30 October 2019

Dear Su

RESPONSE TO THE DEBATE ON THE PROSPECTUS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019.

I am writing following the Grand Committee debate on the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 that took place on 16 October 2019. During the debate, I committed to providing further information on the extension of the public bodies exemption under the retained Prospectus Regulation.

In a scenario where the UK leaves the EU without a deal, the EU has confirmed it would treat the UK as a third country. Our onshoring approach for financial services legislation is therefore to ensure that we have a workable regulatory regime which does not rely on any special arrangements with the EU. In general, it would therefore not be appropriate to treat EEA countries differently from others, and for the prospectus regime specifically, it is therefore necessary to amend the current exemption for EEA public bodies that would otherwise be in the onshored legislation.

We considered narrowing the public bodies exemption to UK public bodies only. However, many EEA public bodies currently access UK markets, bringing additional business to the UK. If we narrowed the exemption to exclude EEA public bodies, it would mean that those EEA public bodies currently making use of this exemption would be required to produce a prospectus at their expense; something they would not be obligated to do when accessing EEA markets. In order to help maintain the global importance and attractiveness of the UK’s capital markets, we have taken an approach which ensures that we will treat EEA States and all other countries in the same way post-exit.

Moreover, we have worked closely with the FCA on the rationale for this approach and the drafting of this instrument to ensure investors remain suitably protected. I am reassured that there will be sufficient protections in place for investors choosing to invest in securities issued by public bodies, even without a prospectus. As with all investments, securities offered by public bodies will entail some risk for investors, and a prospectus may help an investor to understand that risk. However, there is generally more information available to potential investors in public bodies, such as sovereign issuers and state bodies, than there is for corporate entities.
Furthermore, publishing a prospectus is only one of the requirements for listing on a regulated market in the UK. As such, any third country public body to which the exemption applies will continue to be subject to other requirements set out in wider financial services legislation. You asked for further information on these requirements.

Under the financial promotions regime (section 21 of the Financial Services and Markets Act 2000 ("FSMA")), a third country public body must not offer or promote its securities unless the communication has been made or approved by an authorised person (that is a person authorised by the Financial Conduct Authority ("FCA")). Under FCA rules, the communication must be fair, clear and not misleading.

Additionally, if the public body wishes to apply to admit its securities to trading on a UK regulated market, the public body must first apply for admission to the FCA’s Official List and will be subject to the requirements of the UK’s primary markets regime. Under section 75 of FSMA, the FCA has the power to refuse an application for listing if, for any reason relating to the issuer, the FCA considers that granting it would be detrimental to the interests of investors.

Where the securities are shares in the capital of a central bank of a sovereign state, the public body must publish listing particulars. Under section 80 of FSMA, listing particulars must contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the financial position of an issuer and any rights attached to the securities. For all other securities to be admitted to the FCA’s Official List, the public body must submit an application form to the FCA.

The FCA has powers to take action against issuers who breach the listing requirements or the financial promotion restriction, including suspending an issuer’s securities, imposing financial penalties and/or imprisonment for up to two years under sections 25, 77 and 91 of FSMA.

I hope this letter is helpful in explaining why the Government believes the approach taken to the prospectus public bodies exemption is proportionate and prudent in the context of existing safeguards that apply to the issuance of securities. Please contact me should you require any further information.

I am copying this letter to other Peers who were present during the debate and a copy of this letter will be deposited in the Libraries of the House.

[Signature]

LORD BETHELL

The Rt Hon the Baroness Kramer
House of Lords