

**FINANCIAL MARKETS LAW COMMITTEE**  
**[www.fmlc.org](http://www.fmlc.org)**

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**To: Interested Parties**

**From: Lord Browne-Wilkinson**

**FINANCIAL MARKETS LAW COMMITTEE**  
**ISSUE 89: PROSPECTUS DIRECTIVE – CHOICE OF HOME MEMBER STATE**

Expert commentators have noted a number of problems of interpretation in the text of the Prospectus Directive (2003/71/EC).

The FMLC has today released a paper addressing one such issue, which relates to the meaning of “offer of securities to the public” in the context of third country issuers’ choosing their home member State. That paper is available on the FMLC website at [www.fmlc.org](http://www.fmlc.org).

In summary, the issue the paper addresses is that, although the Prospectus Directive includes a definition of offer of securities to the public, it is not clear whether that definition 'speaks' before implementation of the Directive into national law (i.e. before 1 July 2005). There would be no gap in the law if it did not, as there is already an EU-wide concept of public offer. Uncertainty about which is the correct definition has caused disruptive problems in financial markets.

The FMLC has considered how this issue should be addressed. We have suggested that subordinate Community legislation is necessary. I have therefore written today to the European Commission to bring this matter to their attention. I have made it clear that the FMLC is ready to assist in suggesting the technical wording required for such subordinate legislation (that is to say, for ‘implementing measures’ to be passed under Article 2(4) of the Prospectus Directive).

I am most grateful to the expert Working Group who kindly assisted in analysing this issue, the members of which are: Clifford Dammers, IPMA (chair); Esther Jeapes, Shearman & Sterling (secretary); James Bartos, Shearman & Sterling; Lachlan Burn, Linklaters; Habib Motani, Clifford Chance; Megan Butler, Financial Services Authority; Martin Thomas, Secretary to the FMLC. I hope I will be able to ask that group to assist in suggesting the technical wording required for subordinate legislation, if it would be thought helpful.

The FMLC will consider other issues arising under the Prospectus Directive, including the meaning of ‘choice’ in Article 2.1(m) and the interpretation of Article 30 of the Directive, which deals with home state choice for non-EU companies the securities of which are listed on more than one EU exchange.