other person specified as a responsible person in the prospectus of the security if a third party is the source of the information presented in the prospectus.
- Therefore, the degree of fault required is in case of incorrectness of the information at least negligence, and in case of omission of relevant information, intent is required.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Under the Securities Market Act, any purchaser of the securities is entitled to sue for damages. The plaintiff must be able to prove that he has borne damages which are the result of the inaccurate information contained in the prospectus.

Under general contract and tort law, anyone is entitled to sue for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

In civil court action, each party shall prove the facts on which the claims and objections of the party are based.

The plaintiff must prove that the prospectus contains information which is significant for the purpose of assessing the value of the securities and such information is different from the actual circumstances or that significant information has been omitted from the prospectus. The plaintiff must also prove that the damages were caused by the inaccurate information and, in addition, the amount of losses must be shown.

The fault of the defendant is presumed.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The defendant can claim and prove all of the circumstances named in the question to avoid liability. According to the Securities Market Act, in case of incorrect information in prospectus, the defendant can avoid liability if he can prove that he was not aware or should not have been aware of the incorrectness of the information. In case of omission of material information, the defendant can avoid liability by showing that the incompleteness of the information did not result from hiding of the facts by the defendant. Furthermore, in case of a qualified investor, the defendant can claim that the qualified investor should have realised,

at the moment of acquiring the security and by exercising due care in its activities, that the information contained in the prospectus was inaccurate or incomplete (unless the qualified investor proves intent of the defendant).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No. The court may make a proposal to the parties to submit further evidence, but the court decision must be based only on evidence provided by the parties.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

- The plaintiff may claim compensation for direct patrimonial damages and loss of income.
- The Securities Market Act provides that the issuer has the right to compensate for the damage by acquiring the security from the person that sustained the damage for the price that the latter paid to acquire the offered security. By acquiring securities in this manner from the person that sustained the damage, the person causing the damage is released from the obligation to compensate for any other damage to the person that sustained the damage.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The provisions on civil liability are mandatory and any agreements which exclude, limit or reduce compensation or the limitation period prescribed in the law would be null and void.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The limitation period for a claim based on the Securities Market Act is 5 years as of the beginning of the offer of the relevant security on the basis of a prospectus which contains inaccurate information or is incomplete.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

There are no specific provisions regarding civil liability of prospectuses related to international public offers.

According to the Private International Law Act, liability for obligations of a legal person shall be governed by the law of the state according to which the legal person is founded. If a legal person is actually managed in Estonia or the main activities of the person are carried out in Estonia, the legal person shall be governed by Estonian law.

Claims arising from unlawful causing of damage shall be governed by the law of the state where the act or event which forms the basis for causing the damage was performed or occurred.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes, a civil court proceeding is the only way to receive restitution of losses.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

No, class action is not available.

9 Finland

FIN-FSA's answers

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Prospectus civil liability arises out of tort regime. In some cases, the contractual liability regime may also apply, but the tort regime of the SMA is always applicable to damages arising out of breach of prospectus rules.

The main provisions for the regimes are stipulated in the SMA, the Tort Liability Act, the Limited Liability Companies Act (hereinafter "Companies Act"), the Sale of Goods Act and the Consumer Protection Act. Contractual liability regime is also governed by general principles of contract law.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

The law does not specifically prescribe the persons who can be held liable for information contained in the prospectus. Pursuant to the SMA, anyone who causes damages through intentional or negligent procedure that is against the SMA or provisions issued thereunder (including relevant Regulations and Decisions by the European Commission).

Pursuant to the SMA, the issuer, offeror and/or person applying for admission to trading is subject to the obligation to publish the prospectus. Moreover, the person commissioned to handle the offer or application for admission to trading (i.e. managers of the offer) is also covered by the obligation. Liability of the directors of the legal persons is stipulated by law applying to the relevant legal person.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The allocation of the liability is determined case by case. The main rule is that where the damage has been caused by two or more persons, or they otherwise are liable in the same damages, the liability shall be joint and several.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

For any intentional or negligent procedure that is against the SMA or provisions issued thereunder (including relevant Regulations and Decisions by the European Commission). All of the above examples are covered by the provision.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Intent or negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The circle of persons entitled to sue for damages is not specifically stated in the legislation. It will be determined in case law. According to a Report published in 2005 by a Prospectus Liability Working Group set up by the Ministry of Finance, prospectus liability should not be limited only to subscriptions and/or to securities offered for sale to the public in a public offer, if investment decisions are made on the basis of the information presented in the prospectus.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff has to prove at least the losses suffered and the causal link between the losses and the misleading or false statement (or omission of information). The burden of proof relating to negligence or intent will depend on the circumstances of the case.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The respondent can avoid liability by proving (i) the lack of negligence/intent, (ii) the lack of causal link between the misstatement and the damages, or (iii) the lack of damages.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The recoverable damages are not specifically determined by the legislation. According to a Report published in 2005 by a Prospectus Liability Working Group set up the Ministry of Finance the objective is to impose compensation based on the interest fulfilment principle, i.e. an investor shall be put in the same economic position where he/she had been if there had been no errors or deficiencies in the prospectus.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The liability provisions of the SMA are mandatory.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The general period of limitation is 3 years from the moment the person became or should have become aware of the damage and person liable for that. The right to claim for damages however ceases, if the limitation period has not been interrupted within 10 years of the act that gave rise to damages.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

There are no specific provisions on conflict of law issues, general conflict of law principles apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

The Act on Class Actions does not apply to a civil case concerning the conduct of an issuer of securities as referred to in the SMA.

10 France

AMF Answers

INTRODUCTORY NOTE

The answers provided by the AMF to this questionnaire are intended to provide a general overview of the French civil liability regime in connection with securities prospectuses. They should not be considered as an exhaustive and detailed description of all potentially applicable legal provisions in this context. They are for informational purposes only and are not full analyses of the legal matters or issues presented. Moreover, they should not prejudice positions, decisions and/or interpretations of the competent courts, the AMF or any other administrative or judicial authorities regarding any legal issues, provisions and regulations described hereafter. Finally, with regards to the English translations of certain provisions of French law that are provided below, it, should be noted that these translations are not official and are provided for informational purposes only.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

There is no specific civil liability regime under French law concerning prospectuses. Prospectus liability is based on the general regime of civil liability, which in French law is defined in the Civil Code. While tort liability may undoubtedly be incurred in such cases, the question of whether an issuer's contractual liability may be incurred in relation to a prospectus is the subject of debate, in an area where there is very little case law.

French law distinguishes between contractual and tortious liability:

- Tort liability is based on article 1240 of the French Civil Code. In this case, the person suffering the damage must prove fault, prejudice and a causal link. The characterisation of the fault requires in principle to provide proof that there was failure to comply with a duty or a legal obligation. This encompasses not only the violation of a legal norm, but also negligence or imprudence.
- Contractual civil liability is based on article 1231-1 of the French Civil Code. In this case, the victim of the damage must prove non-performance of a contractual obligation or delay in performance of a contractual obligation, prejudice and a causal link.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Issuers, guarantors, sellers and offerors

Pursuant to Article L. 412-1, II of the French Monetary and Financial Code:

> "Responsibility for all information provided in a prospectus drawn up by the issuer pursuant to Regulation (EU) No. 2017/1129 of June 14, 2017 and in any supplement thereto lies with the issuer.
>
> Responsibility for the information provided in the prospectus and in any supplement thereto also lies with the potential guarantor, in relation to the information to which its guarantee relates and concerning it.
>
> In the event of a sale of equity securities by an entity other than the issuer presented in a prospectus prepared by the issuer, responsibility for information relating to the description of this entity, its links with the issuer or with the group of the issuer and the transfer of its equity securities is also the responsibility of this entity if the equity securities it transfers represent a portion of the issuer's capital and a portion of the equity securities offered set by the general regulations of the financial market authority (AMF). [In this case 10 %]
>
> Responsibility for all information provided in the prospectus which is not drawn up by the issuer and in any supplement thereto lies with the offeror or the person seeking admission to trading on a regulated market.
>
> No civil liability action may be brought on the basis of the summary alone, including its translation, unless its content is misleading, inaccurate or inconsistent with the information contained in the other parts of the document mentioned in the first paragraph, or if it does not provide, read in combination with the other parts of the document mentioned in the first paragraph, the essential information to help investors when considering investing in these financial securities. The summary includes a clear warning to this effect."

Statutory auditors

Pursuant to Article 212-15 of AMF general regulations:

> "I. - The statutory auditors rule on the regularity, sincerity and faithful representation of the annual, consolidated or interim accounts which have been the subject of an audit or limited examination and which are presented in a prospectus, a registration document or a universal registration document and in any supplement, amendment or rectification thereof. When the intermediate accounts are summarised, the statutory auditors decide on their compliance with the accounting standards.
>
> They certify that the pro forma information, possibly presented in a prospectus, a registration document or a universal registration document and in any supplement, amendment or rectification thereof, has been adequately established on the basis indicated and that the accounting basis used is consistent with the accounting methods applied by the issuer.
>
> II. - They carry out an overall reading of the other information contained in a prospectus, a registration document or a universal registration document and in any supplement, amendment or rectification thereof. This overall reading as well as, where applicable, specific verifications are carried out in accordance with a standard applicable to auditors relating to the verification of prospectuses.

They draw up a letter of completion of work on the prospectus for the issuer, in which they state the reports issued appearing in the prospectus, the registration document or a universal registration document and in any supplement, amendment or rectification of these, and indicate, at the end of their overall reading and any specific verifications carried out in accordance with the professional standard referred to above, their possible observations. This letter of completion of work on the prospectus is delivered at a date as close as possible to that of the expected approval from the AMF.

A copy of this letter of completion of work on the prospectus is sent by the issuer to the AMF prior to filing or approval of the registration document or the universal registration document or their amendments or rectifications. If it contains observations, the AMF draws the consequences when examining the prospectus.

In the event of difficulty, the auditors of a French issuer may question the AMF for any question relating to the financial information contained in a prospectus, a registration document or a universal registration document and in any supplement to these or, where applicable, their amendments or rectifications.

III. - The provisions of II do not apply to a prospectus drawn up for the public offering or admission to a regulated market of debt securities, since they do not give access to the capital, or with a view to of the admission of financial securities to the compartment mentioned in article 516-5."

Investment service providers

Pursuant to Article 212-16 of AMF general regulations:

"I. - Where one or more investment service providers are managing the initial admission of equity securities to trading on a regulated market, such investment service provider(s) shall confirm to the AMF in a declaration that they have exercised customary professional diligence and that such diligence did not reveal any inaccuracies or material omissions in the content of the prospectus, that are likely to mislead investors or affect their judgement.

After the initial admission of equity securities to trading on a regulated market, where one or more investment service providers are managing any offer to the public or admission to trading on a regulated market of said equity securities, the declaration of such investment service provider(s) shall concern only the procedures of the offer and the characteristics of the equity securities being offered or admitted to trading on a regulated market, as described in the prospectus or the note to the equity securities, as applicable.

II. - Where one or more investment service providers are managing an offer to the public of equity securities that are not admitted to trading on a regulated market, such investment service provider(s) shall confirm to the AMF in a declaration that they have exercised customary professional diligence and that such diligence did not reveal any inaccuracies or material omissions in the content of the prospectus that are likely to mislead investors or affect their judgement.

III. - Where one or more legal persons or other entities, whether investment service providers or not, are authorised by a market operator or an investment service provider that operates an organised multilateral trading facility (MTF) within the

meaning of Article 524-1 are managing an offer to the public of said equity securities on that MTF, such legal persons or other entities shall declare to the AMF that they have exercised customary professional diligence and that such diligence did not reveal any inaccuracies or material omissions in the content of the prospectus that are likely to mislead investors or affect their judgement.

IV. - The provisions of this article do not apply to prospectuses drawn up for admission of financial securities to the compartment referred to Article 516-5".

Q3. Are the persons under the previous question subject to joint and/or several liability?

In accordance with the general principles of civil liability, as clarified by case law, when the same damage has been caused by several people, referred to as co-perpetrators, each of these co-perpetrators is obligated *in solidum*, i.e. for the whole, towards the victim.

The victim can therefore obtain compensation for the damage from any of the co-perpetrators. The co-author who, having been prosecuted for the whole, has paid everything, then has recourse against the others, which will have the consequence of defining the contribution of each to the final burden of liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Absence of prospectus

Pursuant to Article L. 412-1, I of the Monetary and Financial Code, a prospectus must be drawn up pursuant to Regulation (EU) No. 2017/1129 of 14 June 2017 in the event of a public offering of financial securities or admission of financial securities to trading on a regulated market under the conditions set out in this regulation.

Failure to draw up such a prospectus when required by regulations constitutes a fault on the part of the issuer, which could give rise to civil liability.

Dissemination of false or misleading information in the prospectus

Pursuant to Article L. 412-1, II of the French Monetary and Financial Code:

"Responsibility for all information provided in a prospectus drawn up by the issuer pursuant to Regulation (EU) No. 2017/1129 of June 14, 2017 and in any supplement thereto lies with the issuer.

Responsibility for the information provided in the prospectus and in any supplement thereto also lies with the potential guarantor, in relation to the information on which its guarantee relates and concerning it.

In the event of a sale of equity securities by an entity other than the issuer presented in a prospectus prepared by the issuer, responsibility for information relating to the description of this entity, its links with the issuer or with the group of the issuer and the transfer of its equity securities is also the responsibility of this entity if the equity securities it transfers represent a portion of the issuer's capital and a portion of the equity securities offered set by the general regulations of the financial market authority (AMF). [In this case 10 %]

> Responsibility for all information provided in the prospectus which is not drawn up by the issuer and in any supplement thereto lies with the offeror or the person seeking admission to trading on a regulated market.
>
> No civil liability action may be brought on the basis of the summary alone, including its translation, unless its content is misleading, inaccurate or inconsistent with the information contained in the other parts of the document mentioned in the first paragraph, or if it does not provide, read in combination with the other parts of the document mentioned in the first paragraph, the essential information to help investors when considering investing in these financial securities. The summary includes a clear warning to this effect."

Furthermore, pursuant to Article 212-14 of the AMF general regulations, the persons responsible for all or part of the prospectus must confirm, by means of a certificate, to the AMF that, to the best of their knowledge, the data in the prospectus for which they are responsible is consistent with the reality and does not include any omission likely to alter its scope.

In addition, pursuant to Articles 212-15 and 212-16 of the AMF general regulations, auditors and investment services providers may also be held liable in the event that they are at fault in the performance of their duties. This liability is distinct from that of the issuer and its management, since it is based on compliance with the professional standards to which the auditor or investment service provider is bound.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The fault may range from simple negligence to deliberate intent, depending on the circumstances and the person to whom civil liability is attributed. The issuer and its directors may be held liable for all of the information contained in the prospectus. Other persons may be liable for part of the prospectus or for a specific type of information.

The issuer may be held liable for faults committed in the drafting of the prospectus. Pursuant to Article 1242 of the French Civil Code, the issuer may also be held liable for errors committed by its employees or agents.

Pursuant to Article L. 225-251 of the French Commercial Code:

> "The directors and the general manager are liable individually or jointly as the case may be, towards the company or towards third parties, either for breaches of the legislative or regulatory provisions applicable to limited companies, or for violations of the statutes, or for faults committed in their management.
>
> If several directors or several directors and the general manager cooperated in the same acts, the court determines the contributory share of each in the compensation for the damage."

Under French law, a director may only be ordered to remedy the loss or harm caused to third parties if it is proven that he or she personally committed a fault which is "detachable", from (i.e., not connected to) his or her corporate duties. See, in particular, Court of Cassation, Commercial Division, 20 May 2003, no. 99-17.092.

Pursuant to Article L. 821-37 of the French Commercial Code:

"'Statutory auditors are liable, both to the person or entity and to third parties, for the harmful consequences of any misconduct or negligence on their part in the exercise of their profession. They may not, however, be held liable for information or disclosures made in the performance of their duties. They shall not be liable under civil law for offences committed by directors and corporate officers, unless, having become aware of such offences, they failed to report them in their report to the general meeting or to the competent body referred to in Article L. 821-40."

Investment service providers may also be held liable if they breach their duties.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Any person who suffers loss as a result of inaccurate or misleading information or the absence of a prospectus may bring an action for damages.

In addition, pursuant to Articles L. 452-1 to L. 452-4 of the French Monetary and Financial Code, where several individuals, in their capacity as investors, have suffered individual losses caused by the same person and having a common origin, any association mentioned in article L. 452-1 may, if it has been mandated by at least two of the investors concerned, bring an action for damages before any court, on behalf of these investors.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

See the answer to question 1.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

As a general principle, the burden of proof lies with the plaintiff. It is up to each party to prove, in accordance with the law, the facts necessary for the success of their claim, otherwise no civil liability can be established. In addition, the plaintiff's fault would be taken into account in order to limit the respondent's liability.

Q9. Does the judge have the faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of)? If yes, please explain.

As a general principle, French courts must base their decision on the arguments and facts presented by the parties.

Pursuant to Article 4 of the French Code of Civil Procedure, “the subject matter of the dispute is determined by the respective claims of the parties.”

In addition, pursuant to Article 6 of the French Code of Civil Procedure, "in support of their claims, the parties have the burden of alleging the facts on which they are based”.

Furthermore, in accordance with Article 7 of the same code, “the judge may not base his decision on facts that are not part of the debate. Among the elements of the debate, the judge may take into consideration even those facts that the parties have not specifically invoked in support of their claims.”

In addition, French courts can order an expert opinion if they consider that they do not have sufficient elements to make their decision and that they need the technical advice of a professional.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

French law does not provide specific rules for calculating damages. The assessment of damages is left to the discretion of the trial judge.

Not all losses will give rise to compensation. Case law has laid down the conditions that must be met for damage to give rise to a right to compensation. In order to be entitled to civil liability under French law, the victim must demonstrate the existence of direct, legitimate and certain damage.

First of all, the damage must be certain. Case law accepts that the loss of a real and serious opportunity gives rise to a right to compensation. The damage must also be direct, which means that it must be the direct result of the fault. Finally, the damage must have adversely affected a legally protected legitimate interest. For example, a person cannot be compensated for the loss of illicit income.

In its Gaudriot ruling of 9 March 2010, the French Supreme Court for civil and commercial matters (Cour de cassation) ruled that the loss suffered by the shareholder consists of a loss of opportunity (Cass. com., 9 March 2010, nos. 08-21.547 and 08-21.793):

> “[…] anyone who acquires or retains securities issued by way of a public offer on the basis of inaccurate, imprecise or misleading information about the situation of the issuing company loses only the opportunity to invest his capital in another investment or to renounce the one already made”.

This loss of opportunity for the shareholder, which is the only one that can be compensated according to the case law of the Cour de cassation, presupposes that the shareholder's decision to invest or hold his shares has been altered. The prejudice suffered by the shareholder may therefore take the form of a loss of opportunity:

- to have acquired his shares at a lower price than he would have paid, given the circulation on the market of erroneous optimistic information;
- to have been able to sell his shares at a better price, given the circulation of erroneous negative information on the market;
- to renounce his investment if he has retained his securities.

In the event of a dispute, in order to establish a causal link, the shareholder will also have to demonstrate the impact on the decisions he has taken or could have taken. The shareholder will thus have to establish what alternative investment he would have made and what result he could have expected in a convincing manner.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

If the action is based on tort, clauses designed to limit or exclude liability in tort are deemed to be contrary to "public order" and are therefore considered illegal.

If the action is based on contractual civil liability, In accordance with the principle of contractual freedom, clauses limiting or excluding liability are valid in principle. This is one of the characteristics of contractual liability, the effects of which can be adjusted in this way.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Pursuant to Article 2224 of the French Civil Code, the default limitation period applicable to civil actions is five years from the day on which claimant learnt or should have learnt about the facts enabling him to exercise his right. The limitation period may also be suspended in the cases referred to in articles 2233 et seq. of the French Civil Code.

Pursuant to Article L225-254 of the French Commercial Code, "liability action against the directors or the general manager, both corporate and individual, is prescribed three years from the harmful event or, if it was concealed, from its revelation".

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

There is no specific law which deals with issues of civil liability of prospectuses related to international public offerings nor provision to solve any conflict of law. The rules of private international law apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

It is also possible for the victim of losses to bring their civil action for compensation before the criminal courts, rather than before the civil courts for all counts of damage arising from the offences subject to the criminal proceedings.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Under French law, there is currently no class action regime to compensate for losses suffered by investors.

Directive (EU) 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers is currently being transposed into French law.

French law does, however, allow certain investor associations to take legal action to obtain compensation for losses suffered (see above).

Bundesanstalt für
Finanzdienstleistungsaufsicht

BaFin

11 Germany

BaFin Answers

INTRODUCTORY NOTE

The answers to this questionnaire provided by BaFin want to give an overview of the German civil, administrative, government, criminal liability and sanctions regime in connection with securities prospectuses. Therefore, the answers to this questionnaire should not be considered as an exhaustive and detailed description of all potentially applicable legal provisions in this context. Moreover, the answers should not prejudge positions and/or interpretations of the competent courts or any other competent authorities regarding any legal regulations described in the following. The relevant courts are exclusively competent to finally decide upon legal matters.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

In Germany there are special rules dealing with the civil liability for incorrect or incomplete prospectuses and with the civil liability for failure to publish a prospectus. These special rules are implemented in the German Securities Prospectus Act (**Wertpapierprospektgesetz, WpPG**).

In addition, the general rules of the German civil law apply (e.g. tort law, contract law) (section. 16(2) WpPG).

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Civil liability for incorrect or incomplete prospectuses under the Securities Prospectus Act attaches to those persons (i) who assume responsibility for the prospectus (section 9 (1) no. 1 WpPG), and to those persons (ii) who are responsible for the issuing of the prospectus (section 9 (1) no. 2 WpPG).

Persons who assume responsibility are primarily the persons who are explicitly identified as such in the prospectus. The Securities Prospectus Act stipulates that the offeror (who usually is identical with the issuer) has to assume responsibility in the prospectus (section 8 WpPG). In addition, the applicant for admission has to assume responsibility in the prospectus, if the prospectus is to be used for the admission of securities to trading on a regulated market (section 8 WpPG).

In case a person assumes only responsibility for a certain part or certain parts of the prospectus this person would only be liable for the incorrectness of these certain parts of the prospectus. However, at least one person needs to be responsible for the prospectus as a whole.

Persons who are responsible for the issuing of the prospectus are persons who have not been explicitly identified as assuming responsibility in the prospectus but who are nevertheless to be considered as the factual initiator of the prospectus, inter alia because of their own economic interest in the issue (e.g. principal shareholders, members of the board of directors).

Civil liability for failure to publish a prospectus under the Prospectus Regulation attaches to the issuer and the offeror (section 14 (1) WpPG).

Contract law and tort law do not provide for specific parties who can be held responsible for incorrect or incomplete prospectuses. Liability attaches to those persons who fulfil the elements defined by the applicable legal provisions. However, (pre)contractual liability can only be triggered if the purchaser purchased the securities directly from a person who is responsible for the prospectus.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The persons are subject to joint and several liability (e.g. section 9 (1) and section 14 (1) WpPG).

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Under the Securities Prospectus Act a person can be held liable if information contained in a securities prospectus that are material for the assessment of the securities are incorrect or incomplete (section 9 (1) WpPG).

Moreover, under the Securities Prospectus Act a person can be held liable if a prospectus has not been published in contravention of the obligation to publish a prospectus as stipulated in the Prospectus Regulation (section 14 (1) WpPG).

In addition, the general rules of the German civil law apply:

Under contract law a person can be held liable for a breach of a pre-contractual obligation to inform (*culpa in contrahendo*). Such an obligation comes into existence in particular if the third party, by laying claim to being given a particularly high degree of trust, substantially influences the pre- contract negotiations or the entering into of the contract (section 311 (2) and (3) of the German Civil Code, *Bürgerliches Gesetzbuch*, BGB).

Under tort law a person can be held liable for the violation of protective law, i.e. person who commits a breach of a statute that is intended to protect another person (section 823 (2) BGB). Such a statute is inter alia section 264a of German Criminal Code (*Strafgesetzbuch*, StGB) which provides a specific provision for capital investment fraud). Moreover, a person can be held liable if it intentionally inflicts damage on another person in a manner contrary to public policy (section 826 BGB).

