The Initial Public Offerings Law Review

Third Edition

Editor
David J Goldschmidt

The Law Reviews

THE INITIAL PUBLIC OFFERINGS LAW REVIEW

THIRD EDITION

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Editor
David J Goldschmidt

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BUSINESS DEVELOPMENT MANAGER
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PREFACE

Welcome to the third edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 18 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2018 marked a year of continued resurgence for many IPO markets. The number of 2018 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, which accounted for almost 50 per cent of deals in terms of both number and deal volume. China alone was responsible for 307 IPOs valued at US$56.7 billion. Many other regions also experienced strong IPO markets in 2018. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2019 in terms of both global deal count and proceeds. The global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different among jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This third edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions, and serves as a guide for issuers and their directors and management.

David J Goldschmidt
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New York
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Chapter 1

BRAZIL

Jean Marcel Arakawa[1]

I INTRODUCTION

The peak of the Brazilian initial public offering (IPO) market was 2007, when 64 companies went to the market and raised around 55.6 billion reais.[2] Following a series of international and national financial crises, and political instability, the following years saw a smaller number of companies seeking the Brazilian market. The past two years, however, have seen a surge in the equity capital markets for Brazilian companies, with 16 IPOs being priced, totalling over 46 billion reais.[3] Expectations are high for 2019, with a new federal government advancing sweeping proposals to curb fiscal deficit and to implement much needed market-oriented reforms.

The Brazilian national financial system is formed of an exchange and over-the-counter securities marketplaces authorised by law and regulation to have self-regulatory authority; and financial institutions authorised to operate in banking, financial and capital markets, such as multiple banks, including commercial and investment banks, securities broker-dealers, currency exchange broker-dealers, payment institutions, leasing companies and finance companies, among others market players. The National Monetary Council (CMN), chaired by the Minister of Finance, discusses and approves the main regulatory framework. Subordinated to the CMN are the Central Bank of Brazil BCB), the financial markets authority, and the Brazilian Securities Commission (CVM), the securities and exchange markets authority.

The CVM is the federal authority responsible for disciplining, supervising and promoting the securities market in Brazil. Created by Law No. 6,385 (the Capital Markets Law), dated 7 December 1976, the CVM carries out the inspection and regulation of the securities market, to ensure the exercise of fair practices and to restrain any type of irregularity. At the same time, it monitors the markets to gather knowledge required for the definition of public policies and initiatives able to promote the development of the securities markets.

Under the Capital Markets Law, the CVM's mandate mainly includes, among others:

a regulating the matters expressly set forth in the Brazilian Capital Markets Law, in accordance with the policy defined by the CMN;

b granting the registrations provided for by the Brazilian Capital Markets Law;

1 Jean Marcel Arakawa is a partner at Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados.

2 Author's estimate number based on public information on registered IPOs, available on the websites of the CVM and the Securities and Exchange Commission.

3 ibid.

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c permanently supervising the activities and services of the securities market, as well as the transmission of information related to the market, to the persons participating in it and to the securities negotiated therein;
d regulating the issuance and distribution of securities in the market;
e disciplining trading and intermediation in the securities and derivatives markets; and
f organising the operation of securities, commodities and futures exchanges.

The Brazilian capital market has two self-regulatory authorities: the Brazilian Stock Exchange (B3 – Brasil, Bolsa, Balcão SA (B3)), which is responsible for operating and regulating the exchange markets for equity and debt securities in Brazil; and the Brazilian Association of Financial and Capital Markets (ANBIMA) – formed of banks, underwriters, investment banks, brokerage firms, among others – which has its own set of rules that its associates must comply with.

II GOVERNING RULES

A public offering of securities distributed in Brazil requires registration with the CVM of the issuer as a public company and the offering itself. Under Brazilian securities laws, the securities themselves are not subject to registration.

IPOs of securities in Brazil are primarily regulated by Law No. 6,404, dated 15 December 1976, as amended (the Corporate Law); the Brazilian Capital Markets Law; and regulations issued by the CVM, particularly CVM Rule No. 400, dated 29 December 2003, as amended (CVM Rule 400) and CVM Rule No. 480, dated 7 December 2009, as amended (CVM Rule 480). CVM Rule No. 476, dated 16 January 2009, regulates public offerings of securities with selling efforts restricted to professional investors, which in theory may apply to IPOs, but in practice is mostly used to allow issuers to quickly market follow-on offerings.

Additionally, the underwriters of a public offering of securities conducted in Brazil must comply with the Regulatory and Best Practices Code for Public Offerings by ANBIMA, and the issuer must observe the rules set forth by B3, currently the sole stock exchange market in operation in Brazil.

i Main stock exchanges

B3 offers the trading of stocks, forward and futures contracts, index swaps, interest and exchange rates, and agricultural and energy commodities, as well as spot market operations such as gold, dollar and federal public securities.

In addition, B3 exercises a key role in the regulation of public companies that trade their securities on the stock exchange. The Issuers' Regulation Board has the function of regulating the issuers listed in B3, in its guiding, normative and sanctioning aspects, according to the Capital Markets Law and the CVM's regulations.

For an issuer to be able to trade its securities in the organised markets of B3, it must plead its listing and the admission of these securities to trading, and comply with the requirements of the B3 regulations.

Most of the companies listed on B3 are domestic issuers, although it admits the listing of Brazilian depositary receipts (BDRs) – certificates of deposit issued and traded in Brazil, representing securities issued by foreign companies.

Some large, blue-chip Brazilian companies have sought dual listings in the past. Most of these companies have listed American depositary receipts in the New York Stock Exchange.

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More recently, Brazilian technology companies have directly listed their shares in Nasdaq or the New York Stock Exchange, through holding companies incorporated outside Brazil, as Brazilian companies that go public would have to be registered with the CVM, and have their shares listed in a Brazilian stock exchange.

ii Overview of listing requirements

To develop the Brazilian capital market, it was necessary to have different segments with various levels of requirements regarding corporate governance to meet the different profiles of companies willing to list their securities on the stock exchange. B3 has five special listing segments: Bovespa Mais, Bovespa Mais Nível 2, Nível 1, Nível 2 and Novo Mercado, each with its own set of requirements. Novo Mercado has the highest standards of transparency and governance, as required by investors in new public companies, and is recommended for companies wishing to make large offers targeted at any type of investor, from individuals resident in Brazil to large global institutional investors.

When a company is filing for registration of its IPO, not only must it comply with the Corporate Law, the Capital Markets Law and the CVM regulations, but also the rules of one of the special segments of B3 and its Issuer's Manual.

The application for registration of a company with B3, as well as the application to obtain B3's authorisation to trade the company's share on one of the listing segments, must be supported by a set of documents similar to the documents required by the CVM. The terms and time frame for B3 to review and request adjustments and improvements to documents regarding the IPO are similar to CVM terms, in order to guarantee a more efficient process.

Once the registration of the public company with B3 has been granted, the company must execute the participation agreement required to be listed in one of the special listing segments, as well as provide the acceptance of the requirements set forth by the segment rules from the company's new officers, directors and controlling shareholders, if applicable.

iii Overview of law and regulations

A company seeking to list its securities and launch an IPO in Brazil should be a corporation, under the terms of the Brazilian Corporate Law, as well as obtain its registration as a public traded company with the CVM; register the public offering of shares with the CVM; and obtain its registration as a listed company with B3. As previously mentioned, under Brazilian securities laws, the issuer and the offering are subject to registration, but not the securities themselves. This means that by registering the issuer, all its securities are eligible for listing and public trading, and by registering the offering, all the securities sold in the offering may be offered to the general public, and will be fungible with other securities of the same type and class previously issued and listed.

For an issuer to be registered as a public company, it must apply with the CVM for registration in one of the two classes of issuers of tradable securities, A or B. While class A registration authorises the trading of any equity and debt securities issued by the company for trading in regulated securities markets, class B registration only authorises the trading of debt securities issued by the company for trading on regulated securities markets, excluding equity securities such as shares, warrants and share depositary receipts, as well as securities convertible into shares.

A public offering under the terms of CVM Rule 400 requires a prospectus, which primarily includes summarised information about the offeror, and full information on the offering and the securities offered, including the plan of distribution, terms and conditions

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of the securities, use of proceeds, capitalisation table, dilution and risk factors related to the offering. The regulatory requirement is that the prospectus must contain complete, precise, truthful, clear, objective information regarding the issuer and the offering, using non-technical and easily understood language. A prospectus must meet the content requirements provided in detail by CVM Rule 400 and the ANBIMA Code of Regulation and Best Practices of Investment Funds (the ANBIMA Best Practices Code). Nearly all qualified Brazilian investment banks and broker-dealers have pledged to comply with the ANBIMA Best Practices Code and have agreed to sanctions in the event of non-compliance with its terms and conditions. Accordingly, the underwriting agreement will typically require issuers to conform to the standards of this Code.

Additionally, CVM Rule 400 requires an announcement of commencement and closing. An announcement of commencement provides information about the procedures related to the public offering, including a timetable, the amount of securities offered and a price range reference. A closing announcement reveals, mainly, the quantity of securities allocated to each investor and the type of investor that accepted the offering, with the respective amount of security acquired. Both announcements must be published by the lead underwriter in major newspapers or made available on the websites of the offering participants, the relevant stock exchange and the CVM.

The CVM shall waive registration requirements in the case of securities issued by small and micro-sized companies, as defined by Brazilian regulations. With respect to issuers with wide market exposure, as defined under the terms of CVM Rule 480, the CVM may grant automatic offering registration pursuant to an expedited review proceeding.

The application for registration of a public offering under the terms of CVM Rule 400 must be jointly submitted to the CVM by the offeror (whether an issuer or a selling shareholder) and the lead underwriter, and must be accompanied by supporting documents, including drafts of the offering documents.

After the offeror has submitted an application to the CVM for registration of the public offering distributed under the terms of CVM Rule 400, it may release a preliminary prospectus, and initiate its book-building activities and roadshow presentations. In practice, the offeror and the lead underwriter may prefer to wait for an indication from the CVM that no major issues are anticipated in relation to the proposed public offering. No sales may be effected until the CVM has granted registration for the public offering, certain statutory announcements are published or made available on the appropriate websites, and a final prospectus is available. Upon granting of registration of the public offering, the final prospectus must be released and available on the websites of the issuer, the offeror, the underwriters, the CVM, the relevant stock exchange and ANBIMA, in the case of follow-on offerings.

III THE OFFERING PROCESS

i General overview of the IPO process

The registration of a company as well as the IPO registration are usually carried out simultaneously. Upon the first filing of the required documents, the CVM has 20 business days to review and suggest improvements and adjustments to these documents. The issuer has up to 40 business days to address the requirements; however, in practice this step takes five business days. After the second filing of the set of documents, the CVM has 10 business days to review them and certify the suggestions were implemented. The day of the second filing is also the day the commencement announcement is published. If the CVM is still not

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satisfied with the compliance of the requirements, the issuer has another three days to adjust the documents. The registration is than granted to both the company and the IPO. As stated before, the review of the documents by B3 is done simultaneously and should be finished at the same time as the CVM's review.

The list of documents submitted to the CVM includes those related to the issuer and drafts related to the offering. Regarding the issuer, the main supporting documents include:

a the formation documents of the company, including its by-laws;
b the record data form;
c the reference form – an annual report on the periodic reporting applicable to public companies;
d minutes of shareholders' meetings held during the preceding 12 months;
e copies of the shareholder agreements filed at the headquarters of the company;
f the board resolution appointing an investor relations officer;
g audited financial statements for the preceding three fiscal years;
h audited financial statements reflecting any material change in the company's equity structure after the end of the latest fiscal year, if applicable;
i an annual financial report prepared for the most recent fiscal year;
j quarterly financial reports, as applicable;
k statements relating to the issuer's securities held by executive officers, members of the board of directors, and members of the audit committee and any other advisory committees created pursuant to the company's by-laws; and
l policies for disclosure of material facts.

Regarding the offering, the documents include the draft prospectus, the draft announcements to be released to the market during the offering period, drafts of the underwriting agreement and other contractual documents to be executed by the price-stabilising agent and by the investors, and other ancillary documents.

The reference form is the main disclosure document provided by the issuer, and its table of contents is stated on CVM Rule 480. It must be filed with the CVM during an IPO process, as well as annually, and is subject to revision if certain material information needs to be updated, pursuant to the terms of CVM Rule 480.

The reference form provides the complete profile of the company, covering aspects such as its business, products, processes, risks, contingencies, financial condition and results of operations, including a management discussion and analysis section where a comparison of the past three annual financial statements of the company is reviewed.

Considering the importance of the reference form for the decision by the investors to invest in the company, and the liability standard imposed to the issuer, the offerors and underwriters, it is crucial that the due diligence process be conducted by the legal teams representing the company and the underwriters. During the IPO process, the legal teams, the underwriters and the auditors carry out procedures to provide a reasonable basis for the offerors and underwriters to be comfortable that, as of the effective date of the registration of the company, the reference form and the prospectus will contain no significant untrue or misleading information, and no material information has been omitted.

Lastly, the company's independent auditors will provide the underwriters with the comfort letters to the financial information that is stated in the reference form and the prospectus. If any information is not provided in the comfort letter by the independent auditors, the company will provide backup support to the satisfaction of the underwriters.

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The Capital Markets Law states that a qualified underwriter must participate in the marketing and placement of any public offering of securities. In equity offerings, the lead underwriter, the bookrunners and any co-managers will typically enter into a underwriting agreement with the issuer or selling shareholder. Underwriters in equity offerings usually give firm commitments to settle the securities offered in a public offering not effectively settled by the investors. The group of bookrunners will enter into separate agreements with members of the selling group, by which the members of the selling group accede to the underwriting agreement and provide their own commitment to settle the shares purchased but not settled by the investors. In debt offerings, the underwriters give a firm commitment to place and purchase the securities offered in public equity offerings that are not purchased by market investors.

In the IPO, the lead underwriter and the issuer elaborate a plan of distribution that must ensure fair and equitable treatment of investors in the offering. The special listing segment rules of B3 generally require that Brazilian issuers seek to disperse their shares widely among investors in the market. Typically, issuers meet this requirement by affecting a retail offering primarily targeting individual investors.

Underwriters will usually receive orders from retail investors in anticipation of the pricing of a public offering. Orders are permissible as long as the preliminary prospectus is available. After the public offering has been registered and formally initiated, each retail investor will receive a number of shares resulting from the division of the monetary amount of the investment order by the offering price. If the final prospectus, including the reference form, contains a materially different disclosure compared with the preliminary prospectus and reference form, any investor may withdraw its order.