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

In case of an incorrect or incomplete prospectus, a person is not liable if it can prove (i) that it was not aware that the information contained in the prospectus was incorrect or incomplete, and (ii) that such lack of awareness was not the result of gross negligence. Therefore, persons are liable for intent and gross negligence.

In case of a failure to publish a prospectus, either intent or negligence is sufficient for liability. The same applies to possible claims under tort and contract law.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Under the Securities Prospectus Act any purchaser of the securities is entitled to sue for damages, i.e. irrespective of the marketplace (primary or secondary market).

Under contract and tort law generally anyone is entitled to sue for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

According to the general principle the plaintiff has to prove that the prospectus is incorrect or incomplete. Moreover, the plaintiff has to prove the purchase price, the selling price (if any) and the purchase costs. In addition, he has to prove that he purchased the securities (i) after the publication of the prospectus, and (ii) within six months after the first trading of the securities or after the first public offering respectively (section 9 (1), section 10 (no. 1 WpPG). In case of a failure to publish a prospectus, the plaintiff has to prove that he purchased the securities (i) before a prospectus was published, and (ii) within six months after the first public offering of the securities (section 14 (1) WpPG).

With regard to contract and to tort law the general principle applies, i.e. the plaintiff and the respondent have to prove all circumstances supporting their own legal position.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the

acquisition of the securities took place)?

In case of an incorrect or incomplete prospectus, a person is not liable if it can prove (i) that it was not aware that the information contained in the prospectus was incorrect or incomplete, and (ii) that such lack of awareness was not the result of gross negligence (section 12 (1) WpPG). Moreover, a person is not liable if it can prove (i) that the securities have not been purchased on the basis of the prospectus (but on the basis of other reasons), (ii) that the circumstances which are subject to incorrect or incomplete information did not cause a decrease of the market price of the securities, (iii) that the purchaser knew that the information contained in the prospectus were incorrect or incomplete, (iv) that there was a clear and precise corrigendum published in Germany in the context of the annual report or the interim financial statements of the issuer, in an ad-hoc information or a similar publication before the purchase of the securities, or (v) the claim is solely based on information provided in the summary of the prospectus or a translation thereof, but only if the information is misleading, incorrect or inconsistent when read together with the other parts of the prospectus, or the summary does not contain (if read together with the other parts of the prospectus) all necessary key information (section 12 (2) WpPG).

In case of a failure to publish a prospectus, a person is not liable if it can prove that at the time of the purchase the purchaser was aware of the obligation to publish a prospectus (section 14 (4) WpPG). Moreover, a person is not liable if it can prove that the purchaser would have purchased the securities even if a prospectus was published.

With regard to contract and to tort law the general principle applies, i.e. the plaintiff and the respondent have to prove all circumstances supporting their own legal position.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

As a general rule, the judge does not have the faculty to take facts into consideration which were not presented by the parties. However, facts presented (or implied) by a party that are common knowledge with the court need not be substantiated by evidence (section 291 of the German Code of Civil Procedure, *Zivilprozessordnung*, ZPO).

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

According to the Securities Prospectus Act recoverable damages are the purchase price capped at the first issuance price. In case there is no first issuance price the first market price is considered as the first issuance price. In return for the damages the purchaser has to assign the securities to the responsible person. In case the purchaser is not holder of the securities any longer, he is entitled to the difference between the purchase price (capped at the first issuance price) and the selling price.

Additionally, the usual purchase costs are recoverable (section 9 (1) and (2), section 14 (1) and (2) WpPG).

With regard to contract and to tort law the general principle applies, i.e. a person who is liable in damages must restore the position that would exist if the circumstance obliging him to pay damages had not occurred (section 249 (1) BGB). The damage to be compensated for also comprises the lost profits (section 252 BGB).

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

There is no possibility to exclude or limit liability under the Securities Prospectus Act in advance. Any such clause (e.g. inserted in the prospectus or any other document) or agreement would be void (section 16 (1) WpPG).

According to the German Civil Code in principle the obligor may not be released from liability for intention in advance (section 276 (3) BGB). However, in absence of an agreement between an investor and the issuer and/or offeror this rule has no impact in case of a violation of pre-contractual obligations or tort claims.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

There are no specific provisions in the Securities Prospectus Act regarding the limitation period. Therefore, the general statute of limitation does apply which is three years (section 195 BGB). The limitation period commences at the end of the year in which (i) the claim arose and (ii) the purchaser obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if he had not shown gross negligence. Notwithstanding knowledge or a grossly negligent lack of knowledge, the claims become statute-barred ten years after the date upon which they arise (section 199 BGB).

Moreover, the standard rules for the suspension of the limitation period apply, e.g. suspension if negotiations between the parties are in progress in respect of the claim or the circumstances giving rise to the claim (section 203 BGB).

The same time limits apply for claims regarding the violation of pre-contractual obligations or tort claims.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The Securities Prospectus Act is silent with respect to conflicts of law. Therefore, general conflict of law rules would apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Generally, a judicial proceeding before a court is the only institutionalised way to receive restitution of losses. However, settlements out of court as well as arbitration proceedings are possible.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

The German Capital Market Investors' Model Proceeding Act (*Kapitalanleger-Musterverfahrensgesetz,* KapMuG) as part of German civil procedural law applies *inter alia* to claims for compensation of damages due to false, misleading or omitted public capital markets information. The definition of "public capital markets information" expressly

includes information in prospectuses under the Prospectus Regulation. Application for the establishment of a model case may be made by the plaintiff and the defendant of an individual lawsuit, but not by a third party.

Thus, investor association may only act on behalf of the plaintiff. Investors need to file individual lawsuits before being qualified for participation in a model case. Subject of a model proceeding is the establishment of the existence or non-existence of conditions justifying or ruling out entitlement or the clarification of legal questions may be sought, provided the decision in the legal dispute is contingent thereupon.

In addition to the above, the German Consumer Rights Enforcement Act ((*Verbraucherrechtedurchsetzungsgesetz*, VDuG) entered into force in October 2023. The VDuG implements Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers. Section 1 VDuG allows representative actions by qualified entities (including qualified consumer associations) to seek, in particular, redress measures such as compensation on behalf of consumers.

HELLENIC REPUBLIC
CAPITAL MARKET COMMISSION

12 Greece

Answers to the questionnaire on prospectus liability regimes – HCMC (Updated December 2024).

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Under Article 914 of the Greek Civil Code (CC), a party which has suffered pecuniary damage by an action of another party acting unlawfully and in fault has standing to bring an action for damages against the party that caused the damage. This article establishes the general tortuous (delictual) liability regime in Greek civil law. Furthermore, according to Article 71 CC a legal entity is liable for compensation under Article 914 CC for the acts and omissions committed by its representatives, provided its representatives have acted in the context of performing their duties. Such representatives remain jointly and severally liable together with the legal entity they represent for such damage (liability *in solido*), so that the injured party can sue both the legal entity and the person causing the damage, but can recuperate damages only once.

Tort is generally more difficult to defend because the plaintiff has to prove not only the damage suffered and the causal link between damage and fault, but also the fault of the defendant beyond reasonable doubt. For this reason, a specific provision was adapted into the Greek legal system, namely Article 61 of Law 4706/2020, which provides for "Disclosure requirements during the public offer of securities or admission of securities to trading on a regulated market and measures for the implementation of Regulation EU 2017/1129", in part B, chapter C of the aforementioned Law. This article determines the civil responsibility of the persons accountable for the information contained in a prospectus. This responsibility is primary *ex lege*, and its legal base is the tort (delict) according to Article 914 CC. The first paragraph of Article 61 stipulates that the persons responsible for the prospectus, according to Article 60 (transposes article 11 of Regulation (EU) 2017/1129), are liable for a period of 12 months after the prospectus was made public for any positive damage suffered from the liability of the responsible persons concerning the exactitude and the completeness of the prospectus. A course of action based on this special regime is preferable, mainly due to the reversal of the burden of proof in favour of the investor, as explained below under the relevant questions. On the other hand, this course of action entails compensation only for actual damage and shorter prescription.

For issuers and offerors, contractual liability could also be founded on the general provisions of the CC. However, for other parties that could potentially be held responsible for information contained in a prospectus (e.g. external auditors) contractual liability cannot be founded since a direct contractual bond with the investor cannot be established.

Although in the Greek legal system there is no specific Law regulating the protection of consumers of financial instruments (apart from Ministerial Decision Z1/629/30.5.2005 regulating the distant selling of financial instruments), prospectus liability through the general provisions of Law 2251/1994 on Consumer Protection cannot be ruled out.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

According to Article 60 of Law 4706/2020 , which provides for "Disclosure requirements during the public offer of securities or admission of securities to trading on a regulated market and measures for the implementation of Regulation EU 2017/1129", in part B, chapter C of the aforementioned Law, the responsibility for the information contained in a prospectus rests with the issuer, the offeror, the person asking for admission to trading on a regulated market, or the guarantor, the members of the Board of Directors, as well as the underwriter or financial advisor. Other persons besides the above (e.g external auditors, legal counsels, CFOs) can be held responsible for information contained in certain specific parts of a Prospectus provided that the prospectus specifies persons responsible for these parts.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The above-mentioned persons are subject to joint and several liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The above persons are liable for any information contained in a prospectus required by Article 6 of Regulation EU 2017/1129. Such information is required in order for the investors to be able to assess in a comprehensive manner an issuer's (and its guarantor's) assets and liabilities, financial position, profits, losses and prospects, as well as any rights incorporated in these securities.

There are no specific civil liability provisions for a public offer without a duly approved prospectus.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Under Greek law, both contractual and tort liability require fault. There are two degrees of fault: intent and negligence. In order to claim compensation for tort before the Greek Courts,

the plaintiff would have to prove the existence of fault (intent or negligence) in relation to the infringement.

A differentiation regarding the fault liability that is required from the CC for tort is introduced in paragraph 3 of Article 61 of Law 4706/2020. This provision provides for damages on a quasi-strict-liability basis, with a reversed burden of proof, meaning that the claimant has no obligation to invoke or prove fault on the part of the wrongdoer, but in order to be exonerated the latter must prove that the damage was not the result of his fault. So the persons responsible for the completeness and accuracy of the prospectus are liable unless they can prove that they did not know about the untrue or missing information and that their ignorance is not caused by fault (intent or negligence).

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Based on civil (contractual and tort) law, entitled is any person who can prove damages, as well as the causal link between damages and liability of the responsible person. However, according to Article 61 of Law 4706/2020, which establishes a specific prospectus civil liability regime, entitled is any investor who acquired securities during the first 12 months after the prospectus was made public. Both original purchasers in the primary market and subsequent investors in the secondary market are entitled to sue for damages, although the latter cannot base their action on contractual liability provisions.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

According to Article 61 of Law 4706/2020, the injured party is required to prove the damage suffered and the causal link between damage and fault. The plaintiff is not required to prove the fault (intent or negligence) of the liable person. See also the answer to the question 1.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

According to paragraph 3 of Article 61 of Law 4706/2020, in order to avoid liability, the respondent must prove that the damage suffered by the plaintiff was not the result of his fault (intent or negligence). So the respondent is liable unless he can prove that he was unaware of the untrue or missing information and that his ignorance was not a consequence of his fault (intent or negligence).

Q9. Does the judge have a faculty to take into consideration facts which were not

presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

In accordance with Article 106 of Code of the Civil Procedure (CCP), civil courts take into consideration only the allegations set forth by the litigants, who have the burden of submitting evidence in support of their allegations. Article 107 of CCP introduces derogation from the rule of Article 106 of CCP and empowers the Court to order evidence in support of litigant allegations by one or more means recognized as evidence by the CCP.

Facts constituting public knowledge are considered proven and are taken into account by the Court on its own initiative (Article 336 CCP).

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

According to the first paragraph of Article 61 of Law 4706/2020, recoverable is any actual damage (*damnum emergens*) suffered. Monetary compensation does not cover lost profit (*lucrum cessans*) according to this provision, although the latter is not ruled out by general civil law provisions concerning contractual or tortuous liability.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The legislator's objectives of ensuring investor protection and strengthening investor confidence in the capital market, by means of establishing a special prospectus liability via Article 61 of Law 4706/2020, could be compromised if that liability could be mitigated or dispensed with contrary agreements between the parties involved. On this ground paragraph 6 of Article 61 stipulates that "any clause or agreement restricting liability or discharging liable persons is null and void, in relation to investors".

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

In Greek Civil Law the prescription period for claims arising from tort is 5 years from the time the injured party becomes aware of the damage and of the identity of the person legally responsible for this damage. The prescription period can be interrupted or suspended in certain cases expressly specified by the CC.

A shorter prescription is provided for by paragraph 4 of Article 61 of Law 4706/2020, according to which claims for damages against the liable persons are prescribed after three years from the prospectus publication.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

There is no specific conflict of law provision for civil liability arising from prospectuses and there is no clear precedent in the Greek jurisprudence. In the absence of an express clause defining a competent court and applicable law in the terms of the offer, a claim arising from a prospectus could be dealt with under tort law, meaning that the applicable law is that of the State where the tort actually happened (*lex loci delicti commissi*).

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

A judicial proceeding before a civil court is the only way to receive restitution of losses.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Under Greek law, an action for damages may be brought jointly by more than one party (joinder of claims) if: (a) the claimants' right for damages arises from the same factual and legal basis; or (b) the object of the dispute consists of similar claims based on a similar factual and legal basis.

Public interest litigation is provided by Law 2251/1994 on Consumer Protection. According this, a union of consumers with at least 500 members that has been registered in the Registry of Consumers Unions may bring an action for the protection of the general interests of the consumers.

Collective claims and class actions are not provided for by Greek law.

13 Hungary

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

YES, see explanation in the following answers

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

The issuer and the dealer in securities (or the dealer acting as the syndicate leader where applicable), the person who has provided guarantees for the commitments embodied in securities, the offeror or the person requesting admission of the securities for trading on a regulated market, shall be subject to liability for the information contained in the prospectus. The prospectus shall contain specific information concerning the person who/that is held liable for the contents of the prospectus or any part of it, including the name and address of this person and his role in the offering procedure

Q3. Are the persons under the previous question subject to joint and/or several liability?

In the undermentioned cases the issuer and the offeror, or the person requesting admission of the securities to trading on a regulated market and the dealer shall be subject to joint and several liability for any and all damages sustained by the investors:

a. the subscription of securities, including the purchase contract, that were offered in the absence of a prospectus approved by the HFSA and without having published a public notice, and without the involvement of an investment service provider, shall be null and void.

b. the subscription of securities, including the purchase contract, shall be null and void where the shares of a private limited company are offered publicly or presented for admission to trading on a regulated market in the absence of a decision by the general meeting for the company's transformation.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Any and all damage caused to an investor by supplying misleading information or by concealing material information in connection with the offering of securities. The liability of any person shall cover all information contained in the prospectus, as well as the lack of any necessary information.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Strict liability.

(1) The issuer and the dealer in securities (or the dealer acting as the syndicate leader where applicable), the person who has provided guarantees for the commitments embodied in securities, the offeror or the person requesting admission of the securities for trading on a regulated market, shall be subject to liability for any and all damage caused to an investor by supplying misleading information or by concealing material information in connection with the offering of securities. The prospectus shall contain specific information concerning the person who/that is held liable for the contents of the prospectus or any part of it, including the name and address of this person and his role in the offering procedure. The liability of any person shall cover all information contained in the prospectus, as well as the lack of any necessary information.

(2) A signed declaration of liability shall be annexed to the prospectus by all persons held liable under Subsection (1) of this Section. The declaration shall stipulate that all data and information in the prospectus are true and correct, and that it contains all information necessary for investors to make an informed assessment of the issuer or the person who has provided guarantees for the commitments embodied in securities and the securities to which it pertains.

(3) No civil liability shall attach to any person solely on the basis of the executive summary, including the translation thereof into any language, unless it is **misleading, inaccurate or inconsistent when read together with the other parts of** the prospectus.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The original purchasers in the primary market.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Any data or information in the prospectus is untrue or incorrect, or the prospectus doesn't contain all information necessary for investors to make an informed assessment of the issuer or the person who has provided guarantees for the commitments embodied in securities and the securities to which it pertains.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus,

a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The opposite and controversial circumstances stated by the plaintiff in Answer 7.

In relation to Questions 7 and 8 damage, fault and causal link have to be proven by the plaintiff.

The respondent can avoid liability. A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

NO, the judge doesn't have a faculty to take into consideration other facts than presented in the claim for damages.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

All the type of damages (actual damage, profit lost, reliance interest, costs and expenses) are recoverable, there are no specific provisions on the quantification of compensation.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The liability cannot be validly excluded or limited.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The person referred to in answer 2 shall be subject to the liability defined under Answer 4 for five years from the publication of the prospectus or notice to which it pertains.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Based on Art. 5-8, Act XXVIII of 2017 on Private International Law:

- Ownership and other rights related to custody accounts and dematerialised securities shall be governed by the laws of the country where the securities account or securities custody account is located and to which any transfer has been made to the benefit of the owner or holder of other right. Where there is any reference made in the foreign law to Hungarian law with respect to any dispute, such cross-reference shall be disregarded.
- Obligations arising under equity securities shall be governed - in terms of transfer, termination and enforcement - by the law of the country where the legal person is established.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

There are no specific provisions on the legal proceedings, the general principles apply. Arbitration is an option based on the agreement of the parties. Also, the parties can make a settlement any time based on their agreements.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

YES.

In Hungary since 2010 class action lawsuit is the legal tool that allows for a group of investors who have become the casualties of illegal business acts to collectively file claims thereby significantly boosting the amount of compensation a company may have to pay if found guilty.

14 Iceland

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

The Act on the Sale of Goods no. 50/2000 covers the sales of financial instruments and, in the case of a consumer, the Act on Consumer Purchase no. 48/2003 covers such transactions. When there is no contractual relationship between the person which has purchased securities and the person which caused damage by way of a prospectus the acts on the Sale of Goods and Consumer Purchase do not apply. In such cases the general rules of Icelandic tort law allow for the pursuit of damages on the grounds of damage inflicted by untrue information in a material aspect and omission of material information in the prospectus, either by intent or negligence.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Article 4 on the Act on Prospectus for Public Offering or Admission to Trading on a Regulated Market no. 14/2002 states that responsibility for the information given in a prospectus attaches at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be. The persons responsible shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import. No civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

At least one person needs to be responsible for the whole content of the prospectus. Several parties can however be held liable for different parts of the prospectus. In the case of two or more persons liable for different parts of the prospectus the main rule of joint liability holds.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Article 4 on the Act on Prospectus for Public Offering or Admission to Trading on a Regulated Market no. 14/2002 does not state whether those responsible are subject to joint or several liability. Therefore, the general principle of Icelandic tort law of joint liability must be applied to such situations. However, there is an exception to the general principle and the liability could therefore in some cases be several.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Prospectus liability applies to untrue information in a material aspect, omission of material information in the prospectus and selling of securities to the public without having published a PR compliant prospectus.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Article 4 on the Act on Prospectus for Public Offering or Admission to Trading on a Regulated Market no. 14/2002 does not state for which degree of fault those persons are liable. Therefore, the general principle of Icelandic tort law applies, i.e. either intent or negligence is sufficient for liability. Lawyers, accountants and other advisors are under a strict professional liability assessment of negligence.

Art. 27, 40 and 57 of the Act on the Sale of Goods no. 50/2000 and art. 24, 33 and 46 of the Act on Consumer Purchase no. 48/2003 contain rules on strict liability that can be applied to prospectus liability if there is a contractual relationship between parties.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

There are no rules that specify who is entitled to sue for damages. Therefore, the main rules of Icelandic law must be applied, that is that a person (legal or natural) who has suffered damage can sue for damages on the grounds of prospectus liability.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

That the plaintiff incurred loss or damage, that the securities were acquired after the publication of the prospectus and during its twelve-month validity, the prospectus omitted material information or contained untrue statements, the losses suffered were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the

deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

In order to avoid liability the defendant may demonstrate that the investor did not suffer any damages, that the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus or a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Financial loss is recoverable and damages equal the damage caused. There is no specific provision on the quantification of compensation.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The person responsible for the prospectus cannot exclude, proportionate or limit liability. The provisions in the regulation about the specific parties who can be held responsible for information contained in a prospectus is mandatory, and it applies to civil liability. In the case of consumer purchase the laws are peremptory and as such do not allow exclusion or limitation of liability.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

According to the Act on Statute of Limitations n0. 150/2007 the time limit to file a claim for damages is four years from the date that necessary information on the damage and the one responsible were acquired or should have been acquired. If a claimant does not make a claim because he lacks necessary information on the claim or the one responsible then his claim will not be limited until one year after the day he acquired or should have acquired such information, to the maximum of 10 years from the date that the claim would otherwise have been limited. A claim for damages can be made in a criminal case or within a year from a conviction in a criminal case, even though a claim has been limited. The time limit to file a claim is suspended when the one responsible admits the validity of the claim, when a lawsuit is initiated to get the claim validated by a judge or when a demand is made for a set-off of the claim before a judge.

Each responsible person mentioned under question 2 is subject to the same time limit.

If the acts on the Sale of Goods and Consumer Purchase do apply the buyer needs to notify the seller without unreasonable delay or at least submit a complaint within two years from the date of accepting delivery of goods.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

According to our jurisdiction the competent law would be where the issuer has his registered office. The Act on Prospectus for Public Offering or Admission to Trading on a Regulated Market no. 14/2002 is silent with respect to conflicts of law, therefore general conflict of law rules would apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes, except for settlement.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes, the Act on Civil Procedure no. 91/1991 allows for the forming of a class action association for three or more persons for a specific lawsuit. They need to form a specific lawsuit association. Associations of investors do not have the legal capacity to file claims on behalf of their members.

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

15 Ireland

RESPONSES FROM THE CENTRAL BANK OF IRELAND

Introduction

The Central Bank of Ireland (the **"Bank"**) has been designated competent authority in Ireland for the purposes of Regulation (EU) 2017/1129 (the **"Prospectus Regulation"**) by the Prospectus (Regulation (EU) 2017/1129) Regulations, 2019 (S.I. No. 380 of 2019) (the **"Regulations"**). As a result, the Bank is the body charged with overseeing compliance with and acting to remedy non-adherence with relevant provisions of the Regulations, the Companies Act 2014 (the **"2014 Act"**), and any other implementing measures such as the Central Bank's Prospectus Rules (July 2019) (altogether, "**Irish Prospectus Law"**).

The Bank has considered the questions outlined in the ESMA Prospectus Liability Questionnaire and set out the position which exists in Irish law, as of the date of this document as follows:[3]

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Typically, civil liability will only arise in the context of tort for breach of Irish Prospectus Law, although parties are free to contract with each other to adhere with the terms of such law, in which case contractual liability may also emerge. Generally, therefore, only tortious liability will exist, and this is on account of the creation of a specific statutory tort in section 1349 of the 2014 Act which provides that a listed group of persons may be liable for omitting information required by law or including untrue information in a prospectus to which the Prospectus Regulation applies.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

[3] Note that for the purposes of this document, the domestic regime which applies to Prospectuses which fall outside the scope of the Prospectus Regulation has not been considered and answers should be construed accordingly.

Yes, as introduced above, the following persons (herein referred to as **"promoters"** for ease of reference) may be held liable loss or damage occasioned by any party as a result of an omission (to the extent that something is required by law) or misstatement in a prospectus to which the Prospectus Regulation applies:

(i) the issuer who has issued the prospectus or on whose behalf the prospectus has been issued,
(ii) the offeror of securities to which the prospectus relates,
(iii) every person who has sought the admission of the securities to which the prospectus relates to trading on a regulated market,
(iv) the guarantor of the issue of securities to which the prospectus relates,
(v) every person who is a director of the issuer at the time of the issue of the prospectus,
(vi) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time,
(vii) every person being a promoter of the issuer, and
(viii) every person who has authorised himself or herself to be named and is named in the prospectus as a director of the issuer or as having agreed to become such a director either immediately or after an interval of time.).[4]

In addition, Irish Prospectus Law specifies that an expert who has given the consent to the inclusion in a prospectus of a statement purporting to be made by him or her shall be liable to pay compensation to all persons who acquire any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of an untrue statement in the prospectus.

Q3. Are the persons under the previous question subject to joint and/or several liability?

More than one of the persons outlined under question 2 above may be subject to a successful claim with respect to liability for loss of damages arising out of a particular act or omission. To the extent that more than one person is held jointly liable for such damage or loss arising out of an act or omission, that person shall be jointly and severally liable with all others held liable with respect to that same act or omission in terms of the damages awarded.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons outlined in the response to question 2 may be liable for loss or damage incurred by a person who acquires securities to which the prospectus relates which is occasioned by them, and which relates to either:

(a) an untrue statement; or
(b) an omission of information required by EU Prospectus Law.[5]

[4] See Section 1349 of the 2014 Act. Note, however, that the same Act provides at Section 1351 that only a subset of such persons may be liable in the case of a non- equity security prospectus, in which case a restricted regime regarding liability may apply.

[5] This term has a defined meaning in Irish legislation (as outlined in section 1348 of the 2014 Act), and any measures directly applicable in the State, in particular the EU Prospectus Regulation and the delegated acts. in consequence of the Prospectus Regulation.

Note, however, that such persons may be able to claim one or more exemptions, e.g. the prospectus was issued without the relevant person's knowledge or consent and public notice of that fact was given forthwith on the person becoming aware of that fact.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The statutory scheme setting out liability with respect to a prospectus contains no specific provisions with respect to degrees of fault, however, it can be seen as most correctly categorised as one establishing strict liability but with respect to which specific defences (as outlined in the statute) may be availed of.

Thus, while it is not necessary to prove intent, a promoter may be capable of claiming the defence outlined at section 42(3)(b) to the 2005 Act which allows a person to avoid liability where:

> "the prospectus was issued without [the promoter's] knowledge or consent, and that on becoming aware of its issue he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent"

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The relevant statutory tort extends rights to sue for damages to all persons who acquire any securities on the faith of a prospectus for the loss or damage they may have sustained as a result of the relevant untrue statement or omission.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

In order to establish that the defendant is liable to make recompense to a plaintiff, the plaintiff would need to show a Court that:

(a) The Plaintiff had acquired securities to which the prospectus relates;
(b) The prospectus concerned was valid at the time when the securities were purchased;
(c) The prospectus either contained an untrue statement or an omission of required information;
(d) The Defendant caused or was responsible for the statement or omission;
(e) The Plaintiff incurred loss or damage; and
(f) The Plaintiff's loss or damage was occasioned by the statement or omission concerned.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price

of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Civil liability may be avoided by a promoter where he or she successfully demonstrates:

(a) that, having consented to become a director of the issuer, the defendant withdrew, in writing, his or her consent before the issue of the prospectus, and that it was issued without his or her authority or consent, or

(b) that the prospectus was issued without the defendant's knowledge or consent, and that on becoming aware of its issue the defendant forthwith gave reasonable public notice that it was issued without his or her knowledge or consent, or

(c) that after the issue of the prospectus and before the acquisition of securities thereunder by the plaintiff(s) to the suit, the defendant, on becoming aware of any untrue statement therein or omission of material information required by EU prospectus law to be contained therein, withdrew, in writing, his or her consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor, or

(d) the suit is brought by the plaintiff(s) solely on the basis of a summary of a prospectus, including any translation thereof, and that summary is not misleading, inaccurate or inconsistent when read together with other parts of the prospectus, or

(e) that liability is sought with respect to: (i) a statement contained in the prospectus (which did not purport to be made on the authority of an expert or of a public official document) or (ii) a matter required by law, which was omitted but the defendant had reasonable grounds to believe, and did up to the time of the issue of the securities, believe, that the statement was true or that the matter whose omission caused loss was properly omitted, or

(f) that liability is sought with respect to an untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, but that untrue statement was, however, a correct and fair representation of the statement or copy of or extract from the document, or

(g) that liability is sought with respect to a statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, but such statement fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and the defendant had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it (and were relevant, consent had been given to its being published) and had not withdrawn, in writing, that consent before the publication of the prospectus or, to the defendant's knowledge, before issue of securities thereunder.

In addition, certain defences are open to 'experts' whose statements are contained in a prospectus.

Q9. Does the judge have a faculty to take into consideration facts which were not

presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

As a general rule, Courts in Ireland must decide cases on the basis of evidence presented before them by the parties to a dispute. While that is the case, particular applications (e.g. applications for wardship) may take place on the basis of processes and a trial judge will in any event be granted considerable freedom as to the conduct of a particular case within the bounds of the rules of evidence, constitutional obligations with respect to fair procedures, legislation governing the conduct of courts, etc.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The relevant provision of Irish Prospectus Law outlines that a Plaintiff may be entitled to compensation. No specific provisions are provided on the quantification of compensation; however, common law principles with respect to computation would apply as in any other action for damages. For example, a Plaintiff's right to damages may be curtained as a result of their failure to mitigate losses despite being presented with an opportunity to do so.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Although we are not aware of any case law on the matter, we do not consider that there is a possibility to exclude, proportionate, or limit liability a promoter's liability with respect to a prospectus, other than in the circumstances outlined in the answer to question 1.8 outlined above. This is on account of the following:

- The provisions of Irish Prospectus Law which establish the statutory tort allowing an investor to seek compensation from various persons involved in the production of a prospectus in the event of misstatement or omission do not provide for any restriction on the exclusion of liability by such persons. In other statutory torts where liability may be limited, the circumstances in which that have been done are expressly provided for.[6] Given that the 2014 Act outlines in sections 1350 and 1351 the circumstances in which liability may be excused, it appears as though the Oireachtas has codified the entirety of the circumstances in which liability may be excluded;[7]
- Although exclusionary clauses may be recognised in Irish law as a matter of contract as well as tort, a party seeking to exclude or limit liability through an exclusion clause in a Prospectus would face the challenge of not having a contractual agreement with the investor concerned and no clear agreement between promoter and investor; and

[6] See, for example, section 5 of the Occupiers' Liability Act 1995.

[7] As a side note, the Irish Courts have, in the past, shown themselves willing to restrict such clauses and indeed seek some form of agreement as to their acceptance. Thus, in Baldwin v Foy and Forrest Way Riding Holidays Ltd [1997] IEHC 111 the Irish High Court ruled that the defendants were negligent in permitting the plaintiff, who was a novice horsewoman to ride cross-country on unsuitable terrain on a four-year-old horse. The rider incurred damages as a result of an accident with the horse and succeeded in her action, notwithstanding that there were a number of disclaimer notices posted in the area through which she rode, one of which stated that riding was a "risk sport" and that "animals can be unpredictable." The trail judge held that the notices concerned could not be seen to be a disclaimer from the defendant and "it [was] not possible to draw an inference from the evidence that the Plaintiff agreed to waive any right of action she might have in respect of negligence on the part of the Defendants."

- Finally, section 1364 of the 2014 Act states as follows:

  52. A condition – […] requiring or binding an applicant for securities to waive compliance with any requirement of this Chapter or EU prospectus law […] shall be void.

  Provisions imposing statutory liability are contained within the relevant Part of that Act.[8]

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Yes. The general time limit for instituting actions for personal injuries is two years from the date of accrual of the cause of action, or the date of discovery of the necessary information to make a claim, whichever is later, with respect to a claim for a breach of duty.[9]

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

No statutory provision exists with respect to conflict of laws and prospectuses alone. In this respect general conflict of laws principles would apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Typically yes, however, where an entity is a consumer for the purposes of the Central Bank Act, 1942 (Financial Services Ombudsman Council) Regulations, 2005 (SI 190/2005), they may bring a complaint to the Financial Services Ombudsman (the **"FSO"**). The FSO is given power by Part VIIB of the Central Bank Act 1942 to investigate and make findings with respect the conduct of a regulated financial service provider involving-

(a) the provision of a financial service by a financial service provider, or
(b) an offer by a financial service provider to provide such a service, or
(c) a failure by a financial service provider to provide a particular financial service that has been requested.

It would be for the FSO to decide whether or not a "financial service" was involved in a particular case with respect to a prospectus. The Ombudsman's decisions are open to appeal to the High Court as a result of 57CL of the Central Bank Act 1942.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Although theoretically available in some circumstances, (for example, Order 15 rule 9 of the Rules of the Superior Courts 1986 facilitates a rudimentary form of class action known as a "representative action"),[10] such actions are quite restrictive in terms of when available, and even where available, the right to pursue actions in this manner is invoked

8 See section 1352 of the 2014 Act.

9 See Quill, E: Torts in Ireland (2009)(3rd ed.), Gill and MacMillan: Dublin, p.494.

10 See the Law Reform Commission's 2003 consultation paper on the issue of multi-party litigation on Ireland for a full account of the advantages and limitations of such forms of class actions, and those of the limited number of other class action suits available in Ireland.

quite rarely. Multi-plaintiff litigation is, however, not uncommon in Ireland and multi-Plaintiff personal injury litigation is reasonably commonplace in Ireland (see for example various cases brought with respect to army deafness, blood product contamination and effects of tobacco usage, amongst others), and a typical mechanism for doing this has been through the bringing of a “test case”, which has implications for later cases “waiting in the wings”. When a precedent decision is set, remaining parties will be inclined to settle so as to mitigate costs, although each subsequent case will technically be judged on its own merits and require causation to be proved in each circumstance.

16 Italy

ESMA Prospectus Liability Questionnaire – Consob answers

INTRODUCTORY NOTE

The answers to this questionnaire provided by Consob want to give an overview of the Italian civil liability regime in connection with securities prospectuses. The answers to this questionnaire should not be considered as an exhaustive and detailed description of all potentially applicable legal provisions in this context and do not affect under no circumstances future positions of the authority. Moreover, the answers should not prejudge positions and/or interpretations of the competent courts or any other competent authorities regarding any legal regulations described in the following. The relevant courts are exclusively competent to finally decide upon legal matters.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

In Italy article 94 paragraphs (5) and (6) of Legislative Decree no. 58/1998 (hereinafter, the "Consolidated Law") provides for a specific civil liability regime which could arise as a result of the content and use of a defective prospectus: this discipline applies only to persons mentioned in this article (see the answer to question no. 2).

The liability for false or incomplete prospectus of different persons is governed only by the general discipline of article 2043 of the Civil Code.

In any case, according to the decisions of the Court of Cassation, prospectus liability is an extra-contractual civil liability (i.e. tortious liability, article 2043 Civil Code).

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Article 94, paragraphs 5-9, of the Consolidated Law refers to, and thus applies to, "*The issuer or offeror, depending on the case, as well as any guarantor, if applicable, and any*

other persons responsible for some parts of the information contained in the prospectus (…). The issuer, the offeror and the guarantor shall be liable for the entire prospectus, whereas "*any other person responsible for some parts of the information contained in the prospectus*" shall be liable only with respect to the parts of the prospectus for which they are responsible.

The provision of article 94, paragraph 5, of the Consolidated Law is also applicable to persons responsible for the prospectus relating to the admission of securities to trading on a regulated market (article 113, paragraph 1, of the Consolidated Law).

Among persons not mentioned in article 94, paragraphs 5-9, of the Consolidated Law who may be held liable for information contained in a prospectus, according to the provisions of the Civil Code (article 2043) are also Supervisory Authorities. In particular, the Italian Authority on financial market (CONSOB) may be held responsible if it has failed to adequately assess the completeness, consistency and comprehensibility of the information contained in a prospectus (article 94, paragraph 3, of the Consolidated Law).

The civil liability of Supervisory Authorities is governed by article 24 of Law no. 262/2005, which stipulates that, in the exercise of their supervisory functions, the Authorities, their board members and employees may be held liable for damages caused by intent or gross negligence; an update of this discipline is being prepared "*considering the rules applicable to the Italian supervisory system as well as the international recommendations and standards*" (article 19 of Law 5 March 2024 no. 21).

Q3. Are the persons under the previous question subject to joint and/or several liability?

When more than one person has responsibility for the same specific part of the prospectus to whom a claim for compensation refers, they are all subject to joint and several liability (article 2055 of Civil Code).

In the event of joint liability, a plaintiff can choose the person from whom to claim full compensation. The person who has paid this amount in full has the right of recourse against the other persons deemed responsible and, following the exercise of such a right, the Court reallocates the damages to each party in proportion to the comparative responsibility assigned to the other parties, taking into account the seriousness of the respective fault and the consequences resulting therefrom: in doubt, individual faults are presumed to be equal (article 2055, paragraph 2, of Civil Code).

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons mentioned in the answer to question no. 2 are liable for both untrue information in a material aspect and omission of material information in the prospectus.

As an exception to the above rule, article 94, paragraph 8, of the Consolidated Law provides that no person may be held liable solely on the basis of the summary, including any translation thereof, unless the summary is misleading, inaccurate or inconsistent if read together with other parts of the prospectus or, when read together with the other parts of the prospectus, it does not give the key information that can aid the investor to decide whether or not to invest in the financial products offered.

Offering securities to the public or admitting securities to trading on a regulated market without publishing a prospectus required by the Prospectus Regulation constitutes a breach of obligations provided for by that Regulation which may give rise to civil liability under the Italian tort law (article 2043 Civil Code).

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Those persons are liable for intent or for negligence (article 94, paragraph 5, of the Consolidated Law and article 2043 Civil Code).

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Investors, including qualified investors, are entitled to sue for damages suffered for having reasonably relied on the truth and completeness of the information contained in the prospectus. This entitlement extends not only to original purchasers in the primary market but also to subsequent investors in the secondary market, provided that the claimant demonstrates that their investment decision was directly influenced by the false or incomplete information in the prospectus. In the case of subsequent investors in the secondary market, the claimant must also establish that the information in the prospectus was still current at the time the investment decision was made, meaning that it had not been superseded by more recent, true and complete information disseminated after the publication of the prospectus (see also the answer to question no. 7).

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve-month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Both if liability is regulated by article 94, paragraphs 5 of the Consolidated Law and if it is regulated by article 2043 Civil Code (see answer to question no. 1 above), the plaintiff must prove:

- i) that the prospectus or any supplement thereof omitted material information or contained untrue information,
- ii) the misinformation or omission in the prospectus was caused by the defendant's conduct;
- iii) the damages suffered as a result of the misinformation or omission in the prospectus, and
- iv) the causal link between the investment decision and the incomplete or false information contained in the prospectus (i.e. "reliance"): the investor must have relied reasonably on the completeness and truth of the information contained in the prospectus and in any supplement thereof.

Based on article 94, paragraph 5, of the Consolidated Law and therefore for the persons mentioned therein, the defendant's fault is presumed and does not have to be proven by the plaintiff.

Regarding all other persons, whose liability is regulated (only) by article 2043 of the Civil Code, the plaintiff must prove the fault of the defendant (article 2697 of Civil Code).

Moreover, based on article 94, paragraph 9, of the Consolidated Law, when the claim for compensation is brought to Court after five years from the publication of the prospectus, the plaintiff must also prove to have discovered the untruth of the information or the omission in the two years prior to the action is taken.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

In general, to avoid liability, the respondent must prove that the facts alleged by the plaintiff do not exist: he can show that the incompleteness or misstatement in the prospectus does not exist or that the part of the prospectus containing the misinformation or the omission did not fall within his responsibility, or that there is no damage (for example, because the deficiency in the prospectus is not material and therefore did not influence the price of the security) or that the causal link between the investment decision and the false or incomplete information contained in the prospectus does not exist, but that the investment decision was determined only by negligence of the claimant or other facts interrupting the causal link (for example, the plaintiff was aware of the deficiency in the prospectus).

Concerning his fault, that is presumed pursuant to article 94, paragraph 5, of the Consolidated Law (see answer to question no. 7 above), to avoid liability, the respondent must prove to have taken all reasonable care to ensure that the information contained in the prospectus was in accordance with the facts and the prospectus contained no omission likely to affect its import.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No, the judge does not have such a faculty.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The Consolidated Law does not indicate which damages are recoverable nor provides for specific provisions on the quantification of compensation.

Pursuant to the general rules of the Civil Code relating to the assessment of damages in the context of extra-contractual liability (article 2056 of Civil Code), recoverable damages encompass the "*damnun emergens*" and the "*lucrum cessans*" which are a direct consequence of the tort. The "*damnun emergens*" is the amount of the loss which the plaintiff has suffered. The "*lucrum cessans*" is the gain the plaintiff has been deprived of (articles 1223 and 2056 of Civil Code).

When damages have been proven by the plaintiff in his existence but cannot be proven in their exact amount, they are equitably quantified by the judge (articles 1226 and 2056 of Civil Code). Moreover, pursuant to articles 1227 and 2056 of Civil Code, where the plaintiff's contributory negligence contributed to causing the damage, compensation is decreased according to the seriousness of the fault of the claimant and the extent of the consequences stemmed from the claimant's behaviour and in any case compensation is not due for damages which the claimant could have avoided using ordinary diligence.

According to the case law, compensation for damage caused by misinformation or omission of material information in the prospectus should be quantified based on the difference between the price paid by the investor for the securities and the intrinsic value of the securities calculated on the basis of the true and complete information that the prospectus should have contained; therefore, it should not take account of the value of the securities immediately after the disclosure of the true and/or complete information hidden from the prospectus.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

No limitations of liability are possible.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Based on article 94, paragraph 5, of the Consolidated Law and therefore for the persons mentioned therein, claims for compensation or rather actions for damages may be exercised within five years from publication of the prospectus, unless the investor can prove having discovered the untruth or the omission of the information in the two years prior to the action is taken.

The said time limit can be interrupted by an action before court; it is debatable whether or not this term could be either suspended or interrupted for reasons different from an action brought before a Court.

With regard to all other persons, whose liability is regulated by article 2043 of Civil Code, claims for compensation may be brought within five years from the moment the plaintiff became aware of the incompleteness or falsity in the prospectus, or he should have been aware of it using ordinary diligence (pursuant to article 2947, paragraph 1, of Civil Code).

This limitation period can be interrupted by the exercise of an action before court and in this case the running of the statute of limitations is suspended for the duration of the proceedings; it can also be interrupted by an extrajudicial request for compensation or by the recognition of the compensation right by the responsible person.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The criteria for identifying the law applicable to conflicts of law related to international public offerings are established by the Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations

(Rome II), because, as stated in answer to question no. 1, the civil liability for a false or incomplete prospectus is a tortious liability.

According to the general rule set forth in article 4 of Regulation No. 864/2007, the law applicable to a non-contractual obligation arising out of a tort is the law of the country where the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur; however, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply; where it is clear from all the circumstances of the case that the tort is manifestly more closely connected with a country other than that indicated above, the law of that other country shall apply (a manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort in question).

Regulation no. 864/2007 shall not apply to the liability of the State for acts and omissions in the exercise of State authority (so-called *acta iure imperii*; article 1, paragraph 1).

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Restitution of loss can also be received based on a settlement agreement (article 1965 Civil Code), that is a transaction stipulated out of court between the responsible person and the investor.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Pursuant to article 840.*bis et seq.* of the Italian Code of Civil Procedure (introduced in 2019 and in force since 2021), “homogeneous individual rights” may be protected through a class action, aimed at obtaining a declaration of liability and an order for compensation of damages against the party responsible for the harmful conduct. A class action may be filed against companies, but not against supervisory authorities. The action may be brought by any member of the affected group or by an organisation or association (non-profit) listed in a public registry maintained by the Ministry of Justice. The possibility of using a class action to seek compensation for damages resulting from a false or incomplete prospectus is contingent upon the Court determining that the injured investors possess “homogeneous individual rights”: to date, no judicial precedents have been established on this issue.

17 Latvia

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Latvia has several civil liability regimes from which prospectus liability can arise. Under Latvian civil law, tort liability arises from unlawful actions or omissions that cause harm to another party. In the context of prospectus liability the Civil Law of Latvia (Civillikums), particularly provisions on delicts (Articles 1635–1660). If a prospectus contains false, misleading, or omitted material information, investors who suffer losses can claim damages by proving an unlawful act (misrepresentation or omission), causation (a direct link between the misinformation and the financial loss), fault (negligence or intent of the prospectus author), harm (quantifiable financial loss). By initiating legal proceedings in court according to the general Civil Law and Civil Procedure Law, an investor shall be entitled to demand that the loss be covered by the persons named in the prospectus as responsible for the fairness of the information contained therein, where it has incurred loss due to false or incomplete information contained in the issue prospectus. Thus, the investor can demand loss resulting from tort.

P.S. Latvijas Banka cannot give more detailed explanation or practice on issue as no investors has ever tried to initiate court proceedings based on false or incomplete information contained in the issue prospectus.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Financial Instrument Market Law states, that the prospectus is approved by the issuer's shareholders' (participants') meeting or by a management body or official authorised by it. Responsibility for the content of the prospectus lies with the issuer's management body, the public offeror, and the guarantor (if any). The prospectus must include the name, surname, and position of the persons responsible for the accuracy of the information contained therein, or the name, legal address, and registration number of legal entities. The prospectus must also include a statement from each such person declaring that, to the best of their knowledge, the information contained in the prospectus corresponds to actual circumstances and that no facts have been concealed that could affect the significance of the information provided in the prospectus. If a person is not responsible for all the information contained in the prospectus, the prospectus must specify the part of the information for which the respective person is responsible. An investor may, by filing a claim in court in the general manner, seek compensation for losses from the persons indicated in the prospectus as being responsible for the accuracy of the information if they have suffered losses due to false or incomplete information included in the prospectus. An investor may

not claim compensation for losses from the persons indicated in the prospectus as responsible if they made their decision based solely on the summary or its translation, except in cases where the summary is misleading, contradicts other parts of the prospectus, or fails, together with the other parts of the prospectus, to provide the key information necessary for the investor to make a decision regarding the purchase of securities.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Separation of liability is not stated in national laws. If a person is not responsible for all information contained in an issue prospectus, there shall be an indication in the issue prospectus as to the part that person is responsible for and this is a part the person is liable for. According to the Commercial Law, the members of the Management Board and the Supervisory Board are jointly and severally liable for losses they have caused to the company.

The size or amount of liability for each responsible person shall be stated by the court. A member of the Management Board or the Supervisory Board is not liable if they prove that they acted as a prudent and diligent manager.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The persons are liable for the information contained in the issue prospectus, so it reflects the true situation and that the facts that are likely to influence the importance of the information contained in the issue prospectus have not been concealed.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The degree of fault required is in case of incorrectness of the information at least negligence, and in case of omission of relevant information, intent is required.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Every investor can sue for damages the persons responsible, if this investor has incurred loss due to false or incomplete information contained in the issue prospectus.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff shall prove that he has relied on a valid prospectus, the prospectus omitted material information or contained untrue statements, give the detailed calculation on losses suffered, show the relation between the losses and information included the prospectus-

t.i., losses were caused by the misleading prospectus and the plaintiff had relied on the misleading prospectus for the investment decision.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The primary proof shall be given by the plaintiff. The respondent in order to avoid liability shall give his own explanations to all counts in reclamation of plaintiff to show he is not responsible for the facts provided to the court.

The primary proof shall be given by the plaintiff. The respondent in order to avoid liability shall give his own explanations to all counts in reclamation of plaintiff to show he is not responsible for the facts provided to the court.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Each party shall prove the facts upon which they base their claims or objections. Plaintiff shall prove that his claims are well-founded. Defendant shall prove that his objections are well-founded. Evidence shall be submitted by the parties and by other participants in the matter. If the parties or other participants in the matter are unable to submit evidence, the court shall, at their motivated request, require such evidence.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Damages or losses calculated or ordered by the court are recoverable. It depends on the request of the plaintiff – whether it asks for recovery of material damages or loss of profit. The laws do not provide specific provisions on the quantification of compensation; it is under the assessment of the judge to set the limit- specific sum which has to be compensated.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The provision setting civil liability is mandatory to be included in the prospectus. The same amount of liability is provided in the Law on Financial Instruments Market. The liability is full for all information a person is responsible for.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

The claim can be submitted in time period of 10 years for each responsible person. The prescription begins after 10 years. If proceedings in a matter are stayed, the computation

of a time period is suspended. The computation of a time period is suspended from the time when a circumstance has occurred as is cause for a stay of proceedings (the cases specified in section 214 or 215 of the Civil Procedure Law). The computation of a procedural time period shall be continued from the day when proceedings are renewed in the matter. In general, the prescription period begins from the day the person has got to know about the deed he/she can sue the persons mentioned in Q.2. All persons mentioned in Q.2. have the same time limit they can be accused.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The competent law to deal with issues on civil liability of prospectuses related to international public offerings will be the Civil Law, Civil Procedure Law, Law on Financial Instruments Market.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

All civil legal disputes shall be allocated to the court. This shall not deprive the parties of the right to apply, upon mutual agreement, to an arbitration court or to use mediation in order to settle a dispute.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Any natural or legal person may be a party (a plaintiff or a defendant) in a civil matter. An action may be brought by several plaintiffs against one defendant, one plaintiff against several defendants, or several plaintiffs against several defendants. Each co-plaintiff and co-defendant acts independently in relation to the other party and other co-participants. Co-participants may assign the conducting of the matter to one of the co-participants or to one joint representative. Class action is available but no such cases have arisen in practice.