Moreover, if a public offering under the terms of CVM Rule 400 is oversubscribed by more than 33 ⅓ per cent of the offered securities, no securities may be placed with affiliates of the underwriters, the issuer or any parties involved in the offering, except for the orders placed by non-institutional investors, provided that they comply with the recommendations of the CVM and are considered sufficient to mitigate the use of confidential information by investors to obtain improper advantage.

ii Pitfalls and considerations

Liabilities and enforcement

The primary bases of liability in a securities transaction are regulated by CVM Rule 400, which establishes the liability of the issuer, the selling shareholders, the underwriters and their respective managers for material misstatements and omissions in the offering documents. The lead underwriter is primarily liable, among the underwriters, for any damage caused to investors as a result of material misstatements and omissions. A lead underwriter may only be held accountable by an investor for lack of diligence in performing its obligation to ensure that the offering documents are free of material misstatements and omissions. The issuer and selling shareholders that are controlling persons, however, are fully liable for any material misstatements and omissions. A non-controlling selling shareholder is only liable if it fails to act diligently to ensure that the offering documents are free of material misstatements and omissions.

Issuers, selling shareholders and underwriters may also be sanctioned by the CVM in administrative proceedings. It may initiate disciplinary proceedings and impose sanctions ranging from warnings to fines to permanent disqualification from public capital markets. The CVM enforces compliance with the Corporate Law, the Capital Markets Law and its

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own regulations. During the course of the offering, the CVM may also suspend the offering if it determines that it is being conducted in a manner inconsistent with its purpose, is illegal, fraudulent or violates CVM regulations.

Usually, the CVM will not take a position regarding the accuracy of any disclosure documents. In most cases, the CVM will demand amendment to the prospectus, the reference form and other documents until it is satisfied that its concerns have been addressed.

Rules of conduct in public offerings

CVM Rule 400 sets forth the rules of conduct the company and related parties must adopt regarding the disclosure of information in connection with the offering before, during and after the offering. Until the offering is disclosed to the market, the company and parties involved in the offering must (1) restrict disclosure of information relating to the offering to the extent required for the execution of the offering, having recipients being made aware that such information is non-public, and (2) restrict use of the non-public information to the extent strictly required for the execution of the offering. Restrictions on the disclosure of information set forth in CVM Rule 400 shall not apply to information that is already public at the time of its disclosure.

Communication to the media about the offering is prohibited until the publication of an announcement regarding the completion of the offering. Before this announcement, the company and parties related to the offering must abide by the principles of quality, integrity and equality regarding access to information, and disclose any material interests that they may have in the offering, as well as any transactions with related parties having at one side the given party and at the other side, the issuer.

The restrictions on publicity set forth above are not intended to stop the free flow to the public of information about the company. Consequently, the company may conduct its affairs in the normal course of business, so that it may continue to advertise its products and services, distribute customary reports to stockholders, and make announcements to the press with respect to factual business and financial developments in a manner consistent with past practice. Nevertheless, issuers have to manage the 'quiet period' very carefully, as distinctions between announcements in the normal course of business and prohibited communications may not be very clear in practice.

iii Considerations for foreign issuers

BDRs are certificates of deposit issued and traded in Brazil, representing securities issued by foreign companies. There are two types of BDRs: sponsored BDRs, issued by depository institutions, which are contracted by the foreign companies that issued the securities, classified into three types (Levels I, II and III Sponsored BDRs); and unsponsored BDRs, issued by depository institutions without the participation of the foreign companies that issued the backing securities, classified only as Level I Unsponsored BDRs.

Any foreign company that intends to list BDRs in Brazil must register with the CVM and B3, as any other public company in Brazil, as well as register a sponsored BDR programme. The registration of a foreign company with the CVM is regulated by CVM Rule 480, which sets out that only a company incorporated outside Brazil may issue securities eligible to back BDRs. The company qualifies as a foreign issuer if its headquarters are not located in Brazil and more than 50 per cent of its assets are not located in Brazil. The registration of the BDR programme is ruled by CVM Rule 332, dated 4 April 2002, as amended.

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Foreign companies that have listed BDRs in Brazil need to comply with periodic disclosure requirements set out by CVM Rule 480. This rule provides that the financial statements of the foreign company must be produced in Portuguese, stated in Brazilian currency and in compliance with the International Accounting Standards issued by the International Account Standards Boards. In addition, the financial statements should be audited by an independent auditor registered under the place of incorporation of the company, and the auditor's report needs to be reviewed by an independent auditing firm registered with the CVM. Foreign issuers of listed securities also need to release a reference form on an annual basis, as well as give notices of material facts, and generally comply with the same disclosure requirements applicable to Brazilian issuers.

Upon the granting of registration of the company and the BDR programme with the CVM and B3, the foreign company will be authorised to list and trade its BDRs in the local Brazilian market.

IV POST-IPO REQUIREMENTS

In Brazil, companies registered with the CVM and listed in B3 are subject to a significant number of ongoing obligations under the Corporate Law, CVM's regulations and B3's listing segments rules, as well as its Issuer's Manual. Obligations include mandatory disclosures of periodic information, timely disclosure of material information to the market and restrictions on trading its own securities.

The CVM and B3 are responsible for monitoring the compliance of the company with these laws and regulations, and failure to comply may lead to the imposition of administrative penalties on the company's management and controlling shareholders. The CVM may apply penalties such as formal warnings and monetary fines, prohibition of holding offices in public companies in Brazil or temporary bans on securities trading. In addition, breaches of the Capital Markets Law may subject offenders to civil and even criminal liability.

The following are some examples of ongoing obligations of a public company:

a Disclosure of material information: the Corporate Law and CVM Rule 358, as of 3 January 2002, as amended, mandate disclosure of any material events involving a public company, defined as any fact or action that may have an impact on the intention of the investors to trade or hold securities issued by the company.

b Periodic reporting: under CVM Rule 480, the reporting company must annually file the record data form and reference form with the CVM, and must update the documents within seven business days of the date of certain material events established in the Rule. Public companies are also required to file annual and quarterly reports with the CVM, including annual audited and quarterly unaudited financial statements prepared in accordance with Brazilian accounting principles, which are in line with the International Financial Reporting Standards requirements, as approved by the Accounting Rulings Committee.

c Mandatory disclosure for shareholders' meetings: listed companies registered with the CVM under class A and that have free float must also file certain documents and information with the CVM in advance of shareholders' meetings, to enable shareholders to evaluate certain matters to be resolved at meetings, under CVM Rule No. 481, dated 17 December 2009, as amended.

d Disclosure of information regarding shareholding: under the CVM and B3 regulations, management, directors, members of the fiscal committee, controlling shareholders and

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related parties are required to disclose their holdings of securities issued by a public company and any transactions involving such securities within 10 days of the end of the calendar month in which the transaction occured.

e Notice of related-party transactions: moreover, since January 2015, CVM Regulation No. 552, dated 9 October 2014, as amended, provides the criteria to determine the information on related-party transactions that must be reported by listed companies. The purpose of the regulation is to allow the investors and the CVM to monitor the most relevant transactions with related parties as the company enters into them.

V OUTLOOK AND CONCLUSION

Brazilian capital markets have had a consolidated legal and regulatory framework for the past 40 years. However, this does not mean that they are not subject to continuous revision and improvement. The most recent development is the revision of B3's Novo Mercado Rules, along with a thoroughly revised regulation that entered into force on 2 January 2018. In addition to this reform, the CVM has announced the intention to review the securities offerings regime, and a series of amendments to CVM Rules 480 and 400 will be submitted to public review in 2019. These reforms have the main goals of streamlining registration requirements, allowing issuers to gain a faster access to the market, reducing compliance costs and favouring smaller ventures to access the capital markets.

Although the Brazilian capital markets are not the main alternative for financing Brazilian ventures – which traditionally had access to subsidised credit granted by state-owned development and commercial banks, as well as tapped domestic debt capital markets and traditional bank financing – market-oriented reforms aimed at curbing fiscal deficits while reducing the role of public banks in granting credit will bring needed stimuli for the securities market to become increasingly relevant in the coming years.

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Chapter 2

CAYMAN ISLANDS

Suzanne Correy and Finn O'Hegarty[1]

I INTRODUCTION

The Cayman Islands Stock Exchange (CSX) was founded in 1996. As at the end of 2017, the CSX listed more than 4,600 securities and maintained a market capitalisation of more than US$241.4 billion.[2] The CSX generally specialises in the listing of corporate and specialist debt securities, and investment funds, rather than traditional equity listings (there are only five such equity listings on the CSX). Over the past couple of decades, however, the use of the Cayman Islands as a jurisdiction of choice for issuers on international exchanges has grown significantly; in part attributable to its success in ensuring that its legal and regulatory regime is at the forefront of international standards.

The following provide an indication of the popularity of the Cayman Islands exempted company as a listing vehicle of choice for international exchanges:

a in 2017, the Cayman Islands was one of the most common jurisdictions for foreign private issuers undertaking US listed public offerings;
b Cayman Islands incorporated special purpose acquisition vehicles (SPACs) account for the majority of non-US SPACs listed on US exchanges;
c as at the end of 2018, there were 79 Cayman Islands companies listed on Nasdaq and 58 Cayman Islands companies listed on the New York Stock Exchange;
d as at the end of 2018, there were 18 Cayman Islands companies listed on AIM and 11 Cayman Islands companies listed on the Main Market of the London Stock Exchange;[3] and
e as at the end of 2018, 54 per cent of the 2,318 companies listed on the Main Board of the Hong Kong Stock Exchange (HKSE) were Cayman Islands exempted companies: an increase of 200 companies since the end of 2017.[4]

The Cayman Islands offers the significant benefits of a body of laws substantially based upon English common law and a number of 'key' English statutes that are familiar to market participants, combined with a stable political system recognised as a world-class offshore financial centre. This means that a company incorporated in the Cayman Islands and its shares are well recognised and accepted around the world, and particularly in New York, London and Hong Kong.

1 Suzanne Correy is a partner and Finn O'Hegarty is an associate at Maples Group.
2 https://www.csx.ky/aboutus/overview.asp.
3 https://www.londonstockexchange.com/home/homepage.htm.
4 https://www.hkex.com.hk/Mutual-Market/Stock-Connect/Statistics.

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In addition, the Cayman Islands offers the following advantages:

a a modern and flexible statutory regime for companies, providing a non-intrusive regime on dividends, redemptions and repurchases, and financial assistance for the acquisition of shares and few ongoing filing requirements;

b status as a tax-neutral jurisdiction;

c reliable and efficient judicial system, which is accustomed to dealing with complex commercial disputes;

d familiarity and acceptability to investors, underwriters, rating agencies and regulators throughout the world;

e a sophisticated and reliable professional infrastructure; and

f absence of exchange control restrictions or regulations (unlike many other jurisdictions). This means that funds can be freely transferred in and out of the Cayman Islands in unlimited amounts.

II GOVERNING RULES

i Main stock exchanges

The CSX has self-regulatory powers, although it is subject to the supervision and regulation of the Stock Exchange Authority (the Authority). The CSX's council, comprising six senior professionals and the CEO of the CSX, all appointed by the Authority, is responsible for the day-to-day operations of the CSX, a number of which have been delegated to its listing committee (the Listing Committee). The CSX has developed (and continues to refine) rules, policies and procedures for listing (the Listing Rules), and such Listing Rules are subject to the written approval of the Authority.

Cayman Islands-incorporated issuers generally do not pursue dual listings on the CSX and international exchanges – any such issuer that is dual listed will be listed on dual international exchanges.

ii Overview of listing requirements

Listing on the CSX

Listing equity securities on the CSX requires the prior approval of the Listing Committee, and the preparation and approval of a listing document compliant with the CSX's Listing Rules. The listing document must contain all information necessary for an investor to make an informed assessment of the issuer's activities, management, prospects and financial position, and the rights, powers, privileges and obligations attaching to the equity securities to be listed.

There must be a sufficiently liquid market for the equity securities being listed, which the CSX considers requires an expected initial market capitalisation for all the securities to be listed of at least US$5 million; and the minimum percentage of equity securities in public hands to at all times be at least 25 per cent of the class of shares listed, with a minimum of 50 shareholders.

Further, issuers must generally have: an independent auditor acceptable to the CSX; published audited financial statements that cover the three financial years preceding the application for listing; a board of at least three directors, the majority of whom must be independent; and an adequate trading record under substantially the same management (normally at least three financial years). The issuer's constitutional documents must also

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include certain governance terms prescribed by the Listing Rules (specifically in relation to capital structure, appointment of and voting by the directors of the issuer, and voting rights of the listed securities).

Listing on an international exchange

The precise steps and timetable for a listing on an international stock exchange are largely dictated by the requirements of the relevant exchange, and any related share offering timetable. The role of Cayman Islands counsel is to work closely with lead counsel in the relevant listing jurisdiction and will typically be involved with:

a any pre-listing restructuring of the business group that may be required for the purposes of the listing;

b preparing the constitutional documents of the company and tailoring the documents to meet the requirements of the relevant securities laws and listing rules (the flexibility of Cayman Islands law results in the ability to accommodate any required constitutional provisions and shareholder protections required by the listing rules of the relevant stock exchanges);

c advising on relevant parts of the listing document, such as the descriptions of the listed securities and any relevant corporate laws, as well as any Cayman Islands tax disclosure and regulatory considerations;

d advising on the Cayman Islands aspects of any underwriting agreement;

e delivering any Cayman Islands legal opinions required by regulators, exchanges, depositories, registrar and transfer agents, or brokers or underwriters; and

f drafting any and all corporate approvals necessary for the listing.

iii Overview of law and regulations

Regulation of Cayman Islands companies is primarily found in the Companies Law (2018 Revision) and common law. There are no specific additional statutes or government regulations concerning the conduct of an initial public offering (IPO) on either the CSX or non-Cayman exchanges.

III THE OFFERING PROCESS

i General overview of the IPO process

Listing on the CSX

The Listing Rules, at Chapter 6, set out the requirements for the listing of equity securities on the CSX. A draft of the listing document must be provided to the Listing Committee in reasonable time for comment and amendment prior to the proposed listing date, and the final document is subject to approval by the Listing Committee.

The listing document is required to include a summary of:

a the particulars of the issuer (including the issuer's capital structure and the issuer group's activities), the securities to be issued, any listing agent and underwriters, and particulars of other advisers including legal counsel and auditors;

b the offered securities, including the total number offered, the offer price of each security and its nominal value;

c material risks relating to the investment in the applicable equity securities;

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d the provisions of the issuer's constitutional documents relating to, *inter alia*, voting rights of directors, director remuneration, changes in capital and arrangements for the transfer of securities;
e consolidated financial information regarding the issuer group; and
f the management of the issuer group.

The listing document is also required to include particulars of any litigation or material claims against the issuer group, and a list of the parties to and dates of any material contracts (being those entered into not in the ordinary course of business).

Securities must have an International Securities Identification Number to be admitted to listing on the CSX, and must be eligible for deposit in an acceptable electronic clearing and settlement system (including Clearstream, Euroclear or the Depository Trust Company). The issuer must appoint a share transfer agent or registrar, and paying agent in a financial centre acceptable to the CSX, although if the issuer can demonstrate to the CSX that it is capable of doing so, it may perform these functions itself.

Unless otherwise approved by the CSX, the listing must apply to the entire class of the equity securities to be listed and such securities must be freely transferable. The CSX will admit convertible securities to listing only if it is satisfied that investors will be able to obtain the information necessary to form a reasonable opinion as to the value of the securities into which they are convertible.