18 Liechtenstein

Prospectus Liability - Update

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Yes. In Liechtenstein violations against the prospectus requirements under the EU Prospectus Regulation and the EWR-WPPG can lead to administrative sanctions and civil claims.

Additionally, the Liechtenstein general civil law applies. This could also be relevant (i.e. tort (Deliktshaftung), pre-contractual liability (*culpa in contrahendo*), et alt.) for incurring civil liability.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Yes. The prospectus has to contain the information who assumes responsibility for the prospectus, this is/are the person(s) who generally also sign(s) the prospectus. Art. 11 of the PR is transposed into national law in Art. 4 EWR-WPPDG which stipulates that the person(s) responsible for the prospectus have to be mentioned in the prospectus and in case of legal persons they have to be mentioned with their name and function with their place of administration. These have to state that the prospectus is to the best of their knowledge correct and the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

Depending on the individual case responsible persons can be at least the issuer or its administrative, management or supervisory body, the offeror, the person applying for admission to trading on a regulated market and the grantor. They are liable to investors for damage caused by incorrect information in the prospectus or its supplements, unless they can prove that they are not at fault. (Art. 4(2) EWR-WPPDG).

Information in the prospectus from third parties might lead to a liability of these and also it is possible that an auditor might attract liability for their financial statements.

Civil liability for offering securities without a prospectus vests with the person who offered them, i.e. the issuer or the offeror (which is very often the issuer).

General civil law does not provide for specific persons who could be held liable for incorrect or incomplete prospectuses. In case of *culpa-in-contrahendo* (pre-contractual liability) the securities would have to be purchased from the person responsible for the prospectus (remark: often the issuer is responsible for the prospectus and also offers the securities to the public).

Q3. Are the persons under the previous question subject to joint and/or several liability?

If multiple persons are liable for damage, each of them is jointly and severally liable with the others to the extent that the damage is attributable to their own fault and the circumstances personally applicable to them (Art. 5 EWR-WPPDG).

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

See the answers above, especially 2.

If pre-contractual liability is relevant – as shown in 2., the person who is liable for the content of the prospectus and is offering the securities owes the investor certain duties (e.g. duty of information, protection and prudence). Infringement of these duties might offer the investor the possibility to claim damages.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The persons mentioned in Art. 4 EWR-WPPDG are liable to an investor for the damage caused by incorrect information in the prospectus or its supplements, unless they can prove that they are not at fault.

Hence, the person responsible would also be liable in case of slight negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The EWR-WPPDG (e.g. Art. 6) only mentions Anleger (“investors”). Hence, this must mean any investor, irrespective of the market.

Under contract and tort law generally anyone is entitled to sue for damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

There are no specific burden of proof rules.

In case of a prospectus the investor can rely on the prospectus as long as it is valid (generally 12 months, if always supplemented when necessary). If a damage occurs, which would need to be proven by the plaintiff (investor), the plaintiff (investor) would need to also prove that there is causality for this damage (untrue statements, omitted material information, misleading information, et. at.) which vests within the defendant party.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the

deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The defendant can prove that

- there are no damages
- there is no causality between the damages and the prospectus
- they are not at fault (see 5. above).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Yes. In Liechtenstein's civil procedure, the principle of party presentation ("Verhandlungsmaxime") generally applies. This means that the parties are responsible for presenting the facts and evidence relevant for their case. The court bases its decisions on the information provided by the parties and does not independently investigate facts not presented during the proceedings.

However, there are certain exemptions:

- Judicial Notice: court may introduce facts that are common knowledge/universally known without requiring proof
- Public Policy Considerations: In certain situations, the court may introduce considerations related to public policy or mandatory legal provisions, even if not raised by the parties.

Having said this, the aforementioned exemptions are applied cautiously to maintain impartiality and respect the adversarial nature of the proceedings.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

In Liechtenstein damages recoverable under prospectus liability encompass compensation for losses incurred due to inaccurate or incomplete information in the prospectus. Investors can seek compensation for actual financial losses directly resulting from the reliance on faulty prospectus information. These may be direct damages (diminution in value of the securities purchased) or indirect damages (consequential losses that are a foreseeable result of the misinformation, provided on a causal link is established).

The EWR-WPPG establishes the liability framework but falls short of providing specific methods for quantifying damages.

Hence, general civil law principles apply, where the court assesses the extent of the financial loss (price paid and its actual value, considering the misinformation) and causation and foreseeability (direct causal relationship between the misinformation and the investor's loss, which are a foreseeable consequence).

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

There is no possibility to exclude or limit liability (Art. 4 (4) EWR-WPPDG).

From a general civil law perspective the parties enjoy contractual freedom to limit or exclude liability. However, such provisions are constrained by overarching principles. Exclusions of gross negligence, international misconduct or breaches of fundamental contractual duties would not be enforceable. Furthermore, consumer protection laws may further restrict the extent to which liability can be limited or excluded. Therefore, any attempt to limit or exclude liability must be carefully drafted to align with these legal boundaries.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Claims arising from prospectus liability are outlined in Article 7 EWR-WPPG, these claims are governed by the following timeframes:

- Relative Limitation Period: Claims must be filed within one year from the date the injured party becomes aware of both the damage and the liability.
- Absolute Limitation Period: Regardless of awareness, claims are barred after ten years from the date of the act that caused the damage.

The EWR-WPPG mentions that this is valid for all the in the law mentioned responsible persons.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The EWR-WPPG is silent about conflicts of law, hence general conflict of law principles apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes, a judicial proceeding is generally the only institutionalized way to receive restitution of losses.

However, the parties may agree to settle their dispute amongst themselves (settlement) and it would also be possible to contractually agree to an arbitration proceeding (as an alternative to a court proceeding).

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

No, a traditional class action lawsuit is not available in Liechtenstein.

19 Lithuania

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

There are 2 civil liability regimes (tort, contractual) in Lithuania.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

According to the Art. 6 of The Law on Securities of the Republic of Lithuania (The Law) „1.The responsibility for the correctness and completeness of the information presented in the prospectus shall rest at least upon the issuer or the administrative, management or supervisory body of the issuer, the offeror, the person who seeks admission of securities to trading on a regulated market or the guarantor, as the case may be..“ The persons responsible shall be clearly identified in the prospectus: name, last name and current position of the natural person, name of the legal person and the registered address and the declaration of responsible persons. Usually as liable person for whole prospectus on behalf of the issuer are head of the administration of the issuer, sometimes – several managers.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Responsible persons (for the whole prospectus) are subject to joint liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Above-mentioned persons are liable for the correctness and completeness of the information presented in the prospectus. Civil liability may also apply to persons arranging or implementing a public offering of securities without a prospectus or their trading on a regulated market where the public offering of securities or their trading on a regulated market are banned or suspended or where the conditions and requirements for public offering of securities or for their trading on a regulated market established by Regulation (EU) 2017/1129, The Law, Law on Companies and secondary legislation of these laws are not complied with.

In accordance with the provisions of the Civil Code, civil liability arises in the event of failure to fulfill an obligation established by law or contract (unlawful omission) or the performance

of acts that are prohibited by law or contract (unlawful act), or in case of violation of a general obligation to act with care and attention.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The Lithuanian Civil Code provides that fault may be expressed either intentionally or through negligence. Liability without fault (strict liability) is applicable only in exceptional and strictly defined cases under the law (e.g., liability of the owner of a source of increased danger). Although legal acts do not specify the form of fault (intention or negligence) required to establish liability for information disclosed in a prospectus, strict liability is not applicable.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

An investor who suffered damage due to an inaccurate or incomplete information presented in the prospectus (during its validity) have a right to claim indemnity from the responsible persons in the manner stipulated in the Civil Code (Art 6 part 2 of The Law).

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

There is no determined list of circumstances to be proven by the plaintiff. Basically, it depends on the content of claim (e.g. restitution for losses, recognition of a deal as void.) According to general rules of Lithuanian civil law, plaintiff, who is seeking compensation for his/her losses should always prove: 1) the violation of law or the contract; 2) the fault (different notions) of the defendant; 3) the amount of losses; 4) causal relationship/link between the violation of law/the contract and the amount of suffered losses. So, to clarify your additional question, damage, fault and causal link have to be proven by the plaintiff.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The law does not set a list of circumstances to be proven neither by the plaintiff, neither by the defendant. General rules of civil process shall be applied. However, all mentioned circumstances might be relevant in order to avoid liability.

It has been set in Article 177 of the Civil Procedure Code, that any actual data shall be considered as evidence in a civil case, and, according to the procedure established by laws, used by court to state that there are or there are no circumstances which can be used as

justification for claims and replications, and other circumstances that may be significant for finding a fair solution of the case.

In addition, Article 178 of the Civil Procedure Code stipulates for the parties to prove the circumstances used to justify their claims and replications, except cases when the circumstances referred to do not need to be substantiated (for example, when the court has ruled already on the same dispute).

If the respondent is successful in proving that one of the necessary circumstances is missing, for example causal link between the damage and the fault, the respondent may avoid civil liability.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Yes. The judge has such a faculty. For example, a judgement which has been already determined in a similar case must be taken into consideration. Also, in some cases facts concerned with public interest shall be taken into consideration.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

An investor who suffered damage due to an inaccurate or incomplete information presented in the prospectus shall have a right to claim indemnity from the responsible persons in the manner stipulated in the Civil Code (The Law on Securities Art. 6, part 2). There are no other provisions in this Law on the damages recovery or on the quantification of compensation.

According to general rules of Lithuanian civil code, losses might be direct (for example, incurred expenses) and indirect (for example, loss of possible future profit). Both types might be compensated, the plaintiff should prove the amount of his losses, the amount might also be established by the court.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

There are no specific provisions. The general provisions of civil law must be applied. A person might be responsible only for a part of information provided in prospectus (e.g. financial information). Limits of responsibility of a person also might be determined in an employment contract, guarantor agreement, etc. The Regulation (EU) 2017/1129 provides for the distribution of civil liability in the event of a tort among several persons, specifying the extent of each party's liability. However, this does not allow for the limitation of liability.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

General provisions of the Civil code shall be applied. A time limit to file the claim for damage is 3 years. The prescription begins when a person learns about violation of his rights. The prescription might be suspended in certain cases (set in the art.1.129 of the Civil code).

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The Law on Securities (Art. 4) defines the requirements for the preparation, approval and publication of the prospectus to be complied by, where the securities of the issuer whose home Member State is the Republic of Lithuania, are intended to be offered publicly or admitted to trading on a regulated market in the Republic of Lithuania or other Member State of the European Union. Where the home Member State of an issuer is other than the Republic of Lithuania the requirements set forth in this Section shall be complied with where the securities are intended to be offered publicly or admitted to trading on a regulated market of the Republic of Lithuania.

According to such regulation Lithuanian law is competent to deal only with cases of civil liability arising from prospectuses related to public offerings or trading in a regulated market in Lithuania.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

It is not prohibited agreeing on a restitution of losses without judicial proceedings. Out-of-court settlement, arbitration, mediation are also possible.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes, a class action is available. Associations also have legal capacity to file claims on behalf of their members if such a right is set in its statute of association. For example, before public offering of bonds, the issuer must conclude an agreement with a trustee who will represent the interests of the bondholders.

20 Luxembourg

General Considerations in relation to the CSSF's answers to the ESMA questionnaire

The answers by the Commission de Surveillance du Secteur Financier (the "CSSF") to this questionnaire have no legal effect. They do not present or represent any interpretation of or official position by the CSSF regarding existing laws, regulations or other forms of Luxembourg legislation. This document should not and cannot be relied upon for any purpose other than for the purposes for which it was prepared. In particular, the answers provided by the CSSF to this questionnaire should not be relied upon as a substitute for, or as guidance on, any aspect of the supervisory practices of the CSSF or regulatory system of Luxembourg. The CSSF answers to the questionnaire aim to provide an overview of the civil liability regimes applicable in Luxembourg to the person(s) responsible for the prospectus as a result of an infringement to its (their) duties under Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the "Prospectus Regulation") in combination with part II of the Luxembourg law of 16 July 2019 on prospectuses for securities (the "Part II of the Prospectus Law"). The answers provided below are limited to prospectuses drawn-up, approved by the CSSF and published in accordance with the Prospectus Regulation in combination with Part II of the Prospectus Law. For sake of clarification, it should be underlined that the answers to this questionnaire will not cover the specific liability regimes applicable under parts III and IV of the Prospectus Law. The CSSF answers to the questionnaire are limited to those situations where a prospectus contains misstatements, misleading information or omissions which infringe the requirements of the Prospectus Regulation (hereinafter a "Defective Prospectus"). The CSSF answers to the questionnaire are subject to the actual application of the Prospectus Regulation in combination with the Prospectus Law and any other Luxembourg regulations referred to hereinafter which will in particular depend on the relevant scope of application of these regulations and the relevant facts and circumstances of the matter. All references to laws and regulations in this questionnaire are meant to refer to these regulations together with any amendments made thereto as of the date of this questionnaire. Any answer to this questionnaire is subject to and does not prejudge of the actual positions from any other Luxembourg national competent authorities and in particular the relevant Luxembourg competent jurisdictions which should be exclusively competent to decide upon civil liability matters in relation to a Defective Prospectus in accordance with the constitutional principle of separation of powers. In light of the extensive scope of certain questions or/and their generic terms, the answers provided by the CSSF to this questionnaire should not be

considered as providing an exhaustive and detailed description of all potentially applicable legal provisions as regards the matters discussed in this questionnaire. The CSSF's answers to this questionnaire focus exclusively on the civil liability provisions as set-out under Part II of the Prospectus Law together with certain additional considerations from the standpoint of the Luxembourg civil code (the "Civil Code") provisions on extra-contractual civil liability which (i) complete the above-mentioned Prospectus Law civil liability regime and (ii) are generally used by plaintiffs on a principal or subsidiary basis in civil liability proceedings before the Luxembourg Courts. Thus, the answers to the below questionnaire as regards civil liability only include incidental references to other Luxembourg specific statutory regimes that could also potentially apply in the context of a Defective Prospectus depending on the facts and circumstances of the matter and subject to the exact scope of application of these regulations. The answers to this questionnaire do not address in any detail these specific liability regimes. The CSSF answers will also take into consideration certain civil and criminal procedural rules as respectively set out in the Nouveau Code de Procédure Civile (the "Code on Civil Procedure"), the Code d'Instruction Criminelle (the "Code on Criminal Procedure") and the Code de la Consommation (the "Consumer Code"). It should be further underlined that the CSSF's competence in relation to the regulations referred to under this part of the questionnaire is limited to the sole application of the provisions of the Prospectus Regulation and the Prospectus Law and certain provisions of the Consumer Code.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Under Luxembourg law, there are several civil liability regimes out of which liability could arise as a result of the content and use of a Defective Prospectus. Among the various regulations that may apply figure in particular (i) the Prospectus Regulation in combination with the Prospectus Law and (ii) the rules on extra-contractual civil liability of the Civil Code that are generally applicable and may also apply as fallback provisions in addition to or together with the specific civil liability grounds existing under the Prospectus Regulation in combination with the Prospectus Law. The Prospectus Regulation in combination with the Prospectus Law[1] does not foresee an autonomous civil liability regime as it mainly establishes the situations upon which civil liability may be sought and the relevant persons incurring liability[2]. Subject to the specific facts and circumstances of the matter, all the other parameters of liability (and in particular the determination of a fault, the resulting damage and the causal link between the fault and the damage as well as the time limits to initiate legal proceedings) should in principle be determined by the Luxembourg competent courts in accordance with the relevant rules of the Civil Code applicable to extra-contractual liability and the Code on Civil Procedure.[3]

1 See article 11 of the Prospectus Regulation in combination with article 5 of the Prospectus Law.

2 Based on article 11 of the Prospectus Regulation, article 5 of the Prospectus Law provides for the identification of the persons who should take responsibility for the information given in the prospectus (and any supplement thereto).

3 Before the coming into force of the Prospectus Regulation, the provisions of Directive 2003/71/EC, were transposed into Luxembourg law by the law of 10 July 2005, which contained in its article 9 a provision that was almost identical to article 5 of the Prospectus Law. In the draft bill for such law, the Luxembourg government of that time commented such provision as

It should also be noted that, depending on the specific facts and circumstances of each case, information contained or omitted in a Defective Prospectus could constitute an infringement to certain other specific Luxembourg statutory regimes which could give raise to civil liability as result of the committed infringement.[4] This could be in particular the case with respect to potential violations of the following regulations (subject to their particular scope of application):[5]

- The Consumer Code provisions in relation to unfair commercial practices;[6] or
- The financial sector law dated 5 April 1993 in relation to the conduct of business rules when providing investment services to clients.[7]

As none of these regulations provide for an autonomous civil liability regime for prospectuses or constitute to national provisions of implementation of article 11 of the Prospectus Regulation, we will only refer for the purposes of the developments below to the civil liability regime resulting from the application of the Prospectus Law and/or the Civil Code.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

(i) Prospectus Law: Pursuant to article 5(1) of the Prospectus Law, responsibility for the information given in a prospectus attaches to the issuer, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be.[8] The persons responsible shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the

follows: "Les dispositions de droit commun en matière de responsabilité civile au Luxembourg s'appliquent aux personnes responsables des informations fournies dans les prospectus pour les offres au public de valeurs mobilières au Luxembourg ou pour les admissions de valeurs mobilières sur un marché réglementé situé ou opérant au Luxembourg".

4 As regards the Civil Code provisions on extra-contractual civil liability, it is generally admitted by the legal doctrine that the infringement of a requirement imposed by law is sufficient to prove the existence of a fault. For further details, see footnote 12 here-below.

5 In this context, it should also be mentioned that, in general, infringement(s) to administrative and criminal provisions could be sufficient to prove the existence of a fault and, as such, give rise to civil liability.

6 The Consumer Code (see its article L. 122-3) and its implementing Grand-Ducal Regulation of 19 May 2011 (see its article R. 121-1) expressly qualify the information, which was required before the coming into force of the Prospectus Regulation, by articles 8 and 10 of the law of 10 July 2005 (the law transposing Directive 2003/71/EC) and under chapters II and III of Regulation (EC) 809/2004 implementing Directive 2003/71/EC as substantial and as a consequence the omission of its disclosure in a prospectus as misleading and therefore unfair commercial practice. In this context, it is noteworthy that, with the coming into force of the Prospectus Regulation, the Luxembourg legislator has not removed the references to Directive 2003/71/EC and Regulation (EC) 809/2004 from article R.121-1 of the regulation of 19 May 2011, so that, even though it has also not replaced them by the corresponding provisions of the Prospectus Regulation and its delegated regulations, the omission of information to be disclosed in a prospectus is still to be considered as misleading and therefore unfair commercial practice under Luxembourg consumer protection rules.

7 Article 37-3 (2) and (3) of the financial sector law dated 5 April 1993 provides that all information, including marketing communications, addressed by a credit institution or investment firm to clients or potential clients shall be fair, clear and not misleading and that credit institutions and investment firms shall provide appropriate information in good time to clients or potential clients with regard to, among others, its services, the financial instruments and proposed investment strategies (including appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market) and all costs and associated charges.

8 In the draft bill for the Prospectus Law, the Luxembourg government of that time commented its article 5 as follows: "A l'instar de l'approche retenue dans la loi modifiée du 10 juillet 2005, l'option prévue par le règlement (UE) 2017/1129, qui permet aux organes d'administration, de direction ou de surveillance de l'émetteur de prendre en charge la responsabilité des informations contenues dans le prospectus, n'est pas retenue."

prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import. At least one of the persons mentioned in article 5(1) of the Prospectus Law must be responsible for the whole prospectus, notwithstanding that there might be different persons responsible separately for particular parts of the prospectus, it being understood that with respect to certain parts of the prospectus, such liability might be limited to the correct reproduction of content for which another person responsible is liable.

(ii) Civil Code: The Civil Code provisions on extra-contractual civil liability do not provide for specific parties responsible for the information contained in a prospectus (any person falling under the scope of application of the Civil Code relevant provisions is subject to potential civil liability as further described below).

Q3. Are the persons under the previous question subject to joint and/or several liability?

(i) Prospectus Law: The Prospectus Law does not indicate whether civil liability should be incurred on a joint and/or several liability basis. The potential existence of joint and/or several liability should in principle be determined pursuant to the applicable rules of the Civil Code in relation to extra-contractual liability.

(ii) Civil Code: Article 1202 of the Luxembourg Civil Code provides as a general rule that joint liability may not be presumed. It must be expressly stipulated by the parties or expressly provided by law.[9]

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

(i) Prospectus Law: Pursuant to article 6(1) of the Prospectus Regulation jointly read with article 5(1) of the Prospectus Law, the responsible person(s) for the Defective Prospectus could be subject to civil liability as a result of the following breaches of duties (provided that a damage and a causal link between this damage and the abovementioned breaches are also established in accordance with the provisions of the Civil Code):

- The information contained in the prospectus is not in accordance with the facts; or
- The prospectus makes an omission of any 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 of any guarantor, the rights attaching to such securities and the reasons for the issuance and its impact on the issuer.

As an exception to the above rule, article 5(2) of the Prospectus Law, which implements the second paragraph of article 11(2) of the Prospectus Regulation, provides that no civil liability may attach to any person solely on the basis of the summary pursuant to article 7 of the Prospectus Regulation or the specific summary of an EU Growth prospectus pursuant to the second subparagraph of article 15(1) of the Prospectus Regulation, including any translation thereof, unless its content is misleading, inaccurate or inconsistent, when read together with other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid

[9] Article 1202 of the Civil Code provides that “La solidarité ne se présume point: il faut qu'elle soit expressément stipulée. Cette règle ne cesse que dans les cas où la solidarité a lieu de plein droit, en vertu d'une disposition de la loi.”

investors when considering whether to invest in such securities. Civil liability could more generally be triggered in case of an infringement to other provision(s) of the Prospectus Regulation, its implementing regulations and Part II of the Prospectus Law to the extent such infringement constitutes a fault and provided that a damage and causal link between this damage and such infringement are also established in accordance with the provisions of the Civil Code.

(ii) Civil Code: Articles 1382[10] and 1383[11] of the Civil Code provide that extra-contractual civil liability may arise as a result of any fault, negligence or imprudence committed by the author. Three conditions have to be fulfilled in order to establish extra-contractual civil liability ((i) a fault or negligence/ imprudence, (ii) a damage and (iii) a causal link between the previous two factors).[12] Every plaintiff who can prove a fault (article 1382), negligence or imprudence (article 1383), a damage and a direct link between this fault, negligence or imprudence and his damage, should be entitled to have a civil liability claim in indemnification on extra-contractual grounds. As regards the Civil Code provisions on extra-contractual civil liability, it is generally admitted by the legal doctrine that the infringement of a requirement imposed by law is sufficient to prove the existence of a fault. The infringement to the law or regulation will be deemed to constitute a fault.[13]

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

(i) Prospectus Law: The Prospectus Law does not provide for which degree of fault civil liability is incurred in connection with a Defective Prospectus. Therefore, the degree of fault upon which civil liability on extra-contractual grounds is incurred should in principle be determined pursuant to the applicable rules of the Civil Code.