Listing on an international exchange

From a Cayman Islands perspective, the key documents applicable to an international IPO are the listing document, the memorandum and articles of association of the company, and associated corporate approvals. Although unlikely, Cayman Islands law-governed key contracts, including any underwriting agreement, or depository or custody agreement, should also be reviewed by Cayman Islands counsel.

During the listing process, Cayman Islands counsel generally prepares disclosures describing Cayman Islands companies and the corporate law framework of the Cayman Islands for inclusion in the listing document. This can include a comparison of the applicable laws governing companies incorporated in the IPO jurisdiction as against Cayman Islands law, to provide potential investors with sufficient information to assess the consequences of the use of a Cayman Islands company as the listing vehicle compared with an entity formed in the IPO jurisdiction.

While governed by the legal requirements of the Cayman Islands, the constitutional documents of the issuer will need to also meet the requirements of the applicable stock exchange upon which the company is to be listed. With the guidance of lead counsel on the IPO, to determine the requirements of the relevant stock exchange, Cayman Islands counsel will prepare constitutional documents that are in compliance with such rules.

UK exchanges

Unlike public companies listed on the London Stock Exchange with a registered office in the United Kingdom, the Channel Islands or the Isle of Man, Cayman Islands issuers listed on the London Stock Exchange (whether on the Main Market or AIM) are not automatically subject to the United Kingdom Takeover Code and the jurisdiction of its Panel on Takeovers and Mergers. The Takeover Code is designed to ensure that shareholders in an offeree company are treated fairly and are not denied an opportunity to decide on the merits of a takeover,

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and that shareholders in the offeree company of the same class are afforded equivalent treatment by an offeror. It also provides an orderly framework within which takeovers are conducted. However, the constitutional documents of a Cayman Islands issuer listing in London will commonly include provisions that seek to mirror some or all of the protections that shareholders would enjoy under the Takeover Code.

US exchanges

The advantages of 'foreign private issuer' status may be available to Cayman Islands companies intending to list on the main US exchanges, including: reduced reporting and disclosure requirements; certain exemptions from US proxy rules; flexibility to elect to apply accounting standards other than US generally accepted accounting principles, and in choice of reporting currency; and the ability to apply certain 'home country' standards in respect of the composition, election and classification of directors and key corporate governance practices.

Rather than making a direct equity listing, it is common for Cayman Islands companies listing on key US exchanges choose to list American depositary receipts (ADRs), which permits the listed security to be US-dollar denominated and to clear through US settlement systems, but allows the company's equity to continue to be denominated in a currency other than US dollars. Each ADR is a negotiable certificate that evidences an ownership interest in American depositary shares, which, in turn, represent an interest in the shares of the issuer, which are held by the applicable depository.

HKSE

The requirements of the HKSE listing rules and ongoing requirements can easily be met within the Cayman Islands framework, and the constitutional documents of the listing vehicle can be prepared accordingly. Importantly, there is no relevant Cayman Islands law relating to the holding of an annual general meeting or the auditing of accounts, and generally Cayman Islands counsel will assist to conform the issuer's constitutional documents to the required HKSE standards.

ii Pitfalls and considerations

One of the key advantages of using a Cayman company as a listing vehicle of choice is the high level of flexibility that Cayman Islands law provides. Issuers do not need, for example, to hold annual general meetings or to produce audited accounts, although such matters are generally provided for to address investor expectations. As a result, issuers tend to find that this flexibility means results in fewer pitfalls than might perhaps otherwise be expected.

Potential claims may be available to subscribers for shares in an IPO offering under Cayman Islands law against the company and other parties, such as its directors, its auditors and its advisers. While for a Cayman Islands issuer with equity listed on an international exchange it is more likely that proceedings will be brought in another jurisdiction, such as the jurisdiction from which an applicant subscribed for shares and in which a copy of the listing document was made available to them, the position that would apply in respect of proceedings before a Cayman Islands court applying Cayman Islands law is considered below.

Also, though proceedings might be brought before a Cayman Islands court, it may be asked to apply, in accordance with Cayman Islands conflicts of laws rules, the laws of some other jurisdiction as the appropriate system of law to the relevant action. These conflicts

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of laws aspects are particularly important in the case of exempted companies, because they are prohibited from offering their shares to the public in the Cayman Islands, unless such company is listed on the CSX.

Misstatements

There may be civil liability in tort for misstatements in a listing document: either negligent misstatements (under the rule in *Hedley Byrne v. Heller*) or fraudulent misstatement of fact. The terms of the listing document place a duty of care on the company, and may be argued to place a duty of care on the directors, the promoters and even professional advisers named or referred to in the listing document (or otherwise responsible for its content), in favour of persons who subscribe or apply for shares in the company on the faith of the content of the listing document. Breach of this duty would give rise to a claim against such persons for any loss attributable to statements in those parts of the listing document for which responsibility was expressly or impliedly accepted by such person. Reliance on the listing document would have to be proved by the relevant subscriber. Liability for a fraudulent misstatement of fact does not extend to a promise, forecast or expression of opinion. 'Fraudulent' in this context is widely interpreted to mean made either with knowledge that the statement was false, or not caring whether the statement was true or false. An aggrieved investor may, by bringing an action for deceit (a civil claim in tort rather than contract), obtain damages for deceit if it can be shown that a material misstatement was fraudulently made, and he or she was induced to subscribe for shares as a result of the misstatement.

To found an action for deceit, it is not necessary to show either an intent to defraud or that the fraudulent statement was the sole cause that induced the investor to take up the shares.

Pursuant to the Contracts Law (1996 Revision) of the Cayman Islands, damages may be recovered for any pre-contractual misrepresentation if liability would have arisen had the representation been fraudulently made, unless the person making the representation proved that he or she had reasonable grounds to believe, and did believe up to the time the contract itself was made, that the facts represented were true. Generally, this gives a statutory right to damages in respect of negligent misstatements and, where a misrepresentation has been made, the court may award damages in lieu of rescission. Given that the relevant contract (the offering of shares on the terms of the listing document) is with the issuer itself, the subscriber's claim would be against the issuer, although it might, in turn, be able to claim against its directors, promoters or advisers.

Contractual liability

As noted above, the listing document will form the basis of a contract between the issuer and the successful applicants for shares. If it is inaccurate or misleading, applicants may be able to rescind the contract or sue (or both) the company, the promoters or the directors for damages. Again, given that the relevant contract is with the issuer itself, the subscriber's claim would be against the issuer. Under Cayman Islands conflicts of laws principles, these questions would be determined according to the governing law of the contract for subscription. Where the documentation makes no express choice of governing law (as is common in a listing document), it is likely that a Cayman Islands court would consider Cayman Islands law as the governing law, on the basis that the issuer is incorporated in the Cayman Islands and the subject matter of the contract is shares in a Cayman Islands company.

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Criminal liability

Criminal liability may arise under Section 257 of the Penal Code (2019 Revision), which provides that an officer of a company (or person purporting to act as such) 'with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, commits an offence and is liable to imprisonment for seven years'. This section would extend to false statements contained in a listing document.

Further, this section also provides that: any person who dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an offence and is liable on conviction to imprisonment for 10 years; and any person who by any deception dishonestly obtains for himself or herself or another any pecuniary advantage is guilty of an offence, and is liable to imprisonment for a term not exceeding five years. A person is treated as obtaining property if he or she obtains ownership, possession or control of it, and 'obtain' includes obtaining for another or enabling another to obtain or retain. For the purposes of this section, 'deception' means any deception (whether reckless or deliberate) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

iii Considerations for foreign issuers

The CSX is not generally an exchange of choice for foreign issuers and such listings are uncommon in the Cayman Islands.

IV POST-IPO REQUIREMENTS

i CSX requirements

Listing of equity securities on the CSX requires that the issuer prepare and issue to members (and to the CSX) an interim financial report with respect to the first six months of its financial year. Additionally, as soon as practicable after its approval by or on behalf of the directors, and in any event within two months of the end of the period to which it relates, the issuer must deliver a preliminary announcement of the six-month interim results to the CSX for dissemination.

Further, a CSX-listed issuer must make available to every member annual financial statements in accordance with International Accounting Standards or such other standards as may be acceptable to the CSX. The issuer's annual financial statements must also include a report by the directors on the operations of the issuer covering:

a a description of the principal activities of the group and a geographical analysis of consolidated turnover;

b the name of every subsidiary, its principal country of operation, its country of incorporation and its main business, and (subject to certain exceptions) particulars of the issued share capital and debt securities of every subsidiary;

c a statement as at the end of the relevant financial year showing the interests of each director of the issuer in the equity or debt securities of the group, and details of any right to subscribe for equity or debt securities of the group granted to any director of the issuer, and of the exercise of any such right;

d statement as at the end of the financial year showing a summary of bank loans, overdrafts and other borrowings of the group;

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e particulars of material contracts between the issuer and any interested party (including directors or associates of directors, and controlling shareholders of subsidiaries); and
f a summary, in the form of a comparative table, of the results, and of the assets and liabilities of the group, for the past five financial years or since establishment, if later.

On an ongoing basis, the issuer must also notify the CSX for release of:
a any new developments or changes that are not public knowledge, which may reasonably be expected to materially affect the market activity in, or the price of, the listed securities; and
b certain other matters, including any matter constituting a fundamental change in the issuer's business, certain transactions with related parties, any changes in the composition of the board of directors, significant changes to the senior management personnel of the issuer, changes in the issuer's constitutional documents, its capital structure and auditor, and changes in the rights of any class of listed securities.

The issuer must also notify the CSX of any significant changes in the holdings or identity of those holders of equity securities holding in aggregate more than 5 per cent of the issuer's shares, so far as the directors are aware, and of any decision to call, repurchase, draw, redeem or offer to buy any of the issuer's securities.

ii International exchanges

The listing of a Cayman Islands company on an international stock exchange does not result in the imposition of any additional Cayman Islands obligations for the company to satisfy.

V OUTLOOK AND CONCLUSION

The year 2018 proved to be, once again, successful for IPOs of Cayman Islands companies on foreign exchanges, as a result of strong equity markets, high corporate earnings and increased investor confidence in the first three quarters. A number of significant IPO transactions took place globally, including the US$2.3 billion IPO of PagSeguro Digital Ltd., the second-largest IPO in the first quarter of 2018 (and on which the Maples Group advised the underwriters). However, the number of IPOs and the performance of publicly listed companies was influenced by global growth concerns, the withdrawal of various monetary stimulus measures that were introduced following the global financial crisis in 2008 and various global political developments. Fortunately, the outlook for 2019 appears positive in terms of the number of IPOs, in particular with respect to markets in the Americas and the Asia-Pacific region.

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Chapter 3

CHINA

Chen Yang and Zhi Bin[1]

I INTRODUCTION

There are two primary exchanges in China, the Shanghai Stock Exchange (SHSE) and the Shenzhen Stock Exchange (SZSE). The SHSE consists of the Main Board and the forthcoming Technology Innovation Board (detailed draft rules (the Draft Rules) were released on 30 January 2019), whereas the SZSE consists of the Main Board, the Small and Medium Enterprises Board (the SME Board) and ChiNext (a board consisting mainly of high-technology companies).

Shares traded on the SHSE and SZSE that are settled in Chinese yuan are A-shares, whereas shares settled in foreign currency are B-shares. In practice, there are few (if any) B-share initial public offerings (IPOs) in China, as the regulatory framework for B-share IPOs is incomplete.

This chapter focuses on A-share listings. For the purposes of this chapter, 'China' excludes Hong Kong, Macau and Taiwan.

According to the 2017 Annual Report of the China Securities Regulatory Commission (CSRC), at the end of 2017, 1,872 companies were listed on the Main Board of the SHSE and the SZSE, 903 companies were listed on the SME Board and 710 companies were listed on ChiNext. The total market capitalisation of these listed companies was 56.71 trillion yuan, which was 68.56 per cent of China's total 2017 GDP.

The primary regulator of China's capital markets is the CSRC. The SHSE and SZSE are responsible for administering the CSRC's rules, and are empowered by the CSRC to enact rules under the CSRC's supervision.

IPO listings in China are currently subject to regulatory approval by the CSRC. Therefore, the approval system in China differs from the registration-based system in Hong Kong, the United States and other capital markets, though the proposed new Technology Innovation Board will purportedly have a registration-based system (see below). The CSRC determines whether a prospective issuer provided accurate and adequate disclosure in accordance with listing requirements. Prior to 2017, applicants faced long waiting periods (sometimes two to three years or even more) owing to administrative backlog and repeated requests for information. However, since 2017, the waiting periods have shortened to approximately nine months.

1 Chen Yang and Zhi Bin are partners at Han Kun Law Offices.

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II GOVERNING RULES

i Main stock exchanges

As discussed in Section I, the SHSE consists of the Main Board and the forthcoming Technology Innovation Board, whereas the SZSE consists of the Main Board, the SME Board and ChiNext.

Main Board (SHSE and SZSE)

The Main Board of the SHSE primarily attracts established blue-chip companies such as state-owned enterprises. In recent years, however, the Main Board of the SHSE attracted private companies from industries other than traditional state-owned blue-chip companies.

SME Board

The SME Board targets small and medium-sized enterprises with shares in circulation of under 100 million. The listing requirements for the SME Board and the Main Board are nearly identical.

ChiNext

ChiNext was established on 30 October 2009 to support small and medium-sized enterprises, especially in the high-technology sector. Although the overall listing requirements for ChiNext are lower than the ones set forth for the Main Board and the SME Board, the CSRC generally exercises greater regulatory scrutiny, such as increasing the number of members on the issuance review committee, prolonging the sponsor's supervisory period and imposing more rigorous delisting rules.

Presently, there are only a few Chinese companies (primarily state-owned) that are dual listed in China and an overseas exchange (usually the Hong Kong Stock Exchange). Chinese companies are not prevented from pursuing dual listings after listing on a domestic stock exchange, though this would require approval from the CSRC.

Some Chinese companies choose to list on foreign exchanges in lieu of listing on a domestic exchange, such as the Hong Kong Stock Exchange, Nasdaq and the New York Stock Exchange (NYSE). Among foreign-listed Chinese companies, some choose to list overseas mainly for business reasons, such as avoiding profitability threshold requirements. Others choose to list overseas because of China's restrictions on foreign investment in certain industries. Particularly in the technology, media and telecommunications sectors, owing to regulatory restrictions and practice that effectively prevents controlling foreign ownership in a Chinese operating company, some issuers adopt foreign parent entities and list abroad using the variable interest entity (VIE) structure. However, joint ventures involving foreign ownership in a non-restricted sector are permitted to list on China's domestic exchanges.

Forthcoming Technology Innovation Board

President Xi Jinping, in his speech at the first China International Import Expo on 5 November 2018, announced that the SHSE will launch the Technology Innovation Board, which will adopt, among other prospective reforms, a registration-based system. On 30 January 2019, with only two months of preparation, the CSRC and the SHSE released the Draft Rules. They introduce a registration-based system and eased listing standards to accommodate qualified technology companies. In addition, the Draft Rules contain significant detail on execution procedures, such as listing and trading rules.

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The Draft Rules may be considered a breakthrough in China's capital market for the following reasons:

a Removal of profit requirement: pre-profit technology industries such as information technology, high-tech manufacturing, new materials, new energy and environmental protection, along with pre-revenue bio-tech companies, may list on the Technology Innovation Board.

b Unweighted voting rights: the Technology Innovation Board permits, for the first time in the mainland capital markets, technology companies with unweighted rights to list.

c Red-chip companies may list: red-chip companies (those whose parent entity is incorporated outside mainland China and whose primary business activities are in China, including VIE structure companies), may apply for a public offering of its stock in mainland China or through the issuance of Chinese depository receipts (CDRs), though listing standards are higher (see below).

d Spun-off companies may list: the Technology Innovation Board permits, for the first time in mainland capital markets, spun-off technology companies to list.

The above reforms bring the Technology Innovation Board in line with offshore jurisdictions where fast-growing Chinese technology companies have opted to list in recent years, such as Hong Kong and New York. That said, the Draft Rules also contain more restricting delisting procedures whereby affected companies may be delisted without any suspension or cure period. The Draft Rules are available for public comment until the end of February. The market believes the first batch of applicants will submit applications to list on the Technology Innovation Board in the beginning of March at the earliest.

ii Overview of listing requirements

Presently, all listing applications are submitted to and approved by the CSRC, though the forthcoming Technology Innovation Board will have a registration-based system. If an applicant engages in a business subject to regulatory oversight by specific agencies, the CSRC will require such agencies to issue a no-objection letter in respect of the applicant.

Table 1 sets forth the main requirements for the Main Board, SME Board, ChiNext and the Technology Innovation Board. Tables 2a and 2b set forth the main requirements for red-chip companies. These companies must be qualified enterprises, whether they are listing stocks or CDRs, in addition to satisfying the requirements under the Draft Rules.

Table 1 Issuers incorporated in China

IPO requirements	Main Board and SME Board	ChiNext	Technology Innovation Board (the Draft Rules)
Issuer qualifications	A company limited by shares that is duly incorporated and validly existing in China.		
Business records	At least three years of continuous operations or as otherwise approved by the State Council (where a limited liability company is converted into a company limited by shares through the conversion of the entire original book value of its net assets, the term 'continuous operation' may start from the date the limited liability company was established).	At least three years of continuous operations (where a limited liability company is converted into a company limited by shares through the conversion of the entire original book value of its net assets, the term 'continuous operation' may start from the date the limited liability company was established).	

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IPO requirements	Main Board and SME Board	ChiNext	Technology Innovation Board (the Draft Rules)
Profitability	• Annual aggregate net profit exceeding 30 million yuan in each of the past three fiscal years (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses); • aggregate net cash flow over 50 million yuan, or aggregate revenue of over 300 million yuan, in each case for the past three fiscal years; and • no unrecovered losses at the end of the most recent accounting period.	• Annual aggregate net profit of not less than 10 million yuan for the past two years (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses); or • annual aggregate net profit of not less than 50 million yuan in the past year.	N/A
Pre-profit alternatives for the Technology Innovation Board only	One of the following five thresholds (four of which do not have profitability requirements) where expected market value: • (1) is not less than 1 billion yuan; net profit in the past two years is positive, and the aggregate net profit is not less than 50 million yuan, or (2) expected market value is not less than 1 billion yuan; net profit in the last year is positive; operating income is not less than 100 million yuan (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses); • is not less than 1.5 billion yuan; operating income in the past year is not less than 200 million yuan; and total R&D investment in the past three years accounts for not less than 15% of business income in the past three years; • is not less than 2 billion yuan; operating income in the past year is not less than 300 million yuan; and net cash flow generated from business activities in the past three years is not less than 100 million yuan; • is not less than 3 billion yuan; operating income in the past year is not less than 300 million yuan; and • is not less than 4 billion yuan; significant business or products need to be approved by relevant governmental departments; significant market space and phased results; and investment from renowned investment institutions. Pharmaceutical applicants are required to obtain at least one approval for Phase II clinical trials for new drugs that are first rate. Other applicants are required to possess 'obvious technological advantages' and meet corresponding conditions. Expected market value means total equity following the IPO multiplied by the offering price.		
Assets	Proportion of intangible assets (after deduction of land use aquaculture, mining and similar rights) at the end of the most recent accounting period in net assets of ≤20%.	Net assets at the end of most recent accounting period of ≥20 million yuan and no uncovered losses.	N/A
Capital	Pre-listing capitalisation of ≥30 million yuan; or post-listing capitalisation of ≥50 million yuan.	Post-listing capitalisation of ≥30 million yuan.	
Major business	No significant changes in the past three years.	Only one major business; no significant changes in the past two years.	No significant changes in the past two years.
Directors and senior management	No significant changes in the past three years.	No significant changes in the past two years.	
Actual controller	No change in the past three years (the definition of 'actual controller' is based on several legally prescribed factors that are applied to each individual case based on the facts and circumstances of such case).	No change in the past two years.	
Internal control	• Effective internal control systems in all significant respects; and • an unreserved internal control report issued by a certified accountant.	• Effective internal control systems in all significant respects, proving the issuer's operational efficiency, legality and compliance, and the accuracy of its audit report; and • an unreserved internal control report issued by a certified accountant.	

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IPO requirements	Main Board and SME Board	ChiNext	Technology Innovation Board (the Draft Rules)
Competition	The issuer's business must not compete with the business of the issuer's controlling shareholder, actual controller, or other enterprises controlled by such controlling shareholder or actual controller. The definition of 'controlling shareholder' and 'actual controller' are based on several legally prescribed factors that are applied to each individual case based on the facts and circumstances of such case. Although this item was officially removed in a 2015 revision of the listing rules on the condition that there is full disclosure of this item in the prospectus, in practice, the CSRC still devotes special attention to this item. Therefore, it is effectively still a listing requirement.		
Related-party transactions	No unreasonable related-party transactions; related-party transactions must be at arm's length and must not manipulate profits.	Related-party transactions must not significantly influence the issuer's independence or be unreasonable.	
Fund management	Rigorous fund-management procedures; the issuer's fund is not controlled by any controlling shareholder, actual controller or other enterprises controlled by any controlling shareholder or actual controller in respect of borrowing, the use of debt as compensation, advance payments or any other similar form.	Not a listing requirement, but required to be disclosed in the prospectus.	N/A
Tax	Taxes paid in accordance with law; no heavy reliance on tax preferences.	Not a listing requirement, but required to be disclosed in the prospectus.	N/A
Debt	No major credit risk; not a party to any major contingent liability such as a guarantee, litigation or arbitration that may adversely affect the issuer's continuous operation.	Not a listing requirement, but required to be disclosed in the prospectus.	No need to significantly rectify ownership of major assets, core technologies, trademarks, etc.; no major credit risk; not a party to any major contingent liability such as a guarantee, litigation or arbitration that may adversely affect the issuer's continuous operation.
Use of proceeds	Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business and investment projects.	Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business but not necessarily for investment projects.	N/A
Legal compliance	• In the past 36 months, no unauthorised direct or indirect public offering of shares, or if any of the above illegal practices are still currently in existence; and • no other material non-compliance in the past 36 months.	• In the past three years no unauthorised direct or indirect public offering of shares, or if any of the above illegal practices are still currently in existence; and • in the past three years, neither the issuer, its controlling shareholder nor its actual controller have committed a materially unlawful act that harms the legitimate rights and interests of investors and the public.	• The issuer's operations comply with laws and administrative regulations and national industrial policy; • in the past three years, neither the issuer, its controlling shareholders nor its actual controllers have committed the criminal offences of embezzlement, bribery, embezzlement of property, misappropriation of property or destruction of the order of the socialist market economy, nor have they committed any major offences involving national security, public security, environmental security, production security, public health security, etc.; and • in the past three years, neither the issuer, its controlling shareholder or its actual controller have committed a materially unlawful act that harms the legitimate rights and interests of investors and the public.
Other authorities' opinion	Subject to the opinions of the provincial government.	N/A	N/A

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Table 2a Red-chip issuers: qualifying enterprises

Issuer qualifications	Large red-chip companies already listed overseas	Large unlisted red-chip companies
Expected market value/operating income/valuation	Expected market value is not less than 200 billion yuan.	Operating income is not less than 3 billion yuan in the past year; and valuation is not less than 20 billion yuan.
Alternatives	N/A	Accelerated operating income, independent R&D capability, leading international technology and advantageous market position.
Status	Issuer conforms to standards relating to national strategy, achieving core technology and market acceptance.	
Industry	Innovative enterprises that have achieved considered scale such as the internet, big data, cloud computing, artificial intelligence, software and integrated circuits, high-tech manufacturing, bio-tech and other high-tech industries, and strategic emerging industries.	

Table 2b Technology Innovation Board Rules for red-chip issuers

Requirements	Issuance of stock	Issuance of CDRs
Listing requirements	Be a qualifying enterprise (see Table 2a).	
	Satisfy the other threshold requirements under the Draft Rules.	• Basic listing requirements in Article 13 of the Securities Law of the People's Republic of China (2014 amendment); • complete and seamlessly operating organisation; • capacity to achieve profits continuously and sound financial status; • no false record in its financial statements over the past three years; no other major irregularity; and • any other requirements as prescribed by the securities regulatory authority under the State Council, which have been approved by the State Council. (The capacity to achieve profits continuously does not mean such profits have to be realised at the time of listing.)
Jurisdiction	The company law of the issuer, but higher standards will be applied for the purposes of investor protection.	
Disclosure	Full disclosure of any VIE structure, unweighted voting rights or other similar arrangement.	

To date, no red-chip issuer has listed in the mainland.

Compared with the NYSE, Nasdaq and the Hong Kong Stock Exchange, Chinese stock exchanges (except for the Technology Innovation Board) are unique in the following respect (however, as stated above, the Technology Innovation Board's reforms bring it in line with other international exchanges such as the Hong Kong Stock Exchange, NYSE and Nasdaq):

a Applicant eligibility: unlike the NYSE, Nasdaq and the Hong Kong Stock Exchange, A-share applicants have to be companies limited by shares that are incorporated in China. Therefore, foreign issuers (such as Hong Kong, US or Caymanian parent companies) cannot be listed on Chinese stock exchanges. However, a joint venture incorporated in China operating in a non-restricted industry where foreign investment is permitted may list on Chinese stock exchanges.

b Financial criteria: unlike the NYSE, Nasdaq and the Hong Kong Stock Exchange, each financial listing threshold requires the issuer's net profits to be positive.

c Review process: the CSRC currently still uses an approval (rather than a registration) system that requires substantive review of all issuers. As a result, review times tend to be relatively longer and susceptible to policy considerations.

d Board of supervisors requirement: A-share listed companies are required to have a board of supervisors consisting of at least three members. Employee representative

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supervisors may not be less than one-third of the board of supervisors. Directors and senior management may not concurrently be supervisors. The purpose of the supervisor is to oversee the activities of the board of directors and the senior management.

e Competition: the CSRC devotes special attention to analysing potential competition between the issuer, on the one hand, and its controlling shareholder, actual controller or the enterprises controlled by the controlling shareholder or actual shareholder on the other. Generally, mere disclosure of such potential competition in the prospectus will be insufficient and the absence of such competition is effectively still a listing requirement, even though this item was officially removed in the 2015 revision of the listing rules.

f Foreign investment restrictions: if the issuer conducts business in an industry where foreign investment is restricted or prohibited (according to law or in practice), the issuer may not list in China. The CSRC will not accept indirect control arrangements such as variable interest entities, unlike the NYSE, Nasdaq and Hong Kong Stock Exchange.

g Lock-up periods: the listing rules for Chinese IPOs specifically state that the controlling shareholder or actual controller is subject to a three-year lock-up period. All other shareholders are generally subject to a one-year lock-up period. This differs from other jurisdictions where lock-up periods are primarily determined by the underwriters and not by the listing rules. The length of the lock-up period is also longer compared with Hong Kong, where controlling shareholders are only subject to a six-month lock-up period.

iii Overview of law and regulations

The listing requirements for the Main Board (SHSE and SZSE) are set forth in the Administrative Measures for Initial Public Offerings and Listings of Shares. The listing requirements for ChiNext are set forth in the Administrative Measures on Initial Public Offerings of and Listing of Shares on ChiNext. All listings must comply with the requirements set forth by the Company Law, the Securities Law, and other specific rules and requirements of the applicable exchange.

With regard to the CSRC's application of these rules, there have been the following general trends.

Accelerated review

The CSRC's review schedule accelerated, starting in the middle of November 2016. In 2017, the CSRC's issuance examination committee reviewed 488 IPO applications – a much faster pace than in previous periods. In 2018, the CSRC maintained this accelerated pace. In fact, in practice, the time between pre-disclosure and approval in 2018 was approximately 15 months, shorter than the approximately 19-month wait in 2017.

Reduced quantity and success rate of applications

Although the CSRC has accelerated its review of prospective applications, its recent practice of only selecting high-quality applicants that meet its listing standards has reduced the overall success rate of applications.

In 2016, the CSRC's issuance examination committee reviewed 266 applications, of which 241 were successful, resulting in a pass rate of 90.6 per cent. However, in 2017, the CSRC's issuance examination committee reviewed 488 applications (83 per cent more than

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the previous year), of which 380 were successful, resulting in a pass rate of 77.87 per cent. In particular, from 17 October 2017 (the date when the new issuance examination committee took office) to 28 December 2017, the pass rate for IPO applications was at just 57.78 per cent, significantly lower than before.[2] In 2018, the CSRC's issuance examination committee reviewed 185 applications (a much lower number than previous years), of which 111 were successful, resulting in a pass rate of about 60 per cent,[3] which is the lowest in the past five years.

Restructuring of Chinese companies for the purposes of a Chinese listing

Chinese companies that originally had parent companies outside China have restructured in order to list in China. One common restructuring involves the removal of offshore entities under the variable interest entity structure.

In February 2015, the CSRC approved Baofeng's IPO application in what was regarded as a landmark case, involving a variable interest entity restructuring. Since May 2015, several Chinese companies with variable interest entity structures that were formerly listed abroad have privatised and restructured for onshore re-listings through an IPO or reverse merger. In December 2017, the CSRC's mergers and acquisitions examination committee conditionally agreed to Qihoo 360's reverse merger listing on the Main Board of the SHSE. Qihoo 360's reverse merger listing was valued at over 50 billion yuan.

The restructuring of variable interest entities for businesses that operate in a restricted or prohibited sector (according to law or in practice) involves the buyout of foreign shareholders who may not (as a result of such restrictions or prohibitions) hold equity stakes in the China-based issuer. In the context of a Chinese company that is already listed on a foreign exchange, this process requires the privatisation of the present issuer.

Prior to 2018, in light of the CSRC's accelerated review timetable and valuations that were generally higher than those overseas, some Chinese companies with offshore structures chose to privatise for the purposes of listing in mainland China. However, in 2018 there were fewer such instances owing to the low pass rate and the downturn in the A-shares market generally.

The introduction of the Technology Innovation Board may lead to more restructurings owing to more technology companies qualifying for listing as a result of the Technology Innovation Board's reforms. Established existing offshore incorporated red-chip companies may also list directly on the Technology Innovation Board.

Preferences for certain applicants

On 9 September 2016, the CSRC promulgated the Opinions on the Strategy for Capital Markets to Function and Serve Disadvantaged Districts. These measures provide accelerated review for enterprises located in disadvantaged districts of the country.

The eligibility requirements are as follows:

a being registered and having an operating address in a designated district; and having at least three years of business records and tax payments; or

b being registered in a designated district; having paid at least 20 million yuan in income tax in the past year; and committing not to change its registered address for more than three years after its IPO.

2 Prior to 17 October 2017, the issuance examination committee consisted of two different committees, one for the Main Board and the SME Board, and one for ChiNext. From 17 October 2017 onwards, these two committees were combined into one committee.

3 Based on public data of the CSRC.

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Jiyou New Material Co, Ltd (182 days),[4] Tibet GaoZheng Explosive Co, Ltd (less than 11 months) and Tibet Aim Pharm Inc (less than nine months) are three recent examples of successful listings of issuers who received accelerated review owing to their location in disadvantaged districts. This accelerated review period is much shorter than those for ordinary applicants, who sometimes have to wait for two years or more for a final decision.

These recent success stories have prompted a few potential applicants to change their registered or operating addresses to eligible districts for the purposes of qualifying under the measures. However, these measures may be subject to discretionary interpretation by the authorities, requiring shareholders to carefully track regulatory developments. On 29 December 2017, the CSRC responded to the Proposal on the Extension of the CSRC's IPO Preference to Disadvantaged Districts that such preferences for applicants from the disadvantaged districts will be extended to 2025, and the Opinions on the Strategy for Capital Markets to Function and Serve Disadvantaged Districts will remain effective for a certain period.

III THE OFFERING PROCESS

i General overview of the IPO process

Listing in China involves steps that are common in other jurisdictions (due diligence, document preparation, including the prospectus), as well as steps that are unique to China (pre-listing review, conversion from a limited liability company to a company limited by shares, the CSRC approval). Below is a brief overview of the IPO process in China. The time frames set forth in the table reflect common practice. Specific time frames for individual applicants may vary from the ones set forth in the table. The time frames for the Technology Innovation Board are presently unknown, but presumably will be faster owing to its registration-based system.

<table>
<tr><th>Step</th><th colspan="2">Particulars</th><th>Timetable</th></tr>
<tr><td>Due diligence</td><td colspan="2">The sponsor, auditors, legal advisers and other stakeholders conduct due diligence of the issuer, set IPO terms (such as the target amount to be raised), advise the issuer on the IPO process and assist the issuer in complying with IPO requirements.</td><td>T-90 days*</td></tr>
<tr><td>Restructuring</td><td colspan="2">The issuer is restructured into a company limited by shares (as required under law); stakeholders prepare a restructuring plan, audit and appraise the issuer's assets, and prepare sponsor agreements and the issuer's articles of association; the issuer executes the restructuring plan and establishes relevant internal departments in accordance with listing rules.</td><td>T-45 days</td></tr>
<tr><td>Pre-filing review</td><td colspan="2">The local counterpart of the CSRC conducts pre-listing guidance work.

Not applicable for the Technology Innovation Board under the Draft Rules.</td><td>T-15 days</td></tr>
<tr><td>Filing</td><td>All boards except the Technology Innovation Board: the sponsor files the IPO application documents with the CSRC; once the CSRC states the application documents are complete, the CSRC decides whether to accept the filing within five business days.</td><td>The Technology Innovation Board (the Draft Rules): the sponsor files the IPO application documents with the SHSE; once the SHSE states the application documents are complete, it has five business days to decide whether to accept the filing.</td><td>T</td></tr>
</table>

4 Review period calculations in this section start on the date the issuance examination committee accepts the application and end on the date the issuance examination committee approves the application.

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<table>
<tr><th>Step</th><th colspan="2">Particulars</th><th>Timetable</th></tr>
<tr><td>CSRC procedures</td><td>All boards except the Technology Innovation Board:
• Acceptance of the application from the CSRC;
• pre-disclosure;
• feedback;
• face-to-face meeting;
• reply to the CSRC's feedback;
• pre-disclosure updates;
• preliminary review;
• examination of selected disclosures (if any);
• attendance of the issuance examination committee meeting;
• reply to the issuance examination committee's questions or requirements (if any);
• sealing of IPO application-related documents;
• post-meeting review by the issuance examination committee; and
• obtaining of official approval and issuance.</td><td colspan="2">Technology Innovation Board (Draft Rules):
• Acceptance of the application from the SHSE
• Pre-disclosure
• First round of inquiries
• Face-to-face meeting (if necessary)
• Feedback
• Multiple rounds of inquiries
• Reply to the SHSE's feedback
• Consultation regarding industry issues
• Face-to-face inquirers (if necessary)
• A department of the SHSE issues the audit report
• Pre-disclosure
• Attend the issuance examination committee meeting
• Hearing
• Release issuance examination committee's opinion
• SHSE issues opinion
• Report to the CSRC and obtain its official approval
• Pre-disclosure updates
• Disclosure of the prospectus.</td></tr>
<tr><td>Preparation by the exchange</td><td colspan="3">• Approval from the CSRC;
• negotiation with traders about stock abbreviation, stock code, etc;
• submission of documents to the relevant exchange;
• amendment registration with the Administration for Industry and Commerce; and
• listing and trading on the relevant exchange.</td></tr>
<tr><td>Offering**</td><td colspan="2">• Publication of the prospectus;
• offline price enquiries;
• offline subscriptions;
• publication of online announcements, online offerings;
• online subscriptions;
• freezing of capital commitment;
• capital verification;
• lottery;
• release of capital commitment; and
• share registration.</td><td>

T'-1***
T'
T'
T'+1
T'+2
T'+3
T'+4</td></tr>
<tr><td>Listing****</td><td colspan="2">• Publication of the prospectus;
• listing of the application;
• listing of the review;
• supplementary listing application;
• approval;
• notice;
• announcement; and
• listing.</td><td>
T"-1*****
T"-1–T"+6
T"+6
T"+6–T"+10
T"+10
L-5–L-1†
L</td></tr>
<tr><td colspan="4">* T refers to the date when the CSRC accepts the IPO application. Days are calendar days.
** There is some difference between the specific time frames of the SZSE and SHSE, and this part sets forth the common practice for the SZSE as an example.
*** T' refers to the date of online subscriptions. Days are calendar days.
**** There is some difference between the specific time frames of the SZSE and SHSE, and this part sets forth the common practice for the SZSE as an example.
***** T" refers to the date that the relevant exchange accepts the listing application.
† L means the listing date. Days are calendar days.</td></tr>
</table>

The above table may not apply to the Technology Innovation Board in practice. Official policies and market practices will govern its procedures and timelines.

ii Pitfalls and considerations

Under the current IPO process (except for the Technology Innovation Board), the CSRC will conduct a thorough, substantive review of all IPO application documents. In recent years, the CSRC has raised mainly the following issues with respect to unsuccessful applicants:

a failure to satisfy qualification requirements;

b failure to satisfy sustainable profitability requirements;

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c competition involving the controlling shareholder, actual controller or other enterprises controlled by such controlling shareholder or actual controller;
d use of proceeds-related issues;
e disclosure issues;
f corporate governance issues;
g compliance issues;
h finance and accounting issues; and
i defective reports issued by advisers.

This is not an exhaustive list of reasons, and one factor may not necessarily be decisive in an application's denial. However, they serve as a useful guide for prospective issuers.

iii Considerations for foreign issuers

As stated above, prior to the launch of the Technology Innovation Board, an issuer must be a company limited by shares incorporated in China. Accordingly, non-Chinese corporate bodies may not list on Chinese stock exchanges. In 2011, there were reports that the SHSE would create a board for qualified foreign issuers, although there have not been follow-up reports, specific timelines or plans in relation to such board. However, these restrictions do not prevent joint ventures with foreign ownership that do not operate in a restricted or prohibited industry from listing in China. Established offshore incorporated red-chip companies may list on the Technology Innovation Board.

IV POST-IPO REQUIREMENTS

Listed companies in China are subject to continuous disclosure requirements, including regular and *ad hoc* reporting. Generally, regular reporting includes the annual report, biannual report and quarterly reports. *Ad hoc* reporting is required when listed companies encounter significant events or shareholding changes (e.g., over 5 per cent shareholding, change in shareholding of directors or senior management). Tender offer rules also apply for shareholders who acquire more than 30 per cent of the issuer's shareholding after listing.

V OUTLOOK AND CONCLUSION

The most significant change in China's domestic IPO market in 2018 was the lower success rate of applicants. We have noticed recently that the CSRC does not merely focus on an applicant's financial performance and sustainable profitability, but will also pay more attention to its internal controls and the transparency, authenticity and accuracy of its disclosures. However, more rigorous scrutiny may lead to more disciplined and higher quality applicants. The central government's recent emphasis on the capital market's importance in the real economy, along with the Technology Innovation Board, which is currently set to launch in early 2019, means IPO activity in the A-shares market may rise in 2019.

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Chapter 4

FINLAND

Salla Tuominen[1]

I INTRODUCTION

Since 2012, the Finnish initial public offering (IPO) market[2] has been developing extremely well, following what was approximately five years of stagnation.

The Helsinki Stock Exchange is operated by Nasdaq Helsinki, a company belonging to the US corporation Nasdaq, which operates 26 markets worldwide.[3] In addition to Nasdaq Helsinki, Nasdaq operates exchanges in the Nordic countries: Sweden (in Stockholm), Denmark (in Copenhagen) and Iceland (in Reykjavik). On 31 December 2018, the number of listed companies on the regulated markets of the above-mentioned Nordic exchanges totalled 606 (excluding 10 multiple listings), and the number of companies admitted to trading on the alternative marketplaces operated by Nasdaq in the Nordic region was 342.[4]

Nasdaq Helsinki companies can be listed on either the main market (the Official List), which is a regulated market – as defined by EU legislation (and implemented in national legislation) – or admitted to trading on an alternative marketplace, Nasdaq First North Finland (First North), aimed for growth companies.

As at 31 December 2018, there were 157 companies listed on Nasdaq Helsinki, of which 129 companies were listed on the Official List and 28 companies were listed on First North (for both, parallel listings are excluded). In 2018, 13 companies joined Nasdaq Helsinki, including a parallel listing of an Estonian company, which set a new record in the 2000s. Five of these were listings on the Official List and eight were admitted to trading on First North. In addition, one company transferred from First North to the Official List.

One recent feature has been the growing amount of IPOs on First North.

There is a long-established tradition in Finland of stock exchange trading, which dates back to 7 October 1912.

1 Salla Tuominen is a senior counsel at DLA Piper Finland.

2 In this chapter, IPO refers to both the listings of the shares on the regulated market and admitting the shares to trading on the alternative marketplace or multilateral trading facility. Listings of securities other than shares are not discussed in this chapter. Further, the listing of shares in real estate investment funds or listing of shares in the acquisition companies into which special listing requirements are applied are not discussed in this chapter.

3 www.business.nasdaq.com/discover/nasdaq-story/our-businesses (accessed on 16 January 2019).

4 www.nasdaqomxnordic.com/digitalAssets/109/109642_the-nordic-list-january-3--2019.xlsx.

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II GOVERNING RULES

The applicable regulatory framework governing IPOs in Finland is based on EU regulations and the implementation of EU directives. The principal national statute, the Finnish Securities Markets Act (746/2012) (SMA), as amended, governs, *inter alia*, the offering of securities, disclosure obligations on the securities markets, takeover bids, prevention of market abuse and supervision of the securities market. In addition to national and EU legislation, there are authority-based regulations as well as rules issued by Nasdaq Helsinki.

i Main stock exchanges

As noted above, Nasdaq Helsinki operates both the Official List, which is the regulated market, and the alternative marketplace, First North.

Official List

The Official List is suited for companies that are mature and can adhere to the highest standards for reporting, transparency and accountability. The Official List is further divided into the segments of large cap, mid cap and small cap based on the companies' market cap, even though such division has no impact on listing criteria or rules applicable to the companies.[5]

First North

First North is designed for growth companies wishing to gain access to capital markets. As the applicable rules are less extensive than for the Official List, First North provides companies with room to focus on the development of their businesses. First North may be the first step into the financial market and could be used as a springboard to the Official List in the future. First North Premier is a segment within First North, designed for growth companies making a conscious decision to comply with higher disclosure and accounting standards than those applied to regular First North companies.

ii Overview of listing requirements

Applicable listing requirements depend on whether a company aims to have its securities listed on the Official List or admitted to trading on First North. Issuers whose shares are to be listed on the Official List have to comply with high statutory standards that are largely harmonised throughout the European Union and reflected in the listing criteria, whereas First North is merely regulated pursuant to the rules of Nasdaq Helsinki, which are less burdensome than those applied to the Official List.[6]

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5 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.1.2.

6 First North is a multilateral trading facility operated by Nasdaq Stockholm AB (Nasdaq First North Stockholm), Nasdaq Copenhagen A/S (Nasdaq First North Denmark), Nasdaq Helsinki Ltd (Nasdaq First North Finland) and Nasdaq Iceland hf (Nasdaq First North Iceland) (Nasdaq First North Nordic – Rulebook 1 January 2019). This chapter deals only with rules, regulations and practices with respect to First North in Finland.

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Official List

General listing requirements have been harmonised between the Nasdaq Nordic exchanges. The specific requirements and preconditions for a company's shares to be listed on the Official List and the required contents of the application for the listing are regulated by the Nasdaq Helsinki Ltd Rules of the Exchange (the Rules of the Exchange).[7]

A listed company must meet the listing requirements continuously while being listed. However, there are certain requirements that are only applied when the company is admitted to the Official List.[8]

The listing requirements can be summarised as follows:[9]

a general requirements regarding the company and the shares:
- a public limited liability company form;
- legal competence;
- free transferability of the shares;
- shares entered into the book-entry system; and
- all issued shares of the class must be listed;

b annual accounts published for the past three years and sufficient operational history;

c annual accounts prepared in accordance with International Financial Reporting Standards (IFRS);

d sufficient earnings capacity or sufficient working capital for 12 months, available after the first day of listing;

e sufficient shares within the same class in the possession of the public (at least 25 per cent), namely free float,[10] and a sufficient number of shareholders;

f sufficient supply of and demand for the shares existing to facilitate a reliable price formation;

g expected aggregate market value of the shares of at least €1 million;

h information about how the company complies with the corporate governance code recommendations issued in its home state; and

i administration required for a listed company covering the requirements:
- the composition of the board of directors must sufficiently reflect the competence and experience required;
- the management must have sufficient competence and experience; and
- the company must establish and maintain adequate procedures, controls and systems to enable it to provide the market with timely, reliable, accurate and up-to-date information.

7 Currently valid version of the Rules of the Exchange is: Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017)' available at www.business.nasdaq.com/media/Rules_of_the_Exchange_3_Jan_2018_tcm5044-25490.pdf.

8 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.1.2.

9 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.

10 Where necessary, the company may be required to have a market maker for the shares to ensure the reliable price formation.

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In addition, the company shall prepare and publish a listing prospectus according to the SMA and EU Prospectus Regulation[11] approved by the Finnish Financial Supervisory Authority (FIN-FSA).

Listing shall be applied in writing. The Rules of the Exchange include a list of issues that the application must include and practical matters that must be taken care of.[12] A company is also required to enter into a written agreement with Nasdaq Helsinki on trading its shares on the Official List and, in the agreement, undertake to comply with the rules and guidelines of Nasdaq Helsinki.

When seeking a dual listing on the Official List, the company must satisfy Nasdaq Helsinki that there will be sufficient liquidity to facilitate orderly trading and an efficient price formation process. Nasdaq Helsinki will normally recognise the listing requirements of another (in Nasdaq Helsinki's opinion) well-recognised regulated market or equivalent trading venue, if the company is subject to listing on such a market. Nasdaq Helsinki may approve the dual listing of a company with a listing with the maintainer of a regulated market and, on the basis of this, grant exemption from one or more of the general listing requirements as well as the requirements regarding the administration of the company referred to in the Rules of the Exchange. Companies with a listing on a regulated market, or equivalent, which is run by Nasdaq, Deutsche Börse, the London Stock Exchange, the New York Stock Exchange, Euronext, Oslo Børs, Hong Kong Exchanges and Clearing, the Australian Securities Exchange, the Singapore Exchange or the Toronto Stock Exchange, may be granted exemptions from the Rules of the Exchange. Decisions on dual listings of such companies shall be made by the managing director of Nasdaq Helsinki. Usually, it is required that the company has been admitted to trading for at least 12 months on that particular market.[13]

Nasdaq Helsinki may, in cases where all listing requirements are fulfilled, refuse an application for listing if it considers that the listing would be detrimental for the financial markets or investor interests.[14]

First North

The shares of a company may be added for trading to First North subject to approval of a written application. The application shall cover all shares of the same class. The requirements for admitting shares to be traded on First North are significantly less onerous than the requirements set out for the Official List. Pursuant to the Nasdaq First North Nordic – Rulebook (the First North Rules),[15] the shares may be traded on First North when Nasdaq Helsinki finds that they meet First North's requirements and where it finds that trading in the instruments is of public interest.

The listing requirements can be summarised as follows:[16]

11 Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing the Prospectus Directive and the new Prospectus Regulation (1129/2017). See also footnote 21.

12 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.2.2.

13 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.7.3.

14 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.3.14.

15 Currently valid version of the Nasdaq First North Nordic – Rulebook is 1 January 2019 available at: https://business.nasdaq.com/list/Rules-and-Regulations/European-rules/common/index.html.

16 Nasdaq First North Nordic – Rulebook 1 January 2019, Rule 2.3.

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a general requirements regarding the company and the shares: free transferability of the shares, shares entered into the book-entry system, and cleared and settled in a manner acceptable to Nasdaq Helsinki;

b sufficient supply and demand of the shares shall exist: sufficient number of shareholders holding shares with a value of at least €500 and at least 10 per cent of the share class to be traded is held by the general public;[17]

c the company shall be able to demonstrate ongoing business operations;

d the board of directors and the management of the company shall have appropriate qualifications and sufficient competence to govern and manage the company and, comply with the obligations of being admitted to trading on First North; and

e the company shall possess the organisation and staff required to comply with the requirements regarding disclosure of information to the market as set forth in the First North Rules.

Instead of an EU prospectus as required for listings on the Official List, the companies to be admitted to trading on the First North market shall prepare a 'company description' (unless the issue of shares is such that an EU prospectus is required). The obligation to publish an EU prospectus applies to the admittance of shares on First North where the total consideration for the offer of shares in the European Union is a minimum of €8 million calculated over 12 months. The requirements for the company description are provided in the First North Rules and are less extensive than requirements for an EU prospectus.

Companies that join First North are required to engage a certified adviser in connection with the approval process. A certified adviser shall provide support and guide the company through the application process, advise the company with regard to disclosures, communications and reporting duties, and also ensure that the company initially and continuously complies with the First North Rules. The certified adviser shall also report any rule violations to Nasdaq Helsinki. To act as a certified adviser, the adviser must sign an agreement with Nasdaq Helsinki.

Should the company decide to comply with the stricter disclosure requirements and IFRS standards, the company may apply for the separate First North Premier segment.

The additional requirements for the Premier segment are that the company must:[18]

a apply the IFRS for accounting and financial reports, and have at least one reviewed financial report (for example a quarterly report or a semi-annual report) prepared in accordance with the IFRS;

b on a continuous basis, distribute at least 25 per cent of the shares in the share class to be traded held in public hands;

c on a continuous basis, have a market value of at least €10 million; and

d apply the local corporate governance code in the country where it is incorporated.

17 As a general rule, the issuer should normally have at least 300 shareholders. If the issuer has fewer than 300 but more than 100 shareholders, Nasdaq Helsinki may consider the requirement satisfied if the company retains the services of a liquidity provider, First North Nordic – Rulebook 1 January 2019, Chapter 2.3.1.

18 Nasdaq First North Nordic – Rulebook 1 January 2019, Rule 2.1 of Appendix F.

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iii Overview of law and regulations

In Finland, the applicable national legislation for IPOs is primarily set out in the SMA[19] and the Act on Trading in Financial Instruments (1070/2017, as amended). In addition, the regulation of the FIN-FSA gives provisions and recommendations for companies contemplating an IPO. With regard to listing on the Official List and the Rules of the Exchange, and with regard to admittance to trading on First North, the First North Rules are the main source of the exchange-based regulation. Further, regarding listing on the Official List, other rules such as Insider Guidelines of Nasdaq Helsinki and the Finnish Corporate Governance Code of the Finnish Securities Market Association (the CG Code)[20] shall be complied with. The Insider Guidelines shall also be complied with in regard to First North.

In addition to the national rules and regulations referred to above, there are several EU regulations that include legislation directly applicable in the Member States of the European Union and that are relevant for an IPO on a regulated market anywhere in the European Union. The most important EU regulations regarding IPOs are the provisions of the EU Prospectus Regulation,[21] which govern the obligation to publish a prospectus and exemptions thereto, and contents of EU prospectuses. The European Securities and Markets Authority's (ESMA) recommendations, guidelines, opinions and Q&As are also valuable sources of information.

Further, the Transparency Directive[22] and Market Abuse Regulation[23] (MAR) govern the post-IPO transparency principles and protections against market abuse, and include obligations regarding publication of inside information and managers' transactions. On a national level, these obligations arise from the SMA and the Regulation of the Ministry of Finance on the Ongoing Disclosure Obligation of an Issuer of a Security (20 December 2012/1020). In addition, the provisions by the ESMA and the FIN-FSA, the applicable rules of Nasdaq Helsinki, the Guidelines for Insiders[24] and the CG Code recommendations for the post-IPO stage are relevant. The MAR and Guidelines for Insiders are also applied to companies whose shares are admitted to trading on First North.

19 See Section II.

20 www.cgfinland2.fi/wp-content/uploads/sites/6/2015/10/hallinnointikoodi-2015eng.pdf.

21 Commission Regulation (EC) No. 809/2004 of 29 April 2004. Commission Regulation (EC) No. 1287/2006. The new Prospectus Regulation (1129/2017) was published in the Official Journal of the EU on 30 June 2017. Its provisions will begin applying on a rolling basis as of 20 July 2017, with full application from 21 July 2019. The Prospectus Regulation will replace the previous Prospectus Directive 2003/71/EC. The Commission shall also adopt delegated acts to supplement the Regulation. The Prospectus Regulation shall also replace several overlapping sections from the SMA. The new Prospectus Regulation is a part of the capital markets union action plan. The new rules are aimed at simplifying administrative obligations related to the publication of prospectuses but in a manner that still ensures that investors are well informed. The new prospectus regime shall ensure that appropriate rules cover the full life cycle of companies from start-up until maturity as frequent issuers on regulated markets.

22 Directive 2004/109/EC of the European Parliament and of the Council as amended by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013.

23 Commission Regulation (EU) No. 596/2014.

24 A part of the regulation issued by Nasdaq Helsinki available here: www.business.nasdaq.com/media/Guidelines-for-Insiders-of-listed-companies-3-Jan-2018_tcm5044-20055.pdf.

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III THE OFFERING PROCESS

i General overview of the IPO process

Steps and timing

Official List

The listing process (including planning and preparing) takes approximately six months to one year. However, the process may be faster, depending on, for example, how the company has prepared its corporate governance or internal processes, and whether the company has already been reporting annual accounts in accordance with IFRS. The process may be divided into different phases: the preparation phase, the actual listing process and the post-IPO phase (i.e., when the company is a listed company).

The initial planning is typically started six to 12 months prior to the listing. This phase includes general mapping of the targets, choosing the advisers, entering company shares into the book-entry system, making amendments to the company's articles of association (including but not limited to changing the company from a private limited liability company to a public limited liability company) and preparing reports in accordance with the IFRS. The equity story is also prepared.

The actual listing process typically begins three to six months prior to the listing. During this phase, the company prepares for the listing with its advisers through the following:

a a plan and schedule for the listing process is prepared;
b meetings with the FIN-FSA and Nasdaq Helsinki are arranged to present the company's business and financial status;
c due diligence reviews are carried out;
d the prospectus, marketing material, and share sale or issue terms and conditions are drafted; and
e internal processes regarding governance, financial reporting, insider administration and investor relations are prepared, and the ticker symbol is reserved.

At the latter stage of the actual listing process, typically one to three months prior to the listing, the prospectus and terms and conditions of the share sale or issue are finalised and approved by the FIN-FSA, the company gives a presentation to the listing committee of Nasdaq Helsinki and, to finalise the listing application, the company takes part in the training sessions arranged by Nasdaq Helsinki. Also, the company may release information on its planned listing and be initially marketed.

The final stage of the listing process, which typically takes place within four months prior to the listing, includes the company's board of directors' resolution on the listing, submission of the listing application and publication of the prospectus and share sale or issue terms. The listing application is handled and resolved by the listing committee of Nasdaq Helsinki. The company shall, without undue delay, disclose the filing of a listing application with Nasdaq Helsinki. A company that has filed a listing application is considered equal to a listed company until the company share has been listed, the company has disclosed information about the cancellation of a listing application or Nasdaq Helsinki has rejected the listing application, and therefore such a company shall comply with the Rules of the Exchange applicable to listed companies.[25]

25 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.2.2.1.

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Further, the company shall, at the time of filing its application for listing at the latest, have a website where the information made public in accordance with the disclosure duties and information relating to the corporate governance shall be available. In principle, the company shall also draft a communication policy to ensure the company's readiness for the communications required from a listed company. Besides the necessary steps arising out of the listing criteria and rules and regulations, investor communication may have a material significance to the success of the listing; therefore, making the company publicly known in advance is crucial for a successful listing. At the final stage of the listing process, the investor and analyst meetings are arranged.

After the necessary steps with regard to marketing and share sale or issue have been completed, including the market release issued by Nasdaq Helsinki, the company is ready to be listed and trading commences.

First North

The process as regards the admittance of the shares to be traded on First North usually takes approximately one to three months in the aggregate. The length of the process depends, *inter alia*, on whether the company prepares an EU prospectus (as mentioned above) or the lighter company description in accordance with the First North Rules.

The following steps are to be taken during the admittance process:

a appointment of the certified adviser and other advisers, such as a legal adviser;

b the certified adviser contacts Nasdaq Helsinki on the schedule and plan, and the ticker symbol is reserved;

c the company and the certified adviser finalise the application, investor sections of the company's website and company description (or prospectus where applicable);[26]

d the standard industrial classification application is filed with Nasdaq Helsinki;

e the certified adviser files the application, including the attachments, for admission to trading via the Nasdaq Listing Center;

f Nasdaq Helsinki handles the application;

g the company description (or prospectus) and the terms for the share sale or issue are published; and

h the resolution of Nasdaq Helsinki takes place.

After these steps and the share subscriptions and registrations (where applicable) are completed, the company's shares may begin being traded on First North.

Key parties, stakeholders and documentation

The key parties of a Finnish IPO generally consist of (in addition to the issuer itself and the underwriter or underwriters):

a advisers, such as financial and legal advisers;

b Nasdaq Helsinki;

c the central securities depository (Euroclear Finland);

d the FIN-FSA, when applicable;

e accountants;

f the market maker;

26 The approval process for the prospectus is handled by the FIN-FSA through a separate process.

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g the subscription venue;
h communications and investor-relations consultants;
i old and new shareholders;
j personnel; and
k the media.

The legal adviser counsels the company on the legal aspects of the IPO, *inter alia*, by conducting legal due diligence of the company, assisting in the preparation of the prospectus and terms for the share sale or issue, negotiating the underwriting documentation and assisting in preparing the company to meet the listing criteria, the company's internal documentation, and processes regarding governance, disclosure and insider administration.

The required documentation for an IPO process includes, *inter alia*:

a resolutions regarding the appointment of advisers;
b approval of the final agreements regarding the IPO process;
c resolutions on the listing, documenting:
  - the corporate governance and administrative measures of the company;
  - company presentations;
  - the listing application;
  - the prospectus or company description;
  - terms of the share sale or issue; and
  - marketing material; and

d shareholders' resolutions on the amendments to the articles of association, where necessary, regarding:
  - changing the company's legal form from a private company into a public limited liability company;
  - removing the redemption or consent clauses;
  - entering the company's shares into the book-entry system;
  - changing the composition of the board of directors, where necessary; and
  - authorising the board of directors regarding a share issue.

The necessary processes shall also be taken with Euroclear Finland and Finnish Trade Register with respect to the new shares issued in the share issue.

ii Pitfalls and considerations

It is important to carefully plan the listing and listing process with a detailed timetable, and be in contact with Nasdaq Helsinki in advance.

Further, a company that has filed its listing application on the Official List with Nasdaq Helsinki is subject to the disclosure duty applicable to the listed companies. Also, between the time of publication of the prospectus and completion of the listing, any new factor that may have a significant effect on the price of the company's shares needs to be added to the prospectus. Such supplement shall be approved by the FIN-FSA and disclosed to the market.

iii Considerations for foreign issuers

In Finland, the same listing requirements for the Official List apply for foreign issuers as they do for domestic issuers. However, according to the ESMA, the generally accepted accounting principles of the United States, Canada and Japan are sufficiently comparable, and may usually be used if IFRS-formatted annual accounts are not available.

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For companies seeking dual listing on Nasdaq Helsinki and that are already listed on the regulated market or an equivalent, a special process can be applied. See Section II.ii.

With regard to the Finnish book-entry system and registration of foreign shares that need to be taken into account in the IPO process for foreign issuers, if a company contemplating the IPO is Swedish, an established link exists in Euroclear Finland with regard to the registration of the foreign shares. However, if the company's domicile is anywhere other than Finland or Sweden, the possibility to list the shares or admit the shares to be traded in Nasdaq Helsinki depends on the chosen technical measure to be used with regard to registration of the foreign shares, as long as there is no direct link established between Euroclear Finland and the security depository of the domicile country of the foreign issuer. The possibilities include, for example, use of the holding company structure or use of Finnish depositary receipts. In addition, it is recommended to contact Nasdaq Helsinki in advance for guidance.

IV POST-IPO REQUIREMENTS

i General

Listed companies and companies whose shares have been admitted to trading on First North shall comply, *inter alia*, with stricter specific disclosure requirements and corporate governance obligations than for non-listed companies. The purpose of this is mainly to ensure the prompt and non-discriminatory disclosure of information and protection of investors. Companies must also arrange, for example, insider administration, investor communication (including areas other than disclosure through stock exchange releases) and corporate responsibility reporting. As mentioned above in connection with the listing requirements, the companies shall continuously comply with the listing requirements and, therefore, for example, the reporting processes and risk management shall be effectively arranged.

Nasdaq Helsinki continuously monitors the rules issued by it to ensure compliance. Nasdaq Helsinki also monitors certified advisers of First North to ensure they fulfil their obligations according to the First North Rules.

ii Disclosure obligations

The disclosure obligations on the Official List are divided into two categories: the regular duty of disclosure and the ongoing disclosure obligation.

The regular disclosure obligations refer, in practice, to disclosure regarding companies' regular financial reporting, such as financial statement release, half-yearly and other financial reports, annual accounts and management report, the auditor's report, and a report on the administrative and control systems. Further, notices to general meetings; issues of financial instruments; changes in the board of directors, or management and auditors; share-based incentive programmes; closely related transactions; the company calendar; and substantial changes to the operations of the company, shall be disclosed.

If Nasdaq Helsinki considers that special circumstances exist that result in substantial uncertainty regarding the company or the pricing of the traded financial instruments, and that additional information is required for Nasdaq Helsinki to be able to provide fair and orderly trading in the company's financial instruments, it can require the company to disclose the necessary information. Also, if the company is parallel-listed and discloses any significant information owing to rules or other disclosure requirements of another regulated market

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or trading venue, this information shall also be simultaneously disclosed through Nasdaq Helsinki.[27] Further, the company may publish, for example, forecast statements. The Rules of the Stock Exchange include criteria for such disclosures if they are made.

The ongoing disclosure obligation requires that the listed company, without delay, publishes insider information, which directly concerns the respective company by publishing a stock exchange release. The obligation of a listed company to publicly disclose inside information is regulated by the MAR, including its implementing measures[28] and relevant guidelines of the ESMA.[29] A company may, on its own responsibility, delay disclosure of inside information to the public provided that all of the conditions[30] set out in the MAR are met. The decision on the delay shall be notified to the FIN-FSA when the inside information is disclosed. Further, the ongoing disclosure obligation, in addition to the insider matters, includes obligations relating to the management's transactions. Regarding insider issues, Nasdaq Helsinki has also issued insider guidelines, which must be complied with.

Companies whose securities are traded on First North must also comply with the disclosure obligations. These obligations arise out of the First North Rules and are less burdensome than the rules with regard to the companies on the Official List. Disclosure requirements of insider issues on First North are, however, similar to the rules of the Official List. Other disclosure obligations include, for example, annual reports, annual earnings figures and half-yearly reports, transactions with closely related parties, general meetings, offering of new shares, incentive programmes, changes in the management or certified adviser, and qualified auditor's reports.

iii Flagging

Flagging rules and regulations are applied to the companies on the Official List. A shareholder shall have an obligation to notify a company and the FIN-FSA of its holdings and proportion of voting rights (notification of major shareholding, flagging), when the proportion reaches, exceeds or falls below 5, 10, 15, 20, 25, 30, 50 or 90 per cent, or two-thirds of the voting rights or the number of shares of the company. Upon receipt of the notification of a shareholding, the company shall, without undue delay, disclose the information in the notification of shareholding.

Flagging rules and regulations are not applied to the companies whose shares are admitted to trading on First North.

iv Corporate governance and responsibility reporting

All issuers of shares that are traded on the Official List must comply with the CG Code (or an equivalent corporate governance code applied in the home state). The CG Code is a collection of recommendations on good corporate governance. The recommendations of the CG Code supplement the obligations set forth in the legislation. The objective of the CG Code is to maintain and promote the high quality and international comparability of

27 Nasdaq Helsinki Ltd 'Rules of the Exchange' 3 Jan 2018 (Unofficial translation version 21122017 added), Chapter 2.3.3.9.

28 Commission Implementing Regulation (EU) 2016/1055.

29 ESMA, MAR Guidelines, Delay in the disclosure of inside information, 20/10/2016 | ESMA/2016/1478 EN.

30 Article 17.4 of MAR and ESMA, MAR Guidelines, Delay in the disclosure of inside information, 20/10/2016 | ESMA/2016/1478 EN.

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corporate governance practices applied by Finnish listed companies. The purpose of the CG Code is to harmonise the procedures of listed companies, and to promote openness with regard to corporate governance and remuneration. Currently, the CG Code is under revision and the new revised code should enter into force on 1 January 2020.

In addition, if the company listed on the Official List is a large undertaking whose average number of employees during the financial year has exceeded 500, it must include in its management report a statement of non-financial information.[31] The statement shall include, as a minimum, information regarding how the reporting company handles environmental matters, social and employee-related matters, respect for human rights, and anti-corruption and bribery matters.

v Insider matters

For a company that wishes to be listed on the Official List or traded on First North, it is critical that it has effective and reliable insider administration covering internal policies, and processes for maintaining insider lists, disclosure of insider issues and transactions conducted by persons discharging managerial responsibilities and closely associated with them.

vi Websites

Companies on the Official List and First North must have their own website on which information disclosed by the company on the basis of the disclosure obligations imposed on companies must be available for at least five years.

V OUTLOOK AND CONCLUSION

The Finnish IPO market has experienced a boom in recent years, following a prolonged period in the 2000s when it was practically silent. Today, small and medium-sized companies consider undertaking IPOs to expand their businesses. Further, private equity firms have now entered the IPO market and consider listing as an alternative to an exit. Currently, with IPO processes ongoing and, based on certain published aims, further IPOs in the pipeline, the market is predicted to continue this activity in 2019.

31 Accounting Act (1336/1997, as amended) Chapter 3, Section 1.

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Chapter 5

FRANCE

Thomas Margenet-Baudry and Jemma Lohr McPherson[1]

I INTRODUCTION

Founded in 1724, the Paris Bourse is one of the oldest stock exchanges in the world. Known today as Euronext Paris, it is among the largest exchanges in Europe, with approximately 950 listed companies.[2] The Euronext group, created in 2000, includes exchanges in Amsterdam, Brussels, Dublin, Lisbon and Paris, and is the fifth-largest stock exchange in the world as measured by market capitalisation (approximately US$4 trillion), with approximately 1,200 listed companies.[3]

Euronext Paris is the market manager for France-listed companies; it ensures proper market functioning and establishes admission requirements for companies planning to list in France. The Autorité des marchés financiers (AMF) is the French financial market regulator and is an independent body that administers and enforces French and European securities regulations. The AMF is responsible for safeguarding investments in financial instruments, ensuring that investors receive material information and maintaining orderly financial markets in France. Further to these responsibilities, the AMF is charged with authorising prospectuses for companies applying to be listed on Euronext Paris.

With its sophisticated financial infrastructure, growing economy, strength in the high-technology sector and competitive regulatory framework, France offers an attractive capital markets framework to issuers and investors. Ongoing French and EU regulatory efforts seek to make listing in France more efficient and accessible, while maintaining rigorous market and investor protections. For example, since 2015, the AMF has, in certain cases, permitted issuers to prepare prospectuses in English, enabling French issuers to communicate more effectively and directly with the international investor community, and has in recent years moved to a digital filing system.

II GOVERNING RULES

The laws and regulations that are applicable and relevant to initial public offerings (IPOs) and listings of equity securities in France include EU directives and regulations, French laws and

1 Thomas Margenet-Baudry is a partner and Jemma Lohr McPherson is an associate at Latham & Watkins.
2 Euronext, 'Actions – Paris', accessible at https://www.boursedeparis.fr/cours/actions-paris. Last accessed 17 January 2019.
3 World Federation of Exchanges. 'Monthly Report' for December 2018, accessible at: https://www.world-exchanges.org. Last accessed 17 January 2019.

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regulations, the rules of Euronext Paris and Euroclear, and particular US laws and regulations applicable to certain securities offerings that are open to potential US investors but not registered with the US Securities and Exchange Commission.

Mainly owing to the ongoing harmonisation of regulations within the European Union, rules and regulations applicable to securities offerings in the European Union in general – and in France in particular – have been constantly evolving in recent years. Following a consultation process and in line with its capital markets union action plan,[4] the European Commission adopted a new prospectus regulation in June 2017 to further improve the EU prospectus regime.[5] This new prospectus regulation will replace the existing Prospectus Directive (see subsection iii) and, along with further delegated acts to be adopted in the first half of 2019, will constitute a full set of new rules directly applicable in the European Union with respect to prospectuses (collectively, the New Prospectus Regulations).[6] The New Prospectus Regulations are being implemented in three stages, to be completed by 21 July 2019. Although they may engender certain changes to IPO practices in other EU jurisdictions, their implementation is not expected to generate significant and structural changes to the way IPOs are conducted in France.

i Main stock exchange

Euronext Paris is the sole stock exchange operator and market manager in France for equity securities. When preparing equity securities for admission to listing or trading, or both, on Euronext Paris, companies select one of its three markets: the Regulated Market, Euronext Growth or Euronext Access. The decision of which market to list on is generally based on size (valuation, offering size or revenues), applicable regulatory framework and the types of investors to be targeted.[7]

The Regulated Market

The eligibility requirements of the Regulated Market are the most stringent of Euronext Paris' three markets. Companies listed on the Regulated Market are subject to a number of rules that are applicable to all listings on regulated markets within the European Union, particularly in terms of financial reporting, accounting standards and ongoing disclosure obligations; for example, the European Market Abuse Regulation (MAR) applies to companies listed on the Regulated Market, as do EU prospectus regulations in the case of a public offering. The Regulated Market is divided into three 'compartments': Compartment A, for companies

4 European Commission. 'Capital markets union action plan', available at; https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en. Last accessed 17 January 2019.

5 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1129. Last accessed 17 January 2019.

6 The European Union is expected to adopt such delegated acts to supplement the new prospectus regulation and set out in further detail the requirements of that regulation.

7 Euronext. 'Equities', available at: https://www.euronext.com/en/listings/euronext. Last accessed 17 January 2019.

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with a market capitalisation of more than €1 billion; Compartment B, for companies with a market capitalisation between €150 million and €1 billion; and Compartment C, for companies with a market capitalisation of less than €150 million.[8]

Euronext Growth

Euronext Growth is an alternative market for small and medium-sized companies, offering simplified access to the capital markets with fewer eligibility requirements and less stringent ongoing reporting obligations than the Regulated Market. Euronext Growth is open to investment by both professional and retail investors. It is controlled, but not regulated, in accordance with EU securities regulations, although MAR applies to companies listed on Euronext Growth, as do EU prospectus regulations in the case of a public offering. Companies seeking to be admitted to trading on Euronext Growth must appoint a duly accredited 'listing sponsor', which will assist them during the admissions procedure and, following listing, will be responsible for advising and assisting a listed company in its interactions with the market.[9]

Euronext Access

Euronext Access is an alternative market for a variety of companies looking to access the capital markets without having to meet the more stringent eligibility criteria of the Regulated Market or Euronext Growth. Companies seeking to be admitted to trading on Euronext Access must appoint a duly accredited listing sponsor, and companies seeking to be listed, as well as listed companies, must possess a website that includes at least two years of financial statements (which may be unaudited). Euronext Access is not regulated in accordance with EU securities regulations, although MAR applies to companies listed on Euronext Access, as do EU prospectus regulations in the case of a public offering. Listed members are also required to communicate annually with Euronext's compliance department to detail compliance with regulatory obligations.[10]

ii Overview of the Euronext Paris listing requirements

To be listed on one of Euronext Paris' markets, a company must file an application with Euronext Paris and comply with its admission criteria, as detailed below.[11]

8 Euronext. 'Euronext Regulated Markets', available at: https://www.euronext.com/en/regulation/regulated-markets. Last accessed 17 January 2019. Market capitalisation, for the purposes of determining which compartment is suitable, is computed over the last two months of the previous year.

9 Euronext. 'Euronext Growth', available at: https://www.euronext.com/en/listings/euronext-growth. Last accessed 17 January 2019.

10 Euronext. 'Euronext Access', available at: https://www.euronext.com/en/listings/euronext-access. Last accessed 17 January 2019.

11 Euronext. 'European Corporate Client Group – Frequently Asked Questions', available at: https://www.euronext.com/en/listings/frequently-asked-questions. Last accessed 17 January 2019. The listing application contains certain details about the company and the shares to be listed, as well as undertakings from the company to be listed. Applicants for listing on Euronext Paris must also comply with Euronext's 'Know Your Customer' requirements and must provide to Euronext Paris (1) the AMF-approved prospectus, (2) constitutional and corporate documents of the company to be listed, (3) a letter from the listing agent and (4) all press releases published in connection with the offering. Euronext Paris also may request certain other materials in connection with the offering, such as the research reports.

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	Regulated Market	Euronext Growth	Euronext Access
Initial admission			
Free float	25 per cent or 5 per cent (if it represents greater than €5 million on the Regulated Market)	€2.5 million	Not applicable
Documentation	AMF-approved EU prospectus	Information document (or EU prospectus in case of public offers)	
Financial statements	Last three years of audited accounts (plus most recent reviewed half-yearly accounts if admission will be more than nine months after close of last full fiscal year)	Last two years of audited accounts	Last two years of accounts (audited accounts not required)
Accounting standards	International Financial Reporting Standards (IFRS)	IFRS or French generally accepted accounting principles	
Intermediary	Listing agent	Listing sponsor	
Ongoing requirements			
Annual financial reporting	Audited annual report		In compliance with French regulations
Semi-annual financial reporting	Audited semi-annual report	Non-audited semi-annual report	Not applicable
Price-sensitive information, list of insiders, market survey	MAR applies		
Declaration of transactions	MAR applies		
Declarations of breaches of threshold (withholding of capital and voting rights)	Applicable		Not applicable
Anti-money laundering	Applicable		
Intermediary	Not required	Listing sponsor	Not applicable
Website required	Yes		

iii Overview of law and regulations

EU securities regulations

EU securities regulations, which are generally applicable to, or relevant for, French IPOs, are principally composed of: the Prospectus Directive,[12] the Prospectus Regulation,[13] the

12 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0071. Last accessed 17 January 2019. The Prospectus Directive has been amended by: (1) Directive 2013/50/EU, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0050, (2) Directive 2010/73/EU, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0073 and (3) Directive 2008/11/EC, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0011. As at the time of writing, the Prospectus Directive remains in force. It will be repealed by the New Prospectus Regulations with effect from 21 July 2019, except for points (a) and (g) of Article 4(2) of the Prospectus Directive, which were repealed with effect from 20 July 2017, and point (h) of Article 1(2) and point (e) of the first subparagraph of Article 3(2) of Directive 2003/71/EC, which were repealed with effect from 21 July 2018.

13 Commission Regulation (EC) No. 809/2004/EC of 29 April 2004, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0809. Last accessed 17 January 2019. As at the time of writing, the Prospectus Regulation remains in force. The European Commission is expected to adopt delegated acts in the first half of 2019 to supplement the new prospectus regulation, to repeal the Prospectus Regulation and set out in further detail the requirements of the new prospectus regulation. As at the time of writing, no such delegated acts have yet been adopted.

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European transparency directive (the Transparency Directive)[14] and MAR.[15] As discussed above, the Prospectus Directive and the Prospectus Regulation will be repealed and replaced by the New Prospectus Regulations, with full implementation to occur by 21 July 2019. An overview of this regulatory environment is provided below.

EU prospectus regulations ensure that adequate and equivalent disclosure standards are in place in all EU countries so that investors can benefit from the same level of information and protection across the European Union. EU prospectus regulations require a prospectus to be published by a company in connection with (1) offers of securities to the public within EU Member States[16] or (2) admissions of shares to be listed on a regulated market situated or operating within an EU Member State (e.g., the Regulated Market). A prospectus is a legal document that describes a company's business, the risks it faces, its finances and shareholding structure, as well as the securities that are being issued or admitted to trading. It provides investors with the information they need to make an informed investment decision. EU prospectus regulations also set out the format and the disclosure requirements for EU prospectuses, whereas the Transparency Directive sets the disclosure obligations for issuers listed in the European Union.

French securities regulations

In addition to EU directives and regulations, French laws, rules and regulations pertaining to French IPOs and French-listed equity issuers include: the French Commercial Code (for issuers incorporated in France), the French Monetary and Financial Code, the AMF's General Regulation and the corporate governance code of listed companies (the AFEP-MEDEF Code) with respect to the governance of listed companies on a 'comply or explain' basis.

US securities regulations

In addition to preparing an EU prospectus, companies seeking an IPO in France also generally prepare an 'international offering circular' to assist with marketing the global offering outside France. The international offering circular will contain the same information

14 Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0050. Last accessed 17 January 2019. Additionally, (1) MAR, which sets out the framework regarding market abuse and use of inside information in the EU (Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0596. Last accessed on 17 January 2019), (2) Directive 2001/31, which governs the admission of securities to official stock exchange listing and information to be published on such securities (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001, available at: https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32001L0034. Last accessed on 17 January 2019) and (3) MiFID II, which regulates the European Union's financial markets (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065. Last accessed on 17 January 2019), should also be taken into consideration in any French IPO process.

15 Commission Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

16 Per EU prospectus regulations, an 'offer of securities to the public' is a 'communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities; or placing of securities through financial intermediaries'. This term is unchanged in the new prospectus regulation as compared to the Prospectus Directive.

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as the prospectus and typically includes specific disclosure regarding, or pursuant to, US securities laws and regulations, because the global offering will be made (1) by relying on the registration exemptions provided by Rule 144A under the US Securities Act of 1933 (the Securities Act) for sales to 'qualified institutional buyers', or one of the safe harbours provided by Regulation S under the Securities Act for offshore transactions outside the United States, and (2) in compliance with US anti-fraud provisions, notably Rule 10b-5 of the US Securities Exchange Act of 1934.

III THE OFFERING PROCESS

i General overview of the IPO process

A standard IPO process involving an AMF prospectus approval and a listing of shares on Euronext Paris takes approximately four to six months.

The key parties in a French IPO process are as follows:

a the company to be listed (the issuer) and its principal and selling shareholders, if applicable;
b the issuer's financial advisers;
c the underwriters (e.g., a bank syndicate, which is led by joint global coordinators);
d the issuer's auditors;
e the legal advisers to the issuer, management, the selling shareholders and the underwriters;
f the AMF;
g Euronext Paris;
h a settlement or centralising bank; and
i a communications agency advising the issuer.

Certain participants in the IPO will take responsibility for the content of the prospectus, including (1) the issuer, who will provide an attestation to the AMF pursuant to a standard form to be included in the prospectus, which attests that the information in the prospectus is accurate and contains no material omissions, (2) the underwriters, who will provide an attestation to the AMF as to the completeness of their due diligence review and (3) the issuer's auditors, who will provide a letter to the AMF as to the completion of their work, which includes declarations regarding the financial statements and the overall review of the prospectus by such auditors.

The following are the main work streams of a French IPO process:

a IPO preparation and issuer readiness studies;
b management and document due diligence review;
c preparation of financial information;
d preparation, and AMF review and approval of the prospectus;
e analyst presentations and publication of research reports;
f pre-deal investor education, marketing and publicity;
g pricing, settlement and delivery; and
h stabilisation, if applicable.

The key documents in a French IPO are as follows:

a the prospectus;
b early look presentations (if any);
c analyst presentations;

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d research reports;
e the international offering circular; and
f the roadshow or investor presentation.

These main steps and key documents are described in further detail below.

IPO preparation and issuer readiness studies

Before initiating an IPO in France, issuers need to carefully consider both the AMF review and Euronext listing processes, as well as the ongoing disclosure and compliance requirements of French-listed companies, and ensure that they are sufficiently prepared and organised to fulfil these requirements.

Particular topics for consideration pre-IPO are:

a implementation of a risk-mapping exercise;
b implementation of appropriate internal controls;
c preparation of adequate financial reporting for previous fiscal periods (including the completion of contemplated restatements or re-segmentations, as well as consideration of the impact of IFRS changes);
d compliance with relevant regulatory regimes (including industry- and geography-specific labour, tax, data and environmental laws, as well as relevant sanctions and anti-corruption laws); and
e corporate and offering structure, including any internal reorganisation, any plans for retail or employee offerings, and the use of primary or secondary offering structures, or both.

Management and document due diligence review

The underwriters, assisted by legal counsel, will undertake a thorough due diligence exercise early in the process to fulfil their due diligence obligations pursuant to AMF rules, as well as pursuant to Rules 144A and 10b-5. The purpose of the due diligence process is to review the issuer's books and records, and have discussions with the top management of the issuer to ensure that the prospectus and the international offering circular do not contain any untrue statements of material fact, or omissions of material fact necessary to ensure that the statements made – in light of the circumstances under which they are made – are not misleading in connection with the purchase or sale of any security.

Preparation of financial information

The availability of finalised financial statements and the related auditors' reports will often drive the IPO timetable. The issuer's auditors will need to be involved early in the IPO process, as they will review the financial information to be included in the prospectus.

Regarding the period to be covered by the financial statements in the prospectus, the general rule for listing on the Regulated Market is inclusion of three years of audited IFRS financial statements (including auditor's audit reports), plus the most recent interim period

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(including auditor's limited review reports).[17] Although there are specific European rules with respect to the staleness of financial statements,[18] the largest French IPOs generally follow the '135-day rule'.[19]

Preparation, and AMF review and approval of the prospectus

Contrary to many other jurisdictions that use a single prospectus document, the French IPO prospectus is composed of a registration document, a securities note, a summary (contained in the securities note and provided in French and English, if applicable) and, if applicable, one or more updates to the registration document.

The different parts of the prospectus are filed on a confidential basis with the AMF for its review and comment, which generally requires multiple rounds of submission and comments. It is essential to communicate and coordinate closely with the AMF to determine the best timetable for submissions of drafts.

Once the draft registration document is complete and approved by the AMF, it will be 'registered' and made public by the issuer in accordance with applicable rules. After publication of the research reports and completion of the pre-deal investor education process (as described below), the securities note, the registration document updates (if any) as well as the summary of the prospectus are prepared and confidentially filed with and reviewed by the AMF. Ultimately, the entire prospectus is approved and receives a 'visa' from the AMF.[20]

The format and content of the prospectus is set out in the EU prospectus regulations.

The key sections of the registration document are as follows:

a financial information (chapters 3, 9, 10 and 20);

b risk factors and business information relating to the issuer and its industry (chapters 4, 5, 6, 7, 8, 11 and 17);

c guidance (chapters 12 and 13); and

d corporate governance (chapters 14, 15, 16, 18, 19, 21 and 25).[21]

The key sections of the securities note are as follows:

a risk factors relating to the securities being offered;

b key information about the offering (including capitalisation, working capital, material interests and purpose of the offering);

c information about the securities being offered;

d terms and conditions of the offering;

17 Two years of audited financial statements may be acceptable for recently incorporated companies or groups, but this decision must be taken in consultation with the AMF and Euronext Paris.

18 Annex I of the Securities Regulation sets out the rules for staleness of financial statements applicable to French IPOs. Staleness per the Securities Regulation is (1) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document or (2) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

19 The '135-day rule', originally derived from certain US regulations and market practices, provides that if 135 days or more have passed between the date of the most recent financial statements that have been audited or reviewed, on the one hand, and the cut-off date of the comfort letter, on the other hand, the auditors cannot give negative assurance on the change period.

20 AMF approval indicates that the prospectus contains the information required for an investor to decide whether to take part in the offering. AMF approval does not constitute endorsement of the merits of the offering, or the authenticity of the accounting and financial documents presented.

21 Any updates to the registration document will include any sections that are required to appear in the registration document that need to be updated.

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e information about the selling shareholders; and
f information about dilution resulting from the offer.

Analyst presentations and publication of research reports

In connection with the IPO, the underwriters will assist the issuer in the preparation of two analyst presentations (the first made confidentially to syndicate analysts only and the second made publicly and open to non-syndicate analysts). Following the public analyst presentation, analysts will prepare research reports on the issuer.

It is imperative that the analyst presentations do not contain any material information that is not also included in the prospectus. The AMF will review the draft analyst presentations in advance and strictly monitor compliance with this rule, which is derived from the larger principle of equality of information of all investors, including retail investors.

Pre-deal investor education, marketing and publicity

Following the publication of the research reports, pre-deal investor education will commence and, following the public launch of the IPO, marketing will be initiated, mainly conducted through roadshow or investor meetings on the basis of a roadshow or investor presentation. Similar to the analyst presentations, the roadshow or investor presentation cannot contain any material information that is not also included in the prospectus

Publicity in connection with French IPOs is closely regulated by EU, French and US securities law and regulations. Importantly, all 'advertisements' as defined in the EU prospectus regulations must be aligned with the disclosure in the prospectus and are subject to review by the AMF. The IPO timetable needs to take into account the time needed for alignment and review. To assist with this, publicity guidelines (including French and English versions of disclaimers for press materials) that specify measures for complying with such regulations need to be prepared early in the process by legal counsel and shared with the working group, including, particularly, the issuer. All marketing materials, advertisements, IPO websites and press releases relating to the offering, irrespective of form and distribution method, must comply with these guidelines, be provided to the AMF for review before being disseminated and include disclaimers that mention the existence of an AMF-approved prospectus.

ii Pitfalls and considerations

Primary and secondary offerings

Depending on the reason for the offering, an IPO may have a primary component (an issuance of newly issued shares by the issuer to raise money in connection with the IPO) or secondary component (a sale of existing shares by existing shareholders to entirely or partially exit), or a mix of both.

Corporate and tax structure considerations

Taking a company public in France may require pre-IPO reorganisation as well as careful considerations of tax implications, in particular in a leveraged buyout (LBO) exit scenario. The aim of the corporate reorganisation is to design a group structure that will facilitate and optimise – including from a tax standpoint – the admission of the shares as well as the primary and secondary components of the transaction.

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Pre-IPO reorganisations generally address the following main constraints and objectives:

a reconfiguring the shareholding structure of the issuer;

b unwinding the existing management package (including executing mergers, contributions in kind, and conversion of preferred debt and equity instruments into ordinary shares);

c simplifying the holding structure of the group below the issuer to facilitate dividend payments, and optimise the financing and tax structure; and

d ensuring tax efficiency for the shareholders and the group at IPO and going forward.

Retail offerings

AMF regulations require that, in the context of a French IPO, the offering be open not only to institutional investors but also to retail investors (the retail offering). This requirement will be met when there is a procedure by which at least 10 per cent of the overall offering amount is made accessible to retail investors, although no proactive marketing to retail investors is required by the AMF.

However, the AMF will not permit an issuer to prepare the prospectus in English if the issuer implements specific and targeted efforts to reach retail investors, such as publication in the general media outlets, including general television channels or ordinary newspapers.

Concurrent financing or refinancing

In an LBO exit scenario, a full refinancing of the issuer's group outstanding third-party debt is implemented at settlement. In this scenario, it is critical that the IPO and financing work streams are coordinated from the beginning of the process, taking both legal and commercial considerations into account.

iii Considerations for foreign issuers

Under the EU prospectus regulations, the competent authority to review and approve a prospectus is by default the securities regulator of the Member State of incorporation of the issuer. In certain circumstances, however, and with the approval of the relevant regulators, competence can be transferred to the regulator of the country where the listing is requested. As a consequence, the AMF would generally not be the regulator reviewing and approving the prospectus for an issuer incorporated in an EU Member State other than France, even in connection with a Euronext Paris listing. However, the EU prospectus regulations provide for a passporting regime whereby an issuer may prepare a single EU prospectus, have it reviewed and approved by the competent authority its home Member State and passport it into other EU Member States to be used for a listing.

With respect to non-EU incorporated issuers seeking a listing on Euronext Paris, subject to certain conditions and exceptions, the AMF may be chosen as the competent authority for purposes of the prospectus approval.

Generally, listing of non-French businesses and issuers on Euronext Paris has been greatly facilitated by the harmonisation of the European prospectus rules and regulations across the European Union and the EU passport regime, as well as the ability, under certain circumstances, to get a prospectus approved by the AMF in English.

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IV POST-IPO REQUIREMENTS

i Ongoing disclosure and reporting requirements

Following an IPO, companies listed on the Regulated Market must fulfil certain periodic disclosure requirements, including the publication of an annual and a half-yearly report. Annual reports are to be published within four months of the end of the issuer's fiscal year. Half-yearly reports are to be published within three months of the end of the issuer's fiscal half-year. In addition, many France-listed companies elect to make limited quarterly reporting, although it is not mandatory.

In addition to these periodic disclosure requirements, companies listed on the Regulated Market also need to make disclosures at the occurrence of certain events, particularly in relation to material non-public information (defined as 'inside information' under MAR) and director dealings. Inside information is precise, non-public information that relates directly or indirectly to the issuer, which, if made public, could have a significant impact on the share price of the issuer. This type of information may relate to, among other things, trading information, one-off events, or major transactions or projects. The disclosure obligation as regards inside information is guided by the principle that inside information should generally be disclosed as soon as possible. Delay of disclosure may be permitted to protect a 'legitimate interest' if the omission is not likely to mislead the public, any person receiving inside information owes the issuer a duty of confidentiality and the issuer is able to ensure the confidentiality of the inside information.

ii Ongoing compliance with corporate governance principles

Post-IPO corporate governance is generally required to be compliant with the recommendations set forth in the AFEP-MEDEF Code,[22] and the post-IPO corporate government structure will be described in the registration document and the identity of independent board members will be disclosed in the securities note. Thus