(ii) Civil Code: Pursuant to the Civil Code provisions on extra-contractual liability, very plaintiff who can prove (i.) a fault pursuant to article 1382 of the Civil Code or a negligence/imprudence in accordance with article 1383 of the Civil Code, (ii.) a damage and (iii.) a direct link between such fault or negligence/imprudence and such damage, should in principle be entitled to claim for compensation for damages suffered.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

(i) Prospectus Law: The Prospectus Law does not state who should be entitled to sue for damages. The rules of the Civil Code applicable to extra-contractual liability should in

[10] Article 1382 of the Civil Code provides that "Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer."

[11] Article 1383 of the Civil Code provides that "Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence."

[12] See Véronique Hoffeld, Luxembourg in Prospectus Regulation and Prospectus Liability, Oxford University Press, 2020, No 25.17 on page 556.

[13] See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3 rd edition, 2014 who points out that "La preuve d'une faute est aisée à établir lorsqu'elle se matérialise dans l'inobservation d'une norme spécifique imposant aux individus un comportement défini dans les situations qu'elle prévoit. On peut alors parler d'un comportement « illicie ». De telles normes sont constituées par les lois et règlements qui tendent à exiger directement des individus certains comportements. Figurent dans cette catégorie les règles du droit pénal. Mais, plus généralement, toute disposition écrite et impérative imposant un certain comportement aux individus qui se trouvent placés dans la situation qu'elle prévoit, est source de devoirs. Et la faute se dégagera de ce que l'agent n'a pas eu le comportement que la loi lui imposait. […] Le fait de ne pas avoir eu l'attitude prescrite par la réglementation en question rend l'auteur a priori fautif." (paragraph 57 on pages 62 and 63).

principle be applicable for the purposes of determining the rightful plaintiff in connection with a Defective Prospectus.

(ii) Civil Code and Code on Civil Procedure: Pursuant to the Civil Code provisions on extra- contractual liability, in principle, any person who can prove a fault pursuant to article 1382 of the Civil Code (or a negligence or imprudence in accordance with article 1383 of the Civil Code), a damage and a direct link between this fault, negligence or imprudence and his damage, should in principle be entitled to claim for compensation for damages. In addition to the abovementioned rules, plaintiffs should also comply with the Code on Civil Procedure. In accordance with Luxembourg case law, to bring before the competent Luxembourg Courts a civil liability claim against the responsible person(s) for a Defective Prospectus, each plaintiff will have in particular to establish that he has sufficient standing ("qualité à agir") and a legitimate and direct interest ("intérêt à agir") to initiate proceedings in accordance with article 50 of the Code on Civil Procedure.[14]

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

(i) Prospectus Law: The Prospectus Law does not provide for the circumstances to be proven by the plaintiff in the context of her/his civil liability claim for a Defective Prospectus. The rules of the Civil Code applicable to extra-contractual liability should in principle be applicable to this particular matter.

(ii) Civil Code: Pursuant to the Civil Code general rules on extracontractual liability, it rests with the plaintiff to prove each of the three elements underlying the extra-contractual civil liability of the defendant (i.e. (i.) the fault or negligence/imprudence, (ii.) the damage and (iii.) the causal link between the two previous elements).

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

(i) Prospectus Law: The Prospectus Law does not provide for exemption grounds as regards the potential civil liability of the defendant arising in the context of a Defective Prospectus. The rules of the Civil Code applicable to extra-contractual civil liability should in principle be applicable in this context.

[14] In its decision (No CAL-2018-00644) of 6 February 2020, the Cour d'appel du Luxembourg clarified in this context: "L'intérêt à agir est le profit, l'utilité ou l'avantage que l'action peut procurer au plaideur. Pour pouvoir agir en justice, il faut avoir un intérêt né et actuel. Le droit à l'origine d'une action ne doit pas nécessairement être un droit subjectif défini, tel que le droit de propriété ou de créance ; il suffit qu'une atteinte soit portée aux intérêts légitimes de quelqu'un. […] La qualité à agir se définit comme le pouvoir en vertu duquel une personne exerce l'action en justice. Tant l'intérêt pour agir que la qualité pour agir doivent exister au jour de la demande en justice."

(ii) Civil Code: Pursuant to the Civil Code general rules on extracontractual liability, the defendant may prevent in principle civil liability on extra-contractual grounds by proving that one or more of the components underlying her/his liability are not established/proven by the plaintiff (i.e. (i.) the fault or negligence/imprudence, (ii.) the damage or (iii.) the causal link between the fault or negligence/imprudence and the damage). Even in those cases where the plaintiff is in position to prove that (i.) the defendant has committed a fault or negligence/imprudence in the context of the Defective Prospectus, (ii.) this fault or negligence/imprudence has caused her/him a damage and (iii.) a causal link between the fault or the negligence/imprudence and the damage suffered by her/him exists, the defendant may allege in her/his defense that the plaintiff is responsible for part of the financial loss as a result of her/his contributory negligence or fault.[15] In this case, the defendant should, in principle, bear the charge of evidencing the plaintiff's contributory negligence or fault.[16]

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

(i) Prospectus Law: The Prospectus Law does not regulate this particular matter. The rules of the Code on Civil Procedure as described below should in principle be applicable in this respect.

(ii) Code on Civil Procedure: Articles 55 to 57 of the Code on Civil Procedure provide as general rules that (i.) it is the duty of the parties to invoke the facts on which the base their claim(s), (ii.) the judge is not allowed to base his/her decision upon facts, which are not part of the debate between the parties, (iii.) within the debated facts, the judge can take into consideration facts that the parties would not have specifically invoked as the basis of their claim(s) and (iv.) the judge remains free to ask the parties to provide factual explanations, the judge considers as necessary for the resolution of the dispute between the parties.[17]

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

(i) Prospectus Law: The Prospectus Law does not regulate this particular matter. It does not indicate which damages are recoverable and does not provide for specific provisions on the quantification of compensation. The rules of the Civil Code as described below should in principle be applicable in this respect.

(ii) Civil Code: In the context of a civil liability claim on extra-contractual grounds under articles 1382 or 1383 of the Civil Code and where the three criteria of the extra-contractual civil liability described above are fulfilled, the plaintiff is in principle entitled to claim compensation for the damages suffered, as long as they are (i.) not against the law,

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15 See Véronique Hoffeld, Luxembourg in Prospectus Regulation and Prospectus Liability, Oxford University Press, 2020, No 25.42 on page 561.

16 See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3 rd edition, 2014, who states that "la jurisprudence luxembourgeoise est fermement attachée à l'obligation de la victime de modérer, de contenir autant que possible son dommage en prenant toutes les mesures raisonnables à cet effet, et qu'il appartient à l'auteur du dommage qui fait état de ce que la victime a la possibilité raisonnable de minimiser son dommage, de le prouver." (paragraph 1213, page 1172)

17 Article 55 of the Code on Civil Procedure provides that "A l'appui de leurs prétentions, les parties ont la charge d'alléguer les faits propres à les fonder." Article 56 of the Code on Civil Procedure provides that "Le juge ne peut fonder sa décision sur des faits qui ne sont pas dans le débat. Parmi les éléments du débat, le juge peut prendre en considération même les faits que les parties n'auraient pas spécialement invoqués au soutien de leurs pretentions." Article 57 of the Code on Civil Procedure provides that "Le juge peut inviter les parties à fournir les explications de fait qu'il estime nécessaires à la solution du litige."

(ii.) certain, (iii.) direct and (iv.) personal.[18] For damages which fulfill all such criteria, the compensation of such damages should be, in principle, complete.[19] However, the compensation may not exceed the damages suffered[20] (no punitive damages and no cumulative damages[21]). In practice, damages might cover material damages, loss of profit and compensatory interest proven to be suffered by the plaintiff as a result from the defendant's fault or negligence/imprudence.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

(i) Prospectus Law: Based upon article 11(1) of the Prospectus Regulation as implemented in Luxembourg law, by article 5(1) of the Prospectus Law, it should not be possible for the person(s) responsible for the information given in a prospectus to exclude, proportionate or limit his civil liability in connection with the content of the prospectus except for the particular circumstances in which the Prospectus Law or/and Prospectus Directive legal framework allows a limitation to such liability. This is in particular the case in relation to:

- the specific liability regime applicable to the summary of the prospectus;[22]
- the limitation of the responsibility for the information given in a registration document or in a universal registration document only to cases where the registration document or the universal registration document is in use as a constituent part of an approved prospectus;[23] or
- the potential limitation on liability concerning the use of the prospectus as a result of the consent (and conditions attached thereto) granted by the person responsible for the prospectus.[24]

(ii) Civil Code: The civil liability regime imposed by the Prospectus Law pursuant to its article 5(1) as regards the content of the prospectus should be mandatory (subject to the limitations provided by the Prospectus Law and the Prospectus Regulation legal framework). Subject to the above, the person(s) responsible for the information given in a prospectus as determined in accordance with article 5(1) of the Prospectus Law should not be allowed to exclude or limit their civil liability by a clause inserted in the prospectus or in a disclaimer contained on the website, where the prospectus is published.[25]

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[18] See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3 rd edition, 2014, who states that "Pour être réparable, le dommage doit cumulativement remplir certaines conditions. Il doit être licite, certain, direct et personnel." paragraph 1097, page 1076.

[19] See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3 rd edition, 2014, who states that "La réparation doit donc être intégrale : elle doit faire disparaitre le plus complétement possible le dommage subi par la victime." paragraph 1206, page 1166.

[20] See Véronique Hoffeld, Luxembourg in Prospectus Regulation and Prospectus Liability, Oxford University Press, 2020, No 25.74 on page 567.

[21] See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3 rd edition, 2014, paragraphs 1207 to 1211, pages 1168 to 1171.

[22] See article 11(2) of the Prospectus Regulation in combination with article 5(2) of the Prospectus Law.

[23] See article 11(3) of the Prospectus Regulation in combination with article 5(3) of the Prospectus Law.

[24] In this context, please see Recital 26 of the Prospectus Regulation, which states that "In the event that consent to use the prospectus has been given, the issuer or person responsible for drawing up the initial prospectus should be liable for the information stated therein and in the case of a base prospectus, for providing and filing final terms and no other prospectus should be required. However, in the event that the issuer or the person responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. In that case, the financial intermediary should be liable for the information in the prospectus, including all information incorporated by reference and, in the case of a base prospectus, in the final terms."

[25] On this subject, see also article 21(4) of the Prospectus Regulation as well as Véronique Hoffeld, Luxembourg in Prospectus Regulation and Prospectus Liability, Oxford University Press, 2020, No 25.77 on page 568.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

(i) Prospectus Law: The Prospectus Regulation and the Prospectus Law do not provide for any time limit to file a civil liability claim in connection with a Defective Prospectus. The rules of the Civil Code as described below should in principle be applicable in this respect.

(ii) Civil Code: Pursuant to article 2262 of the Civil Code, the time limit to initiate a legal claim on civil extra-contractual grounds before the Luxembourg Courts is of 30 years. In general, prescription begins from the date of the coming into existence of the damage. However, if proven by the plaintiff, prescription begins only from the date on which the plaintiff becomes aware of the damage.[26] The civil proceedings mentioned above can be suspended or interrupted in accordance with the Civil Code provisions (articles 2242 to 2259).

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Under Luxembourg private international law, the regulation that should address potential conflict of law rules in relation to the applicable extra-contractual civil liability regimes that may find to apply as a result of a Defective Prospectus in the context of international public offerings is the Regulation (EC) n 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (the "Rome II Regulation"). The Rome II Regulation provides as a general rule that in case of conflict of laws the applicable law is the "law where the damage occurs".[27] The Rome II Regulation further specifies that this rule applies "irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred".[28]

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

To the extent the plaintiff's claim for damages is based upon an act which qualifies as a criminal offence, the plaintiff could decide to bring her/his civil claim before the competent criminal Courts that are competent to decide upon the criminal proceedings. Pursuant to Article 3 of the Code on Criminal Procedure, civil proceedings can be brought in principle before the criminal Courts by any person who has suffered a loss as a result of a criminal offence provided that its conditions are met.[29] The Luxembourg law dated 24 February 2012 on arbitration in civil and commercial matters may also be applicable in this context.[30] There are also ways available for settling claims out of court.

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[26] See in this respect G. Ravarani "La responsabilité civile des personnes privées et publiques", 3rd edition, 2014, paragraph 1372, page 1283.

[27] See article 4.1, under chapter II "Torts/Delicts" of the Rome II Regulation. Articles 4.2 and 4.3 provide nonetheless certain derogations to this general rule where (i) both the defendant and the person sustaining damage have their residence in the same country (the law of this country being applicable in such case), or (ii) where the tort is more closely connected with another country.

[28] See article 4.1, under chapter II "Torts/Delicts" of the Rome II Regulation.

[29] Article 3 of the Code on Criminal Procedure states that "L'action civile peut être poursuivie en même temps et devant les mêmes juges que l'action publique, à moins que celle-ci ne se trouve éteinte par prescription."

[30] See the law of 19 April 2023 amending Part Two, Book III, Title I, of the New Code of Civil Procedure, with a view to reforming arbitration.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

For the purposes of the answer below, we understand that a class action for the purposes of this questionnaire means the possibility to bring a claim on behalf of a more or less determined (or yet unknown) group of plaintiffs against a defendant or a group of defendants (in the present context against the person subject to civil liability for a Defective prospectus).

Based upon the above understanding on the meaning of class action, no class action is yet available under Luxembourg law. However, a bill for the introduction of a class action into Luxembourg law has been presented by the former Luxembourg government in August 2020. Such bill has been amended in January 2022 to take into account Directive (EU) 2020/1828 and to implement such directive into Luxembourg law. A subsequent amended versions of such bill has been published in April 2024.[31] This latest version expressly mentions the Prospectus Regulation amongst the rules and regulations the violation of which may trigger the bringing to court of a class action. As of the day of the present response to the questionary, the respective law based on such bill has not yet been adopted by the Luxembourg parliament. However, this should be the case in the foreseeable future, given that Directive (EU) 2020/1828 states that Member States shall adopt and publish, by 25 December 2022, the laws, regulations and administrative provisions necessary to comply with such directive and that they shall apply those measures from 25 June 2023.[32]

[31] Projet de loi portant modification : 1. du Code de la consommation ; 2. de la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des spécialités pharmaceutiques et des médicaments préfabriqués ; 3. de la loi modifiée du 27 juillet 1991 sur les médias électroniques ; 4. de la loi modifiée du 27 juillet 1997 sur le contrat d'assurance ; 5. de la loi modifiée du 14 août 2000 relative au commerce électronique ; 6. de la loi modifiée du 24 mai 2011 relative aux services dans le marché intérieur ; 7. de la loi modifiée du 23 décembre 2016 sur les ventes en soldes et sur trottoir et la publicité trompeuse et comparative ; 8. de la loi du 26 juin 2019 relative à certaines modalités d'application et à la sanction du règlement (UE) 2018/302 du Parlement européen et du Conseil du 28 février 2018 visant à contrer le blocage géographique injustifié et d'autres formes de discrimination fondée sur la nationalité, le lieu de résidence ou le lieu d'établissement des clients dans le marché intérieur, et modifiant les règlements (CE) n°2006/2004 et (UE) 2017/2394 et la directive 2009/22/CE, en vue de la transposition de la directive (UE) 2020/1828 du Parlement européen et du Conseil du 25 novembre 2020 relative aux actions représentatives visant à protéger les intérêts collectifs des consommateurs et abrogeant la directive 2009/22/CE.

[32] The legislative process in respect to such bill can be followed under https://www.chd.lu/fr/dossier/7650.

21 Malta

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

In terms of Article 94 of the Maltese Companies Act, 1995, the persons who are responsible for or who have authorised the issue of a prospectus shall be jointly and severally liable for any damage sustained by a person subscribing for securities on the faith of that prospectus, by reason of any untrue statement included in such prospectus. In terms of an amendment to the aforementioned article of the Companies Act, no person shall be liable for statements made in the summary to the Prospectus, including the translation thereof, except when such statements are misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or if it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

In terms of Article 15B(1) of the Financial Markets Act, 1990, the issuer, the offeror, the person asking for the admission to listing and, or trading on an authorised regulated market, the guarantor or, when any of the foregoing is a legal entity, the members of its administrative, management or supervisory bodies, as the case may be, shall be jointly and severally responsible and civilly liable for the information submitted in a prospectus, and any supplement thereto. Furthermore, in terms of Financial Markets Act, 1990, Article 15B(2) states that no civil liability shall attach to any person mentioned in Article 15B(1) solely on the basis of the summary pursuant to Article 7 of the Prospectus Regulation or the specific summary of an EU Growth prospectus pursuant to the second sub-paragraph of Article 15(1) of the Prospectus Regulation, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to assist investors when considering whether to invest in the securities.

Apart from the above, given that a prospectus may be considered as a contract between the issuer of the security and the investor therein civil liability may also arise under the general civil law provisions contained in the Civil Code (Chapter 16 of the Laws of Malta), in particular Articles 960 to 1011 of the Civil Code.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Whilst there could be cases where third parties, such as experts, assume responsibility for parts of the prospectus, it is the Issuer of the security, acting through its Board of Directors that has overall responsibility for the prospectus.

In terms of Article 94 of the Companies Act, the persons who are held responsible for the information contained in the prospectus are:

(a) those who are responsible for or who have authorised the issue of a prospectus;
(b) the persons who have tabled a summary including the translation thereof; and
(c) Experts including engineers, valuers, accountants and any other person whose profession gives authority to a statement made by him - only in the case of any untrue statements made by them and disclosed in the prospectus.

Furthermore, Article 15B(1) of the Financial Markets Act, 1990, highlights that the issuer, the offeror, the person asking for the admission to listing and, or trading on an authorised regulated market, the guarantor or, when any of the foregoing is a legal entity, the members of its administrative, management or supervisory bodies, as the case may be, shall be jointly and severally responsible and civilly liable for the information submitted in a prospectus, and any supplement thereto.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Under both the Financial Markets Act and the Maltese Companies Act, the persons identified in question 2 above have joint and several liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

In terms of Article 94 of the Companies Act, the persons indicated in the response to question 2 above are liable in the case of untrue statements contained in the prospectus. Moreover, Article 96 (1) of the Companies Act, states that:

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included or otherwise inaccurate or inconsistent, and
(b) statement shall be deemed to be included in a prospectus if it is contained therein or in any document appearing on the face thereof or by reference incorporated therein or issued therewith.

Moreover, in terms of Article 89 of the Companies Act, it is not lawful for a company to make an offer to the public unless the company is a public company and the offer is made in the form of a prospectus which complies with the requirements of the Financial Markets Act.

In terms of Article 15B(1) of the Financial Markets Act, 1990, the persons indicated in the response to question 2 above are liable in the case of:

(a) misleading, inaccurate or inconsistent information, when read together with the other parts of the prospectus; or
(b) it does not provide, when read together with the other parts of the prospectus, key information in order to assist investors when considering whether to invest in the securities.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The degree of fault established is willful or negligent misconduct.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

In terms of Article 94 of the Companies Act, any person subscribing for shares or debentures on the faith of that prospectus may sue for damages. The law is generic and does not limit to purchasers on the primary market.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve-month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

In terms of Article 94 of the Companies Act, the plaintiff has to prove that he has suffered damage by subscribing to shares or debentures on the faith of the prospectus by reason of any untrue statement contained therein.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement *to the prospectus correcting the problem was published before the acquisition of the securities took place)?*

In terms of Article 94 (2) of the Companies Act, a respondent may avoid liability if he can prove that:

(a) he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the statement was true; or
(b) as regards an untrue statement made by an expert, that he had reasonable grounds to believe and did, up to the time of the allotment of the shares or debentures believe, that the person making the statement was competent to make it; or
(c) on becoming aware of the untrue statement before any allotment is made under the prospectus, he gave reasonable public notice of the untruthfulness of the statement.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

Yes, during proceedings in court, the presiding judge has the right to ask questions to the parties and their answers thereto may be taken into account by the judge in arriving at a decision.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Although damages are recoverable, there is no specific quantification for this purpose under Maltese Law.

In terms of Article 1135 of the Civil Code, under the law of obligations, the damages due to the creditor are, generally, in respect of the loss which he has sustained, and the profit of which he has been deprived.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Yes, they are mandatory and there is no possibility to exclude, proportionate or limit liability in the prospectus.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

In terms of Article 2153 of the Civil Code any actions for damages not arising from a criminal offence are barred by the lapse of two years.

In terms of Article 2137 of the Civil Code, the prescription starts to run from the day on which an action may be exercised, irrespective of the state or condition of the person to whom the action is competent.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

In the case of commercial partnerships registered in Malta, the relevant law is the Maltese Law (namely the Maltese Companies Act, 1995). In the case of issuers of securities admitted to trading on a regulated market in Malta, the relevant legislation is the Financial Markets Act (Cap. 345 of the Laws of Malta). In the case of a conflict of laws, the general principles of Private International Law will apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes, the only way for a person to obtain enforceable restitution of losses is through an action in Court (there are ways open for arbitration, negotiation or settlement, too however).

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

The Collective Proceedings Act (Cap 520 of the Laws of Malta) has been restricted to three substantive laws being the Consumer Affairs Act, the Product Safety Act and the Competition Act, therefore, it is our understanding that a class action can be filed under these acts accordingly.

22 The Netherlands

*This document contains the answers of the Netherlands Authority for Financial Markets ("**AFM**") to ESMA's Prospectus Liability Questionnaire of May 16, 2012. The answers provide for a general overview of provisions in Dutch civil, administrative and criminal law in relation to prospectus liability. The part on civil prospectus liability is lastly updated on December 31, 2024. Please note that the given answers should not be relied upon in specific cases.*

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Under Dutch civil law, no specific prospectus liability regime exists. Prospectus liability claims can be based on the general tort law provision of section 6:162 of the Dutch Civil Code ("DCC").

Furthermore, two *species* of tort law are relevant here (these have a similar regime when it comes to potential defendants, burden of proof etc.):

I Investors that qualify as consumers can base their claim on chapter 6.3.3a DCC (sections 6:193a - 193j DCC) in which the Unfair Commercial Practices Directive has been implemented.

II In the same chapter, the Misleading and Comparative Advertising Directive has been implemented (sections 6:194-196 DCC) and stipulates that only investors that do not qualify as consumers can base a prospectus liability claim on the ground of misleading advertisement.

If a contractual relationship exists between the investor and the defendant, the defendant could also base his claim on contractual liability (section 6:74 DCC). However, as prospectus liability does not often seem to be based on contractual liability, we will not discuss this alternative in further detail. Claims based on the assertion that the contract was entered into under the influence of an error (*dwaling*) or as a result of duress, fraud or undue influence (*misbruik van omstandigheden*) etc. are also considered to fall outside the scope of the subject matter of the Chapter Civil liability of this questionnaire.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

In general, the issuer, offeror or person asking for the admission to trading on a regulated market or guarantor is *responsible* for the information given in a prospectus in accordance with section 11(2) of the Prospectus Regulation. However, since this provision is an instruction to the member state, *civil liability* cannot be based directly on this provision. Pursuant to relevant case law and/or literature, civil liability can be based on:

I General tort law, section 6:162 DCC: the issuer, in some cases its board of directors or one of its directors, the lead manager, other members of the syndicate or sponsoring banks, and possibly advisors such as an auditor whose (incorrect) statements are incorporated in the prospectus and existing shareholders that offer their shares simultaneously with the issue/listing. With exception of advisors such as an auditor, the responsible persons would be liable for the whole content of the prospectus.

II Unfair commercial practices, sections 6:193a-j DCC: A commercial practice shall be unfair if a 'trader' acts:

a. contrary to the requirements of professional diligence, and

b. the ability of the average consumer to take an informed decision is or may be appreciably impaired, because of which the average consumer takes or may take a transactional decision that he would not have taken otherwise.

Commercial practices shall be unfair if a 'trader' conducts:

a. a misleading commercial practice as meant in section 6:193c up to and including section 6:193g DCC, or;

b. an aggressive commercial practice as meant in sections 6:193h and 6:193i DCC.

A trader (*handelaar)* is (i) a natural or legal person who is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader. who have committed an unfair commercial practice, in this case the publication of a misleading prospectus (ii) the issuer, as well as the lead manager and/or other members of the syndicate or sponsoring banks that distribute the prospectus through their offices, and (iii) existing shareholders that offer their shares simultaneously with the issue/listing insofar as they qualify as 'trader'. Insofar as use of the - whole - prospectus (publication, distribution, offering on the basis thereof) by 'traders' qualifies as an unfair commercial practice, these 'traders' will likely be liable for the whole content of the prospectus.

III Misleading advertisement – sections 6:194-196 DCC:
If the defendant can be held liable under this section, he will be liable for the whole content of the prospectus as he will have made public or caused to have made public the prospectus as a whole; insertion of a disclaimer for certain parts of the contents can only, possibly, lead to non-applicability of the reversal of the burden of proof laid down in section 6:195 DCC (see question 11). Parties that can be held responsible are (i) the person that makes public or causes to be made public misleading information regarding goods or services which he, or the person for whom he acts, offers in the conduct of a profession or a business (ii) the issuer, the lead manager and/or other members of the syndicate or sponsoring banks that distribute the prospectus through their offices and (iii) possibly existing shareholders, mainly directors (who also have a certain level of influence on the content of the prospectus), that offer their shares simultaneously with the

issue/listing. It is argued that a claim against *e.g.* an auditor cannot be based on sections 6:194-196 DCC because they are not considered to be persons that make public or cause to be made public.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The general rule of section 6:102 DCC prescribes that, if for example the court deems both the issuer and the lead manager liable for the same damages, they are jointly and severally (*hoofdelijk*) liable for such damages.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

- Publication of a misleading prospectus. This is for instance the case when certain important information is omitted.
- Committing an unfair commercial practice (see question 2 for a definition of an unfair commercial practice).
- Publication of misleading advertisements.

In the Netherlands there are specific administrative and criminal but no specific civil liability provisions which prohibit a public offer without a duly approved prospectus. However civil liability could also arise from breaches of these specific administrative and criminal liability provisions.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

[Section 162(3) DCC] A tortfeasor is responsible for the commitment of a tort if it is due to his fault or to a cause for which he is accountable by law or pursuant to generally accepted principles. In this context, fault is interpreted as negligence (*verwijtbaarheid*).

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

In the Netherlands any person who claims to have suffered damages is entitled to sue for damages. In general, the people who claim to have suffered damages will be investors and financial intermediaries that have bought financial instruments in the primary and secondary market but given the circumstances also other parties may have suffered damages and are entitled to sue for damages.

Also, pursuant to the Consumer Protection Enforcement Act (*Wet handhaving consumentenbescherming*) the Authority for the Financial Markets may, where financial services or activities are concerned, not only file a petition pursuant to section 3:305d DCC but also impose certain public law sanctions if collective consumer interests are or may be damaged due to, for example, unfair commercial practices.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses

suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Tort in general requires: tortuous behaviour, accountability, loss and causation. The plaintiff must prove that:

- the defendant was responsible for the prospectus (publication, distribution);
- that the prospectus was misleading and that the defendant was aware thereof (can be held accountable);
- that the plaintiff relied on the misleading prospectus for his investment decision; and
- that the plaintiff suffered losses due to this investment.

Pursuant to section 6:193a et seq. DCC, the investor must prove that the defendant performed an unfair commercial practice against him, and that the investor has incurred losses as a result thereof.

Pursuant to section 6:194 et seq. DCC, the investor must prove that the defendant has published or made public such prospectus, and that the investor has incurred losses as a result thereof.

In the Netherlands the causal link between the misleading information and the damage is not presumed, but in case the claim is based on either unfair commercial practices or misleading advertisement, the burden of proof is reversed (section 6:193j DCC and section 6:195 DCC respectively): (i) the defendant must prove that the prospectus was materially correct and complete and (ii) the defendant is assumed to be liable for the damages incurred due to the prospectus unless he proves these damages are not incurred due to his fault or that he is not accountable there for. The causal link between the prospectus and the investment decision is assumed.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The defendant can avoid liability if he can prove that he was neither at fault nor accountable. Basically, the defendant can avoid liability if he can successfully dispute the allegations made by the plaintiff as set out under question 7.

With regard to the possible insertion of a disclaimer, see question 11.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

In general, sections 24 and 25 of the Dutch Code of Civil Proceedings provide rules for facts that the court may take into judicial notice of. No specific provisions apply to prospectus liability proceedings.

Q10. What damages are recoverable? Does the law provide specific provisions on the

quantification of compensation?

[Chapter 6.1.10 DCC] Recoverable are: damages for pecuniary loss (to property, rights and interests, (*vermogensschade)*) and of other (non-pecuniary) loss, the latter to the extent provided for by law. Pecuniary damages comprise both loss incurred and profit deprived. Non-pecuniary losses are immaterial damages (such as emotional damages). As to the quantification of damages, the court shall assess the damage in a manner most appropriate to the nature of such damages. In the event the extent of the damages cannot be determined precisely, it shall be estimated. The recovery of damages can only be claimed for losses that are related to the event giving rise to the liability of the tortfeasor, which, also having regard to the nature of the liability and of the damage, can be attributed to him as a result of such event.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

In contractual relations, it is possible to exclude or limit liability except in case of intent or gross negligence (*opzet of grove schuld*). Under tort law on the other hand, the general view is that an exoneration is not acceptable as it would render protection provided by it ineffective. However, it is argued that in case of claims based on section 6:194 et seq. DCC, insertion by *e.g*. a lead manager of a clause stating explicitly that statements in the prospectus are not originating from him and that he cannot stand for the correctness thereof prevents application of reversal burden of proof. Nevertheless, the lead manager can still be held liable.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Section 3:310 (1) DCC - Claims based on tort have a time limit of five years after the victim becomes aware of the damages and the identity of the person responsible, with a maximum time span of twenty years after the event that caused the damages occurred. The limitation period can be interrupted or suspended by sending a notice to that effect to the responsible party. In principle, the limitation period is the same for all responsible persons, provided of course that the identity of such person is known to the victim.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

This is a matter of Dutch international private law, book 10, chapter 14 DCC in conjunction with the Rome II regulation. Insofar as any claim based on tort would fall outside the scope of the Rome II regulation (and the relevant applicable treaties), section 10:159 DCC stipulates that the provisions of the Rome II regulation will apply nonetheless.

The principal rule for applicable law is laid down in section 4 of the Rome II regulation: applicable is the law of the country in which the direct damage occurs (the country where the investor's investment account is located).

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

A judicial proceeding before a court is not the only way for investors to receive restitution of losses. Individual investors can also settle with the alleged tortfeasor out of court.

In addition, investors can collectively settle out of court. The Collective Settlement of Mass Damage Act (WCAM) provides for judicial endorsement of a voluntary settlement contract concluded between the alleged tortfeasor and the representative organisations acting on behalf of the investors that sustained losses as a result of the alleged tort committed. This is an opt-out system: the collective settlement is declared binding on all investors in the class that is involved in the settlement, unless they opt out by providing written notice.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Section 3:305a DCC provides for class action proceedings. Since 1 January 2020, investors have two possibilities:

I. investors can collectively seek a declaratory judgment that the defending party acted unlawfully against the investors; and
II. investors have the possibility to transfer their individual claims to an investor's association, to the extent that the claims relate to (a) event(s) occurring after 15 November 2016.

Investors have to find an investors association willing to start these proceedings or they have to establish an association/foundation with full legal capacity themselves, which fulfils the requirements set out in section 3:305a DCC. If there are several admissible investor associations, the court will appoint the most suitable party as Exclusive Representative (exclusieve belangenbehartiger), who will then represent the interests of the investors.

The collective action has an opt-out structure. There are two moments that (legal) persons can opt-out:

I. after the appointment of the Exclusive Representative; and
II. if a settlement has been reached, after a settlement agreement has been concluded between the parties.

23 Norway

The Financial Supervisory Authority of Norway answers to this questionnaire have no legal effect, they do not present or represent any interpretation of or official position by the Financial Supervisory Authority of Norway regarding existing laws, regulations or other forms of Norwegian legislation, including case-law by the Norwegian courts. This document should not and cannot be relied upon for any purpose other than for the purposes for which it was prepared. In particular, the answers provided by the Financial Supervisory Authority of Norway to this questionnaire should not be relied upon as a substitute for, or as guidance on, any aspect of the supervisory practices of the Financial Supervisory Authority of Norway or regulatory system of Norway.

In light of the extensive scope of the questions or/and their generic terms, the answers provided by the Financial Supervisory Authority of Norway to this questionnaire should not be considered as providing an exhaustive and detailed description of all potentially applicable legal provisions as regards the matters discussed in this questionnaire.

Any answer to this questionnaire is subject to and does not prejudge of the actual positions from any other Norwegian national competent authorities and in particular the relevant Norwegian competent courts of law, which should be exclusively competent to decide upon civil and criminal liability matters in relation to the prospectus rules in accordance with the constitutional principle of separation of powers.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Civil prospectus liability may arise on the basis of a breach of the prospectus rules, in the Norwegian Act on Securities Trading[1] (Securities Trading Act) chapter 7 and the Norwegian Regulations to Securities Trading Act[2] chapter 7. However, the Norwegian Securities Trading Act does not constitute an autonomous civil liability regime as it mainly establishes the situations upon which civil liability may be sought, the relevant persons incurring liability as well as the necessary level of fault. Subject to the specific facts and circumstances of the matter, all the general parameters of liability, including the determination/level of a fault, the resulting damage and of the causal link between the fault and the damage, must be considered and determined on the basis of general Norwegian liability principles.

In addition civil prospectus liability may arise on a contractual basis, where the prospectus constitutes a legal binding contract between the issuer and the investors. The Financial Supervisory Authority of Norway assumes that the description in the first section will be the easiest way for claiming civil liability. Thus the answers below will focus on this.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror,

[1] 29 th of June, number 75, 2007
[2] 29 th of June, number 876, 2007

guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

The board of the company is responsible for the information in the prospectus, cf. the Securities Trading Act section 7-4.

"Section 7-4 Responsibility attaching to an EEA prospectus

(1) Where an offer for subscription or purchase of shares is made by the company that has issued the shares, the company's board of directors or equivalent governing body shall be responsible for ensuring that the prospectus meets relevant information requirements. The same applies to admission to trading on a regulated market.
(2) In cases other than under subsection (1), responsibility for ensuring that the EEA prospectus meets the information requirements shall attach at least to the offeror, the person requesting admission to trading, or the guarantor, as the case may be"

The responsible persons are liable for the whole content of the prospectus.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The members of the board of the company may be liable cf. Norwegian Public Limited Liability Companies Act[3] section 17-1. The general rule is joint and several liability cf. Act relating to compensation in certain circumstances[4] section 5-3.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The responsible are liable for all the mentioned examples.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Negligence and intent.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Natural or legal persons who have had an economic loss cf. Act relating to compensation in certain circumstances section 4-1.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment

[3] 13th of June, number 45, 1997
[4] 13th of June, number 26, 1969

decision, negligence or intent on the part of the liable person)?

A compensatory basis, economic loss, basis of liability and adequate cause in fact.

All the mentioned examples may be relevant for the consideration of the necessary conditions.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

No compensatory basis, no economic loss, no basis of liability or no adequate cause in fact.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Economic loss, cf. Act relating to compensation in certain circumstances section 4-1. No, the law does not provide specific provisions on the quantification of compensation. The actual loss will be a natural compensation.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The board of the company is responsible for the information. It is not possible to exclude the liability, i.e. with a clause in the prospectus.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

This is regulated in the Act relating to the limitation period for claims5. The general limitation period is three years cf. section 2. The limitation period can be interrupted. Concerning claims for damages, there are special rules, cf. section 9. Claims for damages or redress shall be subject to a limitation period of three years from the date on which the injured party obtained, or should have himself acquired, necessary knowledge of the damage and the person responsible. Nevertheless, the limitation period shall be at the latest 20 years after the commission of the tort or other basis for liability ceased. Section 9 does not apply to claims based on contract.

Each responsible person mentioned under question 2 is subject to the same time limit.

5 18th of May, number 18, 1979

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The Securities Trading Act, general principles of contract law and non-statutory rules on tort. Norway has subscribed to the Lugano Convention.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Yes.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes, for claims based on the same or on materially the same actual basis and legal basis.

24 Poland

INTRODUCTORY NOTE

This document contains the answers of the Polish Financial Supervision Authority to ESMA's Prospectus Liability Questionnaire. The answers provide for a general overview of provisions in Polish civil law in relation to prospectus liability. Therefore, the answers to this questionnaire should not be considered as an exhaustive and detailed description of all potentially applicable legal provisions in this context. Moreover, the answers should not prejudge positions and/or interpretations of the competent courts or any other competent authorities regarding any legal regulations described in the following. The relevant courts are exclusively competent to finally decide upon legal matters.

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

The Act on public offerings, conditions governing the admission of financial instruments to organised trading, and on public companies (hereinafter "the Act on public offerings"), implementing the Prospectus Regulation rules concerning civil liability does not constitute an autonomous civil liability regime although it contains e.g. the list of potential liable entities, general provisions of the joint and several liability. There are not specific rules in such an act, so principles and general provisions concerning the liability for torts (related to the prospectus and public offerings) are emerging from the Polish Civil Code which is applicable in the whole extension.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

According to the Act on public offerings, the person responsible for conformity with the state of fact of the information contained in the prospectus or supplement and for the prospectus or supplement not omitting anything which could affect the meaning of the prospectus, in particular for the information contained in these documents being true, accurate and complete shall be:

1) the issuer - for all information;

2) offeror – for information about the offeror and the sale of securities effected by it, and if the offeror is the issuer's controlling entity or one having significant influence on the issuer– for all information;

2a) the person submitting an application for admission of securities to trading on a regulated market without consent of their issuer – for the information it has drawn up;

3) the guarantor – for information about the guarantee attached to the securities and if the guarantor is the issuer's controlling entity or one having significant influence on the issuer– for all information;

4) underwriter – for information about the underwriter and the subscription for or sale of securities effected by him in the case when in an underwriting contract concluded by the issuer or the offeror the underwriter undertakes to acquire, for its own account, all or a part of securities of a given issue, offered exclusively to this subject, in order to further transfer them in the public offering;

5) the person preparing or participating in the preparation of the information - for the information it prepared or in whose preparing it participated.

The liability referred to the entities mentioned above shall also rest with the persons who use, in their activity in the field of trading in financial instruments, the information indicated in these provisions, unless they did and could know that information was false or had been concealed.

This does not exclude the liability based on the general rules of the Polish Civil Code which may be applicable for example to auditors, experts whose reports were used or cited in the prospectus.

In some specific circumstances emerging from principle rules of the Polish Civil Code, it is also possible to take legal action against members of management board of entities above.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The entities mentioned under the previous question are subjected to joint and several liability and this cannot be limited or excluded. Liability of the persons specified under the previous question shall be joint and several and may not be restricted or excluded. This shall not preclude the possibility of entering into a contract setting forth mutual obligations of these persons in respect of such liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

1. Persons subject to civil liability for information in the prospectus are responsible for conformity with the state of fact of the information contained in the prospectus or supplement and for the prospectus or supplement not omitting anything which could affect the meaning of the prospectus, in particular for the information contained in these documents being true, accurate and complete.
2. The information contained in the prospectus summary and in a special summary of an EU Growth prospectus, including in their translations, shall not be the basis of civil liability, unless, when read in conjunction with the remaining parts of the prospectus, are misleading, untruthful, imprecise, inconsistent with the relevant parts of the prospectus or do not present the key information intended to help investors make their investment decisions. The prospectus summary shall include an explicit warning in this respect.

However there are no specific rules in the Polish law concerning the civil liability for selling securities without duly accepted and published prospectus when required, but liability for such infringements is possible under the general rules of the Polish Civil Code.

In Poland there are also criminal liability provisions prohibiting a public offer without approved prospectus.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The entities are liable for intentional fault or negligence. It emerges from the principle rules concerning the civil liability (the Polish Civil Code) which are also applicable to the potential disputes between the entities operating on the capital market. It concerns the liability of issuers, offerors, guarantors, firm commitment underwriter, other entities preparing or participating in preparation of information in the prospectus and the entities which, in their business activities, pertaining to trading in financial instruments, use information contained in the prospectus.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Generally speaking, formally every entity (legal or natural persons and other entities having legal capacity), which has borne damage and has legal capacity to sue is potentially entitled to sue for damages. Actually, it refers to the persons, whose activity is connected with the capital market, in particular investors who use the information given in the prospectus as the basis for the investment decision to purchase securities during the public offer or to purchase the securities on the secondary market. To sue effectively for damages regarding liability for prospectus information and activities emerging from public offerings of securities, it is necessary to prove legal and factual interest (damage first of all).

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff must prove damage bearing because of unreliable, untrue or incomplete or by omission of information in the prospectus. The plaintiff needs to prove a damage (a loss) arising from an occurrence of breach, a fault on the part of the liable person and the causal link between them.

It emerges from one of the general principle of Polish Civil Code which states that the burden of proof relating to a fact shall rest on the person who attributes legal effects to that fact. There are not specific rules implementing in the regulations concerning the public offers and functioning the regulated market.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the

deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Please note, that one of the key rules of the Polish Civil Code which reads that the burden of proof relating to the fact shall rest on the person who attributes legal effects to that fact is applicable in whole extension.

According to Polish law civil liability for information in the prospectus is based on fault. Therefore a person making claims against the person responsible for the content of the prospectus must prove that the defect in the prospectus has an adequate causal relationship with the damage and, moreover, that the person responsible for the content of the prospectus was responsible for conduct/omission that contributed to the occurrence of the damage.

Additionally it should be stated that the liability referred to the entities mentioned above (point 2) shall also rest with the persons who, in their activities pertaining to trading in financial instruments, use information specified in these provisions, unless they were not and could not be aware of such information being untrue or omitted. It means that such entities in order to avoid liability have to prove the latter circumstances.

Apart from the aforementioned principle rules, there are exceptions enabling to avoid or limit liability (for details see the answer to the question no 11).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

According to the one of the general rules of the Code of the Polish Civil Procedure, which is also applicable to the disputes connected with the capital market, the burden of proof relating to a fact shall rest on the person who attributes legal effects to that fact. So, in the civil litigation the evidence of the fact which is necessary for recognition of the civil liability must be provided by the plaintiff.

However, if a party to the dispute submits its evidence without observing the time limits prescribed by law it can be rejected by the court. It is the aspect of discretionary judge's power.

Only the facts publicly and officially known are taking into account without the motions by the parties. The judge may exceptionally also allow the evidence not indicated by the parties only in the justified circumstances as for example: because of the public interest. This is the discretional judge's power.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The recoverable damages mean compensation both the damage (*damnum emergens*) and loss of opportunity – loss of profit/income (*lucrum cessans*). The Polish Civil Procedure requires to prove amount of damage (loss) which should be meant as an ordinary, relevant effects of the act or omission.

According to the Polish Civil Code the amount of compensation is closely related to the amount of damage.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The provisions of the Polish Civil Code regarding civil liability generally do not create a possibility to exclude, proportionate or limit liability. Exceptionally, in some specific circumstances it is possible to dismiss the lawsuit for example if the defendant proves that the plaintiff would exercise right in a manner which would contradict its socioeconomic purpose or *bona fide* principle. It is also exceptionally possible that, by the judgment, the awarded charge (damages) can be spread out in instalments. There are also some limitations of responsibility at the stage of judgements' execution, but they have not any material impact on the general principles.

The principles of social coexistence or the socio-economic purpose of the law may, in particularly justified cases, determine both the refusal to grant a claim for compensation and the limitation of its amount.

All these principles are applicable for all civil litigations (there are not any specific rules for the disputes on the financial market).

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

There is no specific legal regime in the Act on public offerings. The principle rules of Polish Civil Code are applicable in full extension.

Subject to the exceptions provided for in the law, claims become barred by the statute of limitations. After the limitations period has run, the person against whom a claim is made may avoid satisfying it through allegation. The general provision in the Polish Civil Code (applicable to the liability for torts related with prospectus and public offerings) states that the time-limit to file a claim is three years from the date, when the person who suffered the damage learned about it and learned about the person liable to redress, but not later than 10 years from the date when the event that caused the damage occurred.

Limitations periods cannot be shortened or extended by a legal act.

Suspension

There is not any specific regulation in the act concerning the public securities offers. The principle rules of the Polish Civil Code are applicable in full extension (which do provide for the possibility of suspending limitation periods under certain circumstances).

Interruption

General rule is that the running of the limitations period is interrupted:

1) by any act before the court or other authority entitled to hear cases or enforce claims of a given kind or before the conciliatory court, performed directly either to vindicate or to establish, or to satisfy or to secure a claim;
2) by the acknowledgement of the claim by the person against whom the claim is made.

Every entity (see point 2 above) has the same time -limit in the aforementioned area.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The conflicts of law and law applicable in the particular case as general is described in the Act of Polish Private International Law, which generally refers to the aspects of international contractual obligations or non – contractual obligations. This Act is applied if it is not contrary to such EU regulations as:

- REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I)
- REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

The restitution of damages is also possible through the arbitration procedure independent of judicial system or through mediation within the litigation or independently. There are no objections to finish the legal dispute by settlement, which through the formal judicial approval can be subsequently enforced on equal principle as the judgements.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes – class action is available. The class action can be lodged by the group of minimum 10 persons, but the group must indicate their representative. The claims must present the same sort of claims and they must arise from the same facts of the case. The group of natural or legal persons is obliged to constitute a power of attorney to barrister or solicitor in order to lodge the claim to the court. The associations of investors have the legal capacity to file claims on behalf of their members, only in the case, when they are also the aggrieved party. The written permission of investors is necessary for taking the legal action on behalf or instead of them.

COMISSÃO DO MERCADO
DE VALORES MOBILIÁRIOS

25 Portugal

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

The regime of prospectus liability under Art. 11 of the Prospectus Regulation is foreseen in Art. 149 to 154, Art. 163 and Art. 238 of the Portuguese Securities Code, approved by Decree-Law No. 486/99 of 13 November and republished by Decree-Law No. 357- A/2007, of 31 October. It includes the amendments introduced by Decree-Laws No. 61/2002 of 20 March, No. 38/2003 of 8 March, No. 107/2003 of 4 June, No. 183/2003 of 19 August, No. 66/2004 of 24 March, No. 52/2006 of 15 March, No. 219/2006 of 02 November, Decree-Law No. 357-A/2007, of 31 October, Decree-Law No. 211-A/2008, of 3 November, Law No. 28/2009, of 19 June, and Decree-Law No. 185/2009 of 12 August, Decree-Law No. 49/2010, of 19 May, Decree-Law No. 52/2010, of 26 May, Decree-Law No. 71/2010, of 18 June, Law No. 46/2011, of 24 June, Decree-Law No. 85/2011, of 29 June, Decree-Law No. 18/2013, of 6 February, Decree-Law No. 63-A/2013, of 10 May, Decree-Law No. 29/2014, of 25 February, Decree-Law No. 40/2014, 18 March, Decree-Law No. 88/2014, 06 June, Decree-Law No. 157/2014, 24 October, Law No. 16/2015, 24 February, Law No. 23-A/2015, 26 March, Decree-Law No. 124/2015, 07 July, Law No. 148/2015, 09 September, Decree-Law No. 22/2016, 03 June, Decree-Law No. 63-A/2016, 23 September, Law No. 15/2017, 03 May, Law No. 28/2017, 30 May, Decree-Law No. 77/2017, 30 June, Decree-Law No. 89/2017, 28 July, Law No. 104/2017, 30 August, Law No. 35/2018, 20 July, Law No. 69/2019, 28 August, Decree-Law No. 144/2019, 23 September, Law No. 25/2020, 07 July, Law No. 50/2020, 25 August, Decree-Law No. 56/2021, 30 June, Decree-Law No. 109-H/2021, 10 December, Law No. 99-A/2021, 31 December, Decree-Law No. 31/2022, 06 May, Law No. 23-A/2022, 09 December, Decree-Law No. 27/2023, 28 April, Decree-Law No. 66/2023, 08 August (“PSC”).

The regime described in the answers to the questionnaire is based in the current version of the PSC.

The Portuguese legal framework relating to the responsibility for the information included in the prospectus is established in the PSC and corresponds to a special regulation among the general rules concerning civil liability regimes. This means that plaintiffs may choose the general civil liability regime in the following cases:

(i) Whenever it best serves the protection of their interests;

(ii) Whenever the responsible person is not one of the parties mentioned in Art. 149 or 238 of the PSC;

(iii) Whenever the infraction is not explicitly foreseen in Art. 6 of the Prospectus Regulation.

The plaintiff is not entitled to receive compensation for the same damage more than once.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

In the case of a prospectus published when securities are offered to the public, according to number 1 of Art. 149 of the PSC, "*The following are liable for damages caused by the non-compliance of the contents of the prospectus with the provisions of Article 7 and other legal requirements*":

a) The offeror
b) The issuer;
c) The guarantor, where applicable;
d) The members of the offeror's and the issuer's management body, as applicable, in office on the date of approval of the prospectus;
e) (Repealed.)
f) The members of the offeror's and the issuer's supervisory body, as applicable, in office on the date of approval of the prospectus;
g) (Repealed.)
h) The offeror's statutory auditor in office on the date of approval of the prospectus;
i) Other persons who agree to be identified in the prospectus as responsible for any information, forecast, opinion or study included therein."

In the case of a prospectus published when securities are admitted to trading, Art. 238 of the PSC states that Art. 149 to 154 "*shall apply mutatis mutandis to the prospectus for the admission of securities on a regulated market*" and that some specificities in relation to the persons who are liable. According to Art. 238(3)(a) the following parties can be held responsible:

b) The issuer;
d) The members of the offeror's and the issuer's management body, as applicable, in office on the date of approval of the prospectus;
f) The members of the offeror's and the issuer's supervisory body, as applicable, in office on the date of approval of the prospectus;
h) The offeror's statutory auditor in office on the date of approval of the prospectus;
i) Other persons who agree to be identified in the prospectus as responsible for any information, forecast, opinion or study included therein."

Q3. Are the persons under the previous question subject to joint and/or several liability?

According to Art. 151 of the PSC "*If several individuals are liable for the damage caused, their liability is joint and several*". It is worth mentioning that in accordance with Art. 150 of the PSC, the offeror and the issuer (as the case may be) may be liable, irrespective of fault if any of the persons mentioned in article 149(1), (d), (f), (h) and (i) are liable("strict liability", in the sense that once the damage occurs there is no need to prove their fault or intention

to cause the damage for them to be considered liable). When read in conjunction, these rules imply that in the end, the offeror and the issuer are liable for any damage deriving from a fail to disclose all the information in an appropriate manner and that at least their responsibility is always joint and several (except where the guarantor is liable).

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

According to Art. 149(1) of the PSC, parties who can be held responsible for information contained in a prospectus are liable for damages caused by the non-compliance of the contents of the prospectus with the provisions of Art. 7 of the PSC (e.g. whenever the information contained in the prospectus is not complete, true, current, clear, objective and lawful) and other legal requirements (namely Art. 6 of the Prospectus Regulation according to which prospectuses should 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 of any guarantor, (…) the rights attaching to the securities (…) and the reasons for the issuance and its impact on the issuer*".

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Without prejudice to the offeror's and issuer's strict liability in accordance with Art. 151 of the PSC (please refer to the answer 3 above) – the persons that can be held responsible are liable for acting with fault, *i.e.*, willfully or negligently.

According to Art. 149(1) of the PSC, these persons are presumed to have acted with fault ("*but may prove they acted without fault*"), paragraph 2 also states that "[f]*ault shall be assessed according to high standards of professional diligence*".

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Anyone who is able to demonstrate to have suffered a damage caused by the non-compliance with the contents of the prospectus is entitled to sue for damages since it is possible to demonstrate the causality between the failure to comply with the mandatory content of the prospectus and the damage suffered.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

According to Art. 342(1) of the Portuguese Civil Code, the plaintiff must prove all constitutive facts of the alleged right. This corresponds to proving each of the elements underlying the civil liability of the defendant (i.e. the act/omission; its' illegality; the fault

or negligence, the damage and the causality between the damage and the action). However, the plaintiff does not have to prove that the respondent acted with fault as Art. 149(1) of the PSC enshrines a presumption of guilt.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Under Art. 342(2) of the Portuguese Civil Code, the person against whom the invocation is made must prove the deterring, modifying or extinguishing the right invoked by the plaintiff. This entails proving that at least one of the elements underlying civil liability has not been met. As Art. 149(1) of the PSC enshrines a presumption of guilt, the defendant must prove to have acted without fault.

According to Art. 149(3) of the PSC liability is excluded where the defendant can prove that the addressee "*was or should have been aware of the defect in the contents of the prospectus at the date of issue of its contractual statement or when the respective withdrawal was still possible*". Pursuant to paragraph.4 of the same article "*Liability shall also be excluded if the damage provided for in paragraph 1 results only from the summary of the prospectus, or any translation thereof when read together with the other documents that make up the prospectus, contains misleading, inaccurate or inconsistent references or does not provide key information necessary for investors to determine whether and when to invest in the relevant securities"*.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

According to Art. 5 of the Portuguese Code of Civil Procedure it is up to the parties to allege the essential facts. In addition to the facts articulated by the parties, the judge shall also consider: (i) instrumental facts that result from evidentiary proceedings, (ii) facts that complement and substantiate the parties' allegations (provided they have had the opportunity to comment on them) and (iii) notorious facts (facts that are of common knowledge) as well as those of which the court is aware by virtue of the exercise of its functions.. The facts mentioned in (iii) do not require proof or allegation (Art. 412 of the Portuguese Code of Civil Procedure).

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Pursuant to Article 152 of the PSC:

"1. Compensation should place the injured parties in the exact situation they would be in had the contents of the prospectus, at the time of the acquisition or disposal of the securities, been in accordance with the provisions of Article 7.

2. The amount of the due compensation shall be reduced to the extent that the persons liable prove that the damage was also due to reasons other than the lack of information or forecast included in the prospectus".

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Under Art. 154 of the PSC, the provisions regarding responsibility related to the prospectus may not be set aside or modified by any legal transaction.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

In the case of a prospectus published when securities are offered to the public, Art. 153 states that the right to compensation should be exercised "*within six months after becoming aware of the defect in the contents of the prospectus, and shall cease, in any case, within two years of the prospectus expiry date*".

In the case of a prospectus published when securities are admitted to trading, Art. 238(3)(b) states that the "*right to compensation shall be exercised within six months of becoming aware of the defect in the prospectus, or its amendment, and shall cease, in any case, within two years of the disclosure of the admission prospectus or the amendment containing the non-conforming information or forecast*".

The time limit to file the claim can be suspended or interrupted according to general rules set in the Civil Code (Articles 318 to 322 and 328 to 333, respectively).

All the abovementioned persons (please refer to question 2) are subject to the same time limit.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

General provisions regarding conflicts of law foreseen in the Civil Code apply: when the basis of liability at stake is contractual – typically in a relation between the offeror and the offeree – the obligation is governed by the law chosen by the parties (according to Rome Convention on the Law Applicable to Contractual Obligations and Art. 41 of the Civil Code).

In circumstances where the title of imputation of civil liability is not contractual – e.g. civil liability of the auditor Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applies. In this case the law applicable shall be the law of the country in which the damage occurs, or if the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country; or the law of the country to which the tort/delict is manifestly more closely connected if that is clear from all the circumstances of the case.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

A judicial proceeding before a civil court is the regular way to receive restitution.

Another possible way which is foreseen in Art. 33 of the PSC, which admits the conflict to be settled by means of a voluntary mediation service (organised by the CMVM),intended for the mediation of conflicts between retail investors, on the one hand, and financial intermediaries, investment advisers, management entities of regulated markets or MTFs or issuers, on the other.

The mediators are designated by the CMVM's Executive Board, which may choose individuals from its own organisation or other individuals of recognised repute and competence. The choice of the mediation proceeding instead of a judicial proceeding is optional for the parties involved and does not withdraw the right to appeal before a judicial court.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes. According to Art. 31 of the PSC:

> "1. The following persons shall be entitled the right to file a class action for protecting analogous individual interests or collective interests of retail investors in financial instruments:
>
> **a)** Retail investors;
>
> **b)** Investor protection associations that satisfy the requirements detailed in the subsequent Article;
>
> **c)** Foundations aimed at protecting financial instrument investors.
>
> ***2.*** The judgment obtained shall specify the entity in charge of receiving and managing the compensation due to securities holders who are not individually identified, by designating, as applicable, guarantee funds, investor protection associations, or one or various of the shareholders identified in the action.
>
> ***3.*** Any unpaid compensation based on a statute of limitations or on the impossibility of identifying the respective securities holders, shall revert to:
>
> **a)** The guarantee fund of the activity giving rise to the compensation;
>
> **b)** In the absence of the guarantee fund described in the previous subparagraph, the investor compensation scheme".

26 Romania

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

No. The national civil law (Civil code) does not contain express provisions related to prospectus liabilities.

Capital market legislation

The capital market legislation (*e.g.- Law no 24/2017 on issuers of financial instruments and market operations, republished, with subsequent modifications and additions*) contains provisions stating the responsible persons for non-compliance with the legal provisions regarding the reality, precision and accuracy of the information included in a prospectus and any supplement to it, in accordance with art. 11 para. (1) first sentence of Regulation (EU) 2017/1129, depending on the role and responsibilities conferred by law and/or convention.

Also, the Law no 24/2017 states that civil liability shall not arise for any person solely on the basis of the summary of the prospectus in accordance with Article 7 of Regulation (EU) 2017/1129 (…) including a translation thereof, except in the following cases:

a) the summary is misleading, inaccurate or inconsistent with the other parts of the prospectus; or

b) the summary does not provide, in relation to the other parts of the prospectus, essential information to help investors decide whether to invest in such securities.

According to the Law no 24/2017, the public offer carried out without the approval of the prospectus or in breach of the conditions established by the approval decision is null and void and entails the application of the sanctions provided by law for those at fault. This requirement applies only to offers for which the publication of a prospectus is mandatory according to Regulation (EU) 2017/1129, given that the Law no. 24/2017 provides that the public offers for sale of securities regulated by this law are the public offers for sale provided for by Regulation (EU) 2017/1129, as well as by the European regulations issued in relation to Regulation (EU) 2017/1129, which apply accordingly.

The secondary legislation states that A.S.F. may ascertain the conduct of the public offer without the approval of the prospectus or with non-compliance with the conditions established by the approval decision and implicitly the proper application of the provisions of the Law no. 24/2017. Any interested person may apply to the competent court in order to repeat the titles, respectively the funds received, as well as to request damages.

Mention should be made that we have no information that a plaintiff reclaimed civil liability related to a prospectus in practice.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror,

guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Civil code

No. The national civil law (Civil code) does not contain express provisions related to specific parties who can be held responsible for information in a prospectus

Capital market legislation

According to the Law no. 24/2017, the following persons are responsible for non-compliance with the legal provisions regarding the reality, precision and accuracy of the information included in a prospectus and any supplement to it, in accordance with art. 11 para. (1) first sentence of Regulation (EU) 2017/1.129, depending on the role and responsibilities conferred by law and/or convention, as the case may be:

a) the issuer;

b) members of the board of directors, directors, members of the supervisory board, of the executive board or of other bodies or other functions assimilated to them of the issuer;

c) the offeror, if it is different from the issuer;

d) members of the board of directors, directors, members of the supervisory board, of the board of directors or of other bodies or other functions assimilated to them of the offeror;

e) the founders, in case of public subscription;

f) the person applying for admission to trading, if he/she is different from the issuer or the offeror;

g) the guarantor;

h) the financial auditor/audit firm that audited the financial statements, whose information was taken over in the prospectus and only with regard to that information;

i) the intermediary of the offer or, as the case may be, the member of the intermediary syndicate responsible;

j) any other person, including the intermediaries of the offer, who has accepted in the prospectus the responsibility for any information, study or evaluation inserted or provided for in the prospectus. In this case, the person concerned shall be liable only for the reality, accuracy and accuracy of the information, study or evaluation expressly indicated by the person and only to the extent that the information, study or evaluation has been included in the prospectus in the form and context expressly agreed by the person responsible.

The following persons are liable, regardless of the fault, and are jointly and severally liable:

a) the issuer, if any of the persons referred to in para. (1) letter b) is responsible;

b) the offeror, if any of the persons referred to in para. (1) letter d) is responsible.

The above provisions shall also apply accordingly in relation to the responsibility for the information included in a registration document or universal registration document, within the meaning of Article 11 para. (3) first subparagraph of Regulation (EU) 2017/1.129, which shall apply accordingly.

The secondary legislation (ASF Regulation no 5/2018) states that the prospectus may be drawn up only by the offeror, in which case the responsibility for the reality, precision, accuracy and completeness of the information presented therein lies exclusively with him.

Q3. Are the persons under the previous question subject to joint and/or several liability?

Civil law -Not applicable, since the specific answer at question 2 is no.

Capital market law – please see the answer to question 2

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Please, see the explanation in Question 1

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Civil law -Not applicable, since the answer at question 1 is no.

Capital market law – No specific provisions (please see the answer in question 1)

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Any person who considers himself damaged related to a prospectus can sue for damages. The law does not contain specific provisions nominating the person who can sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries).

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

There are no specific provisions regarding circumstances that must be proven by the plaintiff. Depending on the subject of the request, the plaintiff has the obligation to provide proofs that: - his rights were damaged, - there is a fault of the respondent and - there is a causal link between them.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the

price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The respondent has the ability to avoid the liability by demonstrating that the three elements mentioned at 7 have not been met. Mention should be made that the judge has the final decision taking into consideration the proofs provided by the parties.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The law does not contain specific provisions regarding the quantification of compensation. The judge will decide the quantum of the damage to be recovered (material damage).

According to provisions of ASF Regulation 5/2018, the offeror and/or the intermediary involved are liable for the cancellation of the offer as a result of non-compliance with the normative acts in force and will be obliged to reimburse the amounts advanced by the investors, as well as an interest related to the inflation index communicated by the National Institute of Statistics for the respective period within 10 days from the date of cancellation of the offer.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

Taking into consideration the provisions of the capital market legislation mentioned in the answer to question 2, the persons mentioned therein can limit their liability to the information provided by them and included in the prospectus.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

According to the provisions of the capital market law, the right to receive damages shall be exercised within maximum 6 months from the date when the shortcomings of the prospectus have been acknowledged, but no later than 1 year from the date when the public offer has been closed.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

The capital market law does not contain specific provisions regarding the civil liabilities of prospectuses related to international public offerings or solving conflicts of law. Therefore, the general conflict of law rules apply.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of

losses? If other, please explain.

Yes. An investor damaged in relation with a prospectus can receive the restitution of his losses only by initiating a procedure before a court.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

~~Yes~~. No An association of investors can file claims of behalf on their members.

Note - The prospectus regime is regulated by the capital market law.

The prospectus is a special type of contract which is subject to the capital market law. Any breach that can make a prospectus liability arise is subject to a claim which will be solved by the capital market authority (which administrates the capital market law). If the claimant feels damaged by the capital market authority's decision, he can sue that decision.

However, the person who feels damaged related to a prospectus can bring the case directly to the Court. The answers above are without prejudice to the decisions that Court may take.

The Law no 24/2017 contains also provisions regarding administrative sanctions and other administrative measures for the infringements of the relevant provisions of PR, such as for the infringements of Article 11 paragraph (1) and (3)) (administrative liability).

27 Slovakia

QUESTIONS – Answered by the National Bank of Slovakia

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

The Slovak legal system in general regulates two civil liability regimes which could relate to breach of prospectus liability. The first one is regulated by the Civil Code and the second one by the Commercial Code. The Civil Code regulates the two forms of liability for damage: contractual liability and non-contractual liability. The Commercial Code has the status of speciality to the Civil Code and regulates mostly the contractual liability regime in the commercial relationships. Only a few parts of this regime are supplemented by the general regulation in the Civil Code. The non-contractual regime of liability is regulated mostly in the Civil Code. There are some exemptions. The regulation in the Commercial Code is relevant for liability arising out of breach of duties established by the Commercial Code. According to the general rule (called also the general liability regime) in the Civil Code everyone is responsible for the damage he caused by the breach of legal obligation unless otherwise stated. This rule is *lex generalis* and shall apply if the contractual liability arising from the Commercial Code is not applicable. In the case of contractual liability regime stipulated by the Commercial Code there is stated that whoever breaches an obligation arising from a certain contractual relationship shall compensate the damage thus caused, unless it is proven that the said breach was caused by the circumstances excluding responsibility. Excepting the above-mentioned rules, our legal system regulates also the other forms of protection of consumers (e.g. Act on protection of consumers, Act .on the consumer protection in connection with the distance financial services and on the amendment of certain acts).

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Responsibility for the information given in a prospectus bears the issuer or its statutory, management or supervisory bodies, the natural person or legal person which offers securities to the public the person asking for admission to trading on a regulated market, the person guaranteeing the redemption of the securities or the yields thereon, or the person who has drawn up the prospectus. The persons responsible shall be clearly identified in the prospectus by, in the case of natural persons, their names and functions or, in the case of legal persons, their names and registered officers. The prospectus shall also include declarations by such persons that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission

likely to affect its import for an informed assessment of the issuer or of the securities to be offered to the public or to be admitted to trading on a regulated market.

According to the Commercial Code, the company issuing the prospectus can hold its directors (who are responsible for the prospectus and thus determined in the prospectus) liable for the damages - the directors are subject to joint liability.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The persons under the previous question are normally subject to joint liability. In justified cases the court may decide about several liability of them.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Persons are responsible for untrue and faithless information presented in a prospectus and they are also responsible for offering of securities to the public without having published a PR compliant prospectus. Such persons shall be liable for any damage caused in the event that this information is inaccurate or false. But the civil liability shall attach also to the person responsible for the summary or its translation if the summary contains information that is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Basically, the negligence (also the intent) is sufficient for liability. In the context of civil liability, the Slovak legislation doesn`t know the term „strict liability“.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

In this realm, the entitled party is the subject to whom the prospect was given. It could be an original purchaser in the primary market or an investor in the secondary market.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff must prove the omission of material information, the incorrectness, the untruthfulness information, the inaccuracy and misleading character of information or that the prospectus was not published and also the damage caused by this fact. In that case, fault is assumed.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the

prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

The defendant has to prove, that the damage isn´t caused by his fault (not even negligently).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

The general rule states, that the judge considers only facts presented by the parties, but where it is justified by the aim of equity, the judge is entitled to discover fact without being presented by a party.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The damage shall be compensated by the way of money, if however, the entitled party so requests, and if it is possible to common practice, then the damage shall be compensated by restitution to the former state. The compensation shall be provided for the actual damage and for the lost profits. Compensation shall not, however, be provided for damage which exceeds the amount (damage), which the liable party envisaged or could have envisaged - as a possible result of the breach of its obligation at the outset of the contractual relationship – with regard to all the facts which the liable party was conscious of, or should have known of, if all due care was taken. The injured party may demand - instead of the profit actually lost- compensation for profits usually attained in fair business conduct under the conditions similar to those of the breached contract in the injured party`s line of business.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

According to the Commercial Code, whoever breaches an obligation arising from a certain contractual relationship shall compensate the damage thus caused, unless it is proven that the said breach was caused by the circumstances excluding responsibility. An obstacle which occurs regardless of the liable party`s will, and which prevents this party from performing its obligation, shall be deemed to fall under the circumstances excluding responsibility - if it cannot be reasonably presumed that the liable party could have prevented or overcome such an obstacle or its effects - and at the outset of the obligation could not have anticipated such an obstacle. An obstacle, which occurs only during the time when the liable party was in delay with the performance of its obligation, or arises from the party`s financial situation, shall not exclude the party’s responsibility.

If the liability for damage arises from the Commercial Code, the court does not have the power to reduce the damage, not even in the cases worth special consideration. There is no possibility to limit the liability. The Commercial Code also forbids any agreements concluded between the company and its directors regarding the limitation of their liability for the caused damages.

If the liability arises from the provisions of the Civil Code, in cases worth special consideration, the court should reduce the damage, taking into account in particular how the damage occurred, as well as personal and financial circumstances of a natural person who did cause it, taking into account the situation of the individual who was harmed. The reduction can not be performed in case of damage caused intentionally.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Yes. According to the Civil code, the right to compensation of damage shall become statute-limitated in two years from the day when the damaged person learnt of the damage and of the liable person. The right to compensation of damage shall become statute limitated no later than in three years and, as for damages caused by intention, in ten years from the day when it came to the event from that the damage arose; this rule shall not apply to damages to health.

According to the Commercial Code, the right to compensation of damage has to be exercised within the four years period since the damaged party acknowledged the caused damage and of the liable person and no later than ten years since the breach of contractual obligation (since the damage occurred).

As regard the suspendation or interruption of time limit, the Civil code enacted that if the creditor exercises his right with a court or other competent authority during the limitation period and properly continues in the commenced proceedings, the limitation period shall not run from the moment of the exercise during the proceedings. This rule shall also apply to a finally and conclusively awarded right in case of that an enforcement of a decision was applied for with a court or other competent authority. Moreover, each responsible person mentioned above are subject to these rules.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

According to the Slovak legislation, the competent law which deal with the issues on civil liability of prospectuses related to international public offerings is the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (and other EU legal acts) and also the Act on International Private and procedural law (e.g. Tort claims shall be governed by the law of the place where the damage or the harmful event occurred).

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Except the civil proceedings, there are these three options to attain the restitution of losses:

a. out-of-court settlement,
b. arbitration,
c. mediation.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

Yes. ACT No. 261/2023 on actions for the protection of the collective interests of consumers and on amendments and supplements to certain acts regulates the legal relations related to the filing of actions for the protection of the collective interests of consumers and the rules for the application of this mechanism. It is a transposition of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4. 12. 2020).".

An authorised person may file an action for the protection of the collective interests of consumers. An authorised person is a legal entity that carries out activities aimed at promoting and protecting the interests of consumers and operates in the non-profit sector.

28 Slovenia

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

No.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

Yes. Persons who are liable for the information contained in a prospectus are stated in article 81/1 of ZTFI-1 (ZTFI-1stands for Zakon o trgu finančnih instrumentov – Market in Financial Instruments Act) and they are responsible for the content of whole prospectus.

Article 81

(Liability relating to the prospectus)

(1) The prospectus and any supplement thereto shall contain information on all the persons responsible for the accuracy and completeness of the information contained in the prospectus and any supplement thereto, specifically at least the following depending on the purpose of compiling the prospectus:

1. the issuer;
2. the members of the issuer's management or supervisory bodies,
3. the offeror or the person asking for admission of securities to trading on a regulated market, if the offeror or the person asking for admission of securities is not at the same time the issuer,
4. the potential guarantor for the liabilities arising from securities.

Q3. Are the persons under the previous question subject to joint and/or several liability?

The persons referred to in points 1, 3 and 4 under previous question are subject to joint liability.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

Persons, responsible for information included in the prospectus, are jointly liable for damage caused to the investor as a result of incorrect or incomplete information in the prospectus. Persons, who actually sell securities or require the admission of securities to trading on a regulated market without prior publication of prospectus are liable for

described actions and that can be issuer, offeror or person demanding admission of securities to trading on the regulated market.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

Strict liability.

Article 81 (ZTFI-1)

(3) The persons referred to in points 1, 3 and 4 of paragraph one of this Article shall be jointly and severally liable to the investor for any damage caused to the investor as a result of incorrect or incomplete information contained in the prospectus, unless they are able to prove one of the following exonerating grounds that:

1. they acted with all due professional care in the drawing up of the prospectus and in the verification of the accuracy and completeness of information contained in the prospectus,
2. upon the purchase of securities, the investor knew about the inaccuracy or incompleteness of information contained in the prospectus,
3. the investor had the right to withdraw from accepting the offer of securities to the public pursuant to Article 23(2) of Regulation (EU) 2017/1129 and failed to exercise this right,
4. individual pieces of information were left out of the prospectus in accordance with Articles 18(1), (2) and (3) of Regulation (EU) 2017/1129, or
5. it concerns information is which is not likely to be considered by a reasonable investor as important when deciding on the purchase of securities.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

First buyers on the primary market and subsequent investors in the secondary market are entitled to sue.

Article 52 (ZTFI-1)

(Investor)

Investor means a buyer of securities or a person to whom an offer for the purchase of securities is addressed.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

Real damage (for example much lower price of share after initial offer because some important fact of the issuer was not included in the prospectus) caused because of incomplete or incorrect information in prospectus.

Article 81/3 of ZTFI-1:

The persons referred to in points 1, 3 and 4 of paragraph one of this Article shall be jointly and severally liable to the investor for any damage caused to the investor as a result of incorrect or incomplete information contained in the prospectus, unless they are able to prove one of the following exonerating grounds that:

1. they acted with all due professional care in the drawing up of the prospectus and in the verification of the accuracy and completeness of information contained in the prospectus,
2. upon the purchase of securities, the investor knew about the inaccuracy or incompleteness of information contained in the prospectus,
3. the investor had the right to withdraw from accepting the offer of securities to the public pursuant to Article 23(2) of Regulation (EU) 2017/1129 and failed to exercise this right,
4. individual pieces of information were left out of the prospectus in accordance with Articles 18(1), (2) and (3) of Regulation (EU) 2017/1129, or
5. it concerns information which is not likely to be considered by a reasonable investor as important when deciding on the purchase of securities.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Circumstances in above mentioned Article 81/3 of ZTFI-1.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Article 81 (ZTFI-1)

(5) If the information contained in the prospectus is incomplete or inaccurate, it shall be deemed that the damage caused to the investor by reducing the value of their investment in securities in view of the purchase price paid is in a causal connection with such incomplete or inaccurate information unless the responsible person is able to prove that there is no such causal connection.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

They are mandatory.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When

does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Obligations Code

Compensation Claims
Article 352

(1) Compensation claims for damage inflicted shall become statute-barred three years after the injured party learnt of the damage and of the person that inflicted it.

(2) In each case the claim shall become statute-barred five years after the damage occurred.

Claims between specific persons
Article 358

The statute-barring period shall not run:

1. between spouses
2. between parents and children, as long as the parental right lasts
3. between a ward and the guardian thereof or between a ward and the care authority, as long as the guardianship lasts and as long as bills are not issued
4. between persons cohabiting in an extra-marital union

Insurmountable Obstacles
Article 360

The statute-barring period shall not run while for reason of insurmountable obstacles the creditor is unable to demand the performance of the obligation through the court.

Influence of grounds for suspension on statute-barring period
Article 361

(1) If a statute-barring period cannot run because of any lawful grounds, it shall begin to run when such grounds cease.

(2) If the statute-barring period began to run before the grounds for which it was suspended arose, it shall resume when such grounds cease; the time that passed before the suspension shall be counted towards the period stipulated by the statute of limitations.

Claims by persons with incapacity to contract
Article 362

(1) The statute-barring period shall run against minors and other persons with incapacity to contract, irrespective of whether they have a lawful representative.

(2) However the statute-barring of a claim by a minor without a representative or by any other person with incapacity to contract without a representative may not occur until two years have passed since such person gained full capacity to contract or obtained a representative.

(3) If a period of less than two years is stipulated for the statute-barring of any claim and the creditor is a minor without a representative or any other person with incapacity to contract without a representative the statute-barring period for the claim shall begin to run

when the creditor gains capacity to contract or obtains a representative.

Statute-barring of claims by persons engaged in military service
Article 363

Statute-barring against a person engaged in military service or on military exercises, performing alternative civilian service or training for tasks in the police reserves may not occur until three months have passed from the completion of military service, the end of the military exercises, the completion of alternative civilian service or the completion of training in the police reserves.

Acknowledgement of debt
Article 364

(1) Statute-barring shall discontinue when the debtor acknowledges the debt.

(2) A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security.

Filing of suit
Article 365

Statute-barring shall discontinue with the filing of a suit or any other act by the creditor against the debtor before the court or other relevant authority to determine, secure or collect a claim.

Statute-barring period in event of discontinuance
Article 369

(1) After discontinuance the statute-barring period shall begin to run anew, and the time that passed prior to the discontinuance shall not count towards the period stipulated by the statute of limitations.

(2) A statute-barring period discontinued by the debtor's acknowledgement shall begin to run anew from the acknowledgement.

(3) If the statute-barring period discontinued with the filing of a suit or any other act by the creditor against the debtor before the court or any other relevant authority to determine, secure or collect a claim, by the exercise of an offset of the claim in a dispute or by the registration of the claim in any other procedure it shall begin to run anew on the day the dispute is completed or is otherwise settled.

(4) If the statute-barring period discontinued with the registration of the claim in bankruptcy proceedings it shall begin to run anew on the day such proceedings are completed.

(5) This shall also apply if the statute-barring period discontinued with a petition for compulsory execution or security.

(6) A statute-barring period that begins to run anew after discontinuance shall end when the time stipulated by the statute of limitations for the discontinued statute-barring period passes.

Article 403

(1) If the statute-barring period is not running or is discontinued against one debtor it shall continue to run for the other joint and several debtors and may reach completion; however a debtor against whom the obligation has not become statute-barred and that must perform the obligation shall have the right to demand that the other debtors against whom the obligation has become statute-barred each reimburse their part of the obligation to such debtor.

(2) The waiver of completed statute-barring shall have no effect against the other debtors.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

Private International Law and Procedure Act:

Article 1

(1) This Act contains rules for determining the law that shall be used in all personal, family, social labour, property and other civil law relations with an international element.

Article 30

(1) For non-contractual indemnity obligation, the law of the place where the offense was committed should be valid. If it is more favorable for impaired person, a place where the effect has taken place is valid instead of the law of the place where the offence was committed, but only if the place of the consequences has been and had to be foreseen by the person responsible for dispute.

(2) If the law determined under the first paragraph of this Article is not closely related to dispute and there is obvious connection with another law, the application of that law should be valid. The same law also governs the jurisdiction of the courts and other authorities of the Republic of Slovenia in cases with an international element, as follows:

Article 48

(1) The Court of the Republic of Slovenia has jurisdiction in case the defendant has his residence or a registered seat in the Republic of Slovenia.

(2) If the defendant's residence or his registered seat are not in the Republic of Slovenia nor in any other country, the Court of the Republic of Slovenia has jurisdiction, if the defendant's temporary residence is in the Republic of Slovenia.

Article 49

(1) If the same charge applies to more than one defendant who are in legal community or whose obligations relate to the same legal and factual basis, the Court of the Republic of Slovenia has jurisdiction also in case where one of the defendants has a permanent address or a seat in the Republic of Slovenia.

Article 55

(1) In matters of non-contractual indemnity obligation the Court of the Republic of Slovenia has jurisdiction even in cases when a damage has been committed in the

territory of the Republic of Slovenia of if harmful consequence has occurred in the territory of the Republic of Slovenia.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

Arbitration Act:

Article 1

(1) This Law applies to arbitration with seat in Slovenia regardless of the fact whether parties are foreign or domestic persons (hereinafter: domestic arbitration).

Article 4
(subject of arbitration and the parties of arbitration)

(1) Any claim for indemnification could be subject of arbitration agreement. Other claims may be the subject of an arbitration agreement only if parties to the claim can agree on settlement.

(2) Any natural or legal person may enter an arbitration agreement, including the Republic of Slovenia and other entities of public law.

Article 5
(agreement on jurisdiction of foreign arbitration)

Citizens of the Republic of Slovenia and legal persons with registered seat in the Republic of Slovenia may agree to settle the dispute decided by foreign arbitration, except in cases where the decision over disputes is exclusively a competence of the competent court in the Republic of Slovenia.

ARBITRATION AGREEMENT
Article 10
(definition and form of arbitration agreement)

(1) An arbitration agreement is an agreement of parties to submit to arbitration all or some disputes which have already originated among them or which may arise in connection with certain contractual or non- contractual legal relationship. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of an independent agreement.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

No.

29 Spain

Civil liability (restitution for losses from the author of the breach)

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

Article 38 of Law 6/2023 of 17 March on the securities markets and investment services creates a specific statutory regime relating to prospectus civil liability. This regime is further laid down in articles 69-74 of the Royal Decree 814/2023, of 8 November, which partially implements said law in relation to the admission to trading of securities in regulated markets, public offerings, and the prospectus required for these purposes. Answers to this questionnaire are based on this regime and not on the general rules of the Spanish civil law (e.g. tort or contractual law).

Nevertheless, it should be noted that in the current litigation practice in Spain, contractual civil remedies established in the Spanish Civil Code, particularly the voidance action (*acción de nulidad por error-vicio en el consentimiento,* article 1300 of the Spanish Civil Code), have somehow overshadowed the importance of the prospectus liability regime, because the voidance action, when successful, always enables the claimant to get back the full price paid or subscribed in exchange of the securities. It also allows a longer time limit to file the claim compared to the prospectus liability regime (ie: four years, instead of three years, art. 1301 of the Spanish Civil Code). Technically, both remedies are different in their scope and merits, but might be very often filed simultaneously in the same statement of claims, and the claimant is able to prioritise one remedy as the main petition, the other one being examined only by default of the former petition.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only for certain parts of it).

The issuer, offeror, or the person asking for the admission of the securities to trading on a regulated market, as the case may be, is responsible for the whole content of the prospectus. Also, the directors of these legal persons can be held liable in accordance with the Spanish commercial law.

The guarantor is liable for the information required by annex 21 (guarantees) of Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004, which this party has drawn up.

In addition, other persons can be liable if they voluntarily accept liability and the prospectus expressly indicates that they consent to be liable or persons who have authorised the content of the prospectus and this is mentioned in the prospectus. In both cases, these persons can assume responsibility for certain parts of the prospectus. This would include for example an independent expert who has issued a report which is mentioned in the prospectus.

Finally, according to Royal Decree 814/2023, a statutory claim may also be brought against the lead manager but only if the following two conditions are met:

- the prospectus must be approved by the CNMV and relates to shares which are going to be admitted to trading on a regulated market for the first time and have been previously the object of a public offer of shares directed to retailers; and
- it's due diligence exercise on whether the information regarding the securities or the transaction included in the securities note is not false and does not omit relevant data required by the applicable legislation was not carried out according to the generally accepted market standard.

Q3. Are the persons under the previous question subject to joint and/or several liability?

If more than one person is responsible for the same content of the prospectus, such persons would be jointly and severally liable in relation to the claims brought forward by investors.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

The responsible person is liable for statements in the prospectus which are untrue or inaccurate in a material aspect or omission of material information.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

The degree of fault must be either intent or negligence.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

Any person who has acquired in good faith (either in the primary market or in the secondary market) any of the securities to which the prospectus relates.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the

losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The plaintiff must prove that

- the securities were acquired during the prospectus validity period
- the prospectus omitted material information (according to Regulation 2017/1129 of the European Parliament and the Council of 14 June 2017) or contained untrue statements;
- the deficiency in the prospectus was not publicly rectified by the issuer through a prospectus supplement or was not publicized in the market before the plaintiff acquired the securities;
- the investor suffered a damage and the causal link between the damage and the omission or misleading information.

The plaintiff does not need to prove the fault of the responsible person.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

Even if the person suing the responsible person has proved all the facts set out in the previous answer, the latter will have a defence if it proves any of these circumstances referred to the moment the prospectus is published:

- it acted with due diligence in order to ensure that the information included in the prospectus is accurate and that it does not contain material omissions; or
- the relevant information which omission caused the damage was correctly omitted

This exemption will not be applied when the liable person, after the approval of the prospectus, knew the falsehood or the omission of the information and did nothing in order to diligently inform investors during the validity of the prospectus.

In addition to the above, the respondent, in order to avoid liability, can reject any of the arguments on which the plaintiff bases its action (mentioned in the answer to question 7).

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of). If yes, please explain.

No. Facts that were not raised by the parties cannot be taken into consideration by the court (excluding those of which the court may have knowledge because they derive from the proceedings e.g. implied from the documents, statements of witnesses, etc.) or for being notorious or public.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

The law does not provide specific provisions on the quantification of the compensation. The law only refers to damages suffered as a result of the faulty prospectus. Therefore, the claimant, if successful, would be entitled to recover its actual loss, to the extent positively demonstrated.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The legal provisions on civil liability related to prospectus are mandatory. Therefore, it is not possible to exclude, proportionate, or limit liability (except in the cases specified in the answer to Q.2).

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

Yes, there is a time limit of three years.

It can be interrupted by filing a claim before the court or out of court; also, the prescription period would be suspended if the responsible person admits the wrongdoing.

The prescription period starts running when the claimant is deemed to have been able to know the wrongdoing.

Every responsible person is subject to the same time limit.

Q13. According to your jurisdiction, what will be the competent law to deal with issues on civil liability of prospectuses related to international public offerings? Is there any provision to solve conflicts of law?

There are no specific provisions in the securities markets law stipulating the competent law for civil liability matters regarding prospectuses related to international public offerings or to solve conflicts of law. Notwithstanding, there is a general regime to solve conflicts of law applicable to civil liability matters to be assessed on a case-by-case basis.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

If a criminal offence has been committed, the action to receive restitution of losses can be jointly exercised with the criminal action before a criminal court.

It is also possible to claim against the public administration through an administrative procedure, when the damage has been caused as a result of the functioning of the public service.

Arbitration is a valid mechanism of dispute resolution with respect to prospectus liability. Nevertheless, a binding arbitration clause in a prospectus for retail investors should be compliant with Ley 7/2017, of 2 November (transposition of Directive 2013/11, of 21 May 2013, on alternative dispute resolution for consumer disputes).

Out-of-court settlements are also possible.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

When several actions have the same cause and are based on the same facts, they can be aggregated into the same procedure and all of them will be processed jointly.

Investors are considered as “consumers of financial services”, and in order to protect their collective interests, article 11 of Spanish Law of Civil Procedure states that without prejudice to the individual rights of people concerned, the legal associations of consumers have the right to judicially defend the rights and interests of their associates and of themselves.

30 Sweden

Civil liabilities

Q1. Do you have several civil liability regimes (tort, contractual, protection of consumers of financial instruments, other) out of which prospectus liability can arise? If yes, please provide separate explanations for each of these civil liability regimes under the relevant following questions.

The Swedish Companies Act contains specific liability provisions for founders, board members, managing directors, auditors, general examiners and special examiners in a company that has prepared and issued a prospectus or an exemption document in accordance with article 1.4 g and 1.5 first subparagraph f of the Prospectus Regulation1. According to the Swedish Companies Act Chapter 29 Section 1 and 2, a founder, board member, managing director, auditor, general examiner or special examiner shall compensate anyone who suffers damages due to a breach of the provisions in the Prospectus Regulation, including the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

Potential prospectus liability for other persons (including an issuer) than the ones mentioned above, will be governed by general tort principles and the relevant provisions of The Swedish Tort Liability. According to the Swedish Tort Liability Act, pure economic loss (i.e. economic loss arising without any person having sustained personal injury or damage to property) that arises in a non-contractual relation is recoverable only if the loss is caused by the commission of a crime. There are considerable uncertainties as to whether damages caused by breaches of prospectus provisions are compensable on a non-contractual basis.

Q2. Does your national law prescribe specific parties who can be held responsible for information contained in a prospectus (e.g. issuer, the issuer's directors, offeror, guarantor, lead manager, distributors, auditor, experts, parent company of the issuer or other shareholders)? If yes, please provide details (in particular, please indicate if the responsible persons would be liable for the whole content of the prospectus or only certain parts of it).

Founders, board members, managing directors, auditors, general examiners and special examiners of an issuer may be liable pursuant to the relevant provisions of the Swedish Companies Act. In the light of the fact that the board of directors is the relevant corporate body responsible under Swedish law for drawing up a prospectus, it is most often relevant to direct the responsibility towards the members of the board of directors in accordance with the prospectus liability rule in Chapter 29 Section 1 of the Swedish Companies Act. Apart from the liability rule in the Swedish Companies Act, Swedish law does not contain any specific provisions as regards what parties that can be held liable for the information in a prospectus.

Q3. Are the persons under the previous question subject to joint and/or several liability?

[1] Regulation (EU) 2017/1129 of the European Parliament and the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

The responsibility that founders, board members and managing directors have for the prospectus and its content according to Chapter 29 Section 1 in the Swedish Companies Act constitutes an individual liability provision (several liability). On the other hand, it follows from the Swedish corporate body function that the board as a corporate body is responsible for the preparation of the prospectus and its content. However, the board as a corporate body can never be liable for damages. On the other hand, according to Chapter 29 Section 6 of the Swedish Companies Act, the liability is joint and several when several persons are liable for the same damages.

In light of the fact that the board is the corporate body that is obliged to ensure that a prospectus is drawn up and the board members individually are responsible for the information in the prospectus, the typical case is that all board members are jointly and severally liable for potential damages.

Similar principles of several, and joint and several, liability apply pursuant to the Swedish Tort Liability Act, should civil liability be sought on a more general non-contractual basis.

Q4. For which breaches of duties or obligations are the persons under the previous question liable (e.g. untrue information in a material aspect or omission of material information in the prospectus, selling of securities to the public without having published a PR compliant prospectus)?

According to Chapter 29, Section 1 and 2 of the Swedish Companies Act, founders, board members, managing directors, auditors, general examiners and special examinors shall compensate anyone who suffers damages due to breaches of the provisions in the Prospectus Regulation, provided that the breach was intentional or negligent.

The Swedish law does not contain any specific provisions regarding which breaches or obligations the aforementioned persons are liable. The liability provisions in the Swedish Companies Act only stipulates liability in cases of a breach of the Prospectus Regulation, including the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements. The assessment whether a specific breach of the Prospectus Regulation is such that may give rise to civil liability must be assessed on a case-by-case basis by examining whether the breach is causally related to the damages claimed by the subscriber of the offered securities or other persons claiming to have suffered damages as a consequence of the breach.

Q5. For which degree of fault are those persons liable (e.g. intent, negligence, strict liability)?

In order for civil liability to arise for a limited company's board members according to Chapter 29 Section 1 of the Swedish Companies Act, the requirement is that damages occur as a result of the board member intentionally or negligently breaches provisions of the Prospectus Regulation. Thus, at least negligence is required for civil liability according to the Swedish Companies Act to arise.

Q6. Who is entitled to sue for damages (e.g. only original purchasers in the primary market or also subsequent investors in the secondary market, financial intermediaries)?

The subjects entitled to sue for damages according to Chapter 29 Section 1 of the Swedish Companies Act is "a shareholder or someone else". There is thus no expressed limitation

on who may be entitled to damages. The group of persons entitled to damages is defined by whether the breach of the Prospectus Regulation caused a causally connected damage to such third person (whether it is a subscriber of the securities offered, i.e. an investor on the primary market, or a purchaser of the securities on the secondary market, or anyone else). Thus, it is primarily the adequacy assessment that follows from general principles of tort law that limits the circle of persons entitled to damages.

Q7. What circumstances must be proven by the plaintiff (e.g. the securities were acquired after the publication of the prospectus and during its twelve month validity, the prospectus omitted material information or contained untrue statements, the losses suffered, the losses were caused by the misleading prospectus, the plaintiff relied on the misleading prospectus for the investment decision, negligence or intent on the part of the liable person)?

The main rule according to general evidentiary principles in Swedish law is that whoever claims that a certain evidentiary or legal fact, i.e. a certain circumstance of importance for the applicability of a legal rule is at hand, also has the burden of proof that this is the case.

Based on these principles, in order for civil liability to arise according to Swedish law, it is required that the injured plaintiff can prove that the following circumstances have existed; i) that provisions of the Prospectus Regulation have been breached, ii) that damage has occurred, iii) that the breach occurred intentionally or through negligence and iv) that there is a causal connection between the breach and the occurred damage.

There is no express rule regarding relief of the burden of proof for civil prospectus liability in Swedish law (for example that it is presumed to be a causal link between the fault and the damage) and strict liability is not applied.

Q8. What circumstances must be proven by the respondent in order to avoid liability (e.g. the defendant was not aware of the incompleteness or misstatement in the prospectus and such lack of awareness was not the result of negligence, the deficiency in the prospectus is not material and therefore did not influence the price of the security, the plaintiff was aware of the deficiency in the prospectus, a supplement to the prospectus correcting the problem was published before the acquisition of the securities took place)?

In order to avoid liability for damages, it is required that the defendant refutes that at least one of the circumstances i)–iv) (please see the answer to question 7 above) exists.

Q9. Does the judge have a faculty to take into consideration facts which were not presented by the parties (excluding facts which the judge may take judicial notice of)? If yes, please explain.

First of all, claims of civil liability due to breaches of the Prospectus Regelation are subject to the rules of litigious civil procedure of the Swedish Code of Judicial Procedure. The main rule in civil proceedings in Sweden, is that the court in its judgement only may consider facts presented by the parties (Chapter 17 Section 3 of the Swedish Code of Judicial Procedure). However, the court has an obligation to direct the proceedings. This obligation may include to ascertain that the parties determine their respective position in the case, and what facts they want to present. On the other hand, this obligation by the court does not include the court a right to consider facts not presented by the parties. Furthermore,

the principle of *jura novit curia* in Swedish law has the meaning that the court is obliged to know the content of the law and apply it to the facts pleaded by the parties in a lawsuit. Because of the *jura novit curia* principle, it is not considered necessary for the parties to legally qualify invoked legal facts. Nor is it necessary for the parties to prove what the applicable law stipulates, or proof of the existence of applicable legal provisions.

Hence, the judge (or the court) does not have a faculty to take into consideration facts which were not presented by the parties, but the court is obliged to direct the proceedings. Furthermore, the parties do not have to legally qualify the facts presented, what the applicable law stipulates or the existence of applicable legal provisions.

Q10. What damages are recoverable? Does the law provide specific provisions on the quantification of compensation?

Recoverable damages according to the Swedish Companies Act takes aim at two different types of damages, direct and indirect damages. Direct damage refers to damage that affects shareholders directly without the company suffering any damage. Indirect damage refers to damage that affects the company and thereby only indirectly affects third parties, for example if a shareholder's shares decrease in value as a result of damage suffered by the company. Direct damage is compensable. It is more unclear to what extent indirect damage is compensable. Neither the Swedish Companies Act nor the Swedish Tort Liability Act (in case damages are sought on a non-contractual basis) contains specific provisions regarding the quantification of compensation for damages.

Q11. Are the provisions in the law about civil liability mandatory or is there a possibility to exclude, proportionate or limit liability (i.e. by a clause inserted in the prospectus)?

The provisions regarding prospectus liability in the Companies Act are mandatory.

Q12. Is there a time limit to file the claim? Can it be suspended or interrupted? When does the prescription begin? Is each responsible person mentioned under question 2 subject to the same time limit?

According to Section 2 of the Swedish Statute of Limitations Act, the general time limit to file the claim is ten years from the date on which the cause of the claim originated.

According to Section 5 of the Swedish Statute of Limitations Act, the time limit to file a claim can be interrupted by i) the debtor pledges payment, pays interest or amortization or acknowledges the claim in another way towards the creditor, ii) the debtor receives a written demand or a written reminder about the claim from the creditor or iii) the creditor brings an action against the debtor or otherwise invokes the claim against the debtor in court, with the Swedish Enforcement Agency or in arbitration proceedings, bankruptcy proceedings or plan negotiations during company restructuring.

The time limitation according to Section 2 of the Swedish Statute of Limitations Act is applicable for each responsible person mentioned under question 2 above.

Q13. According to your jurisdiction, what will be the competent law to deal with issues in civil liability of prospectus related to international public offerings? Is there any provision to solve conflicts of law?

There are no specific provisions in Swedish law to solve conflict of law regarding prospectus liability. In general, the Rome II Regulation (EC) No 864/2007 deal with conflict of laws on the law applicable to non-contractual obligations.

Q14. Is a judicial proceeding before a civil court the only way to receive restitution of losses? If other, please explain.

A plaintiff and a defendant may always reach a settlement out of court. They can also agree on alternative dispute resolution proceedings, such as arbitration. However, there are no alternative mechanisms than judicial proceedings before a civil court included in the Swedish legislation on how to receive restitutions of losses in prospectus related civil claims. However, according to the Swedish Code of Procedure, there is also the possibility for the parties to demand mediation within the framework of civil legal procedures.

Q15. Is a class action available? If yes, please explain (in particular, do associations of investors have the legal capacity to file claims on behalf of their members).

There are general provisions which enable class action suits according to the Swedish Class Action Act. Hence, Swedish law provides a class action institute that could be used by one or more plaintiffs in prospectus related civil suits. However, it should be emphasised that class action proceedings in Swedish law are not particularly common, i.a. due to the fact that it is an opt-in procedure and that several prerequisites must be present for the court to allow a class action procedure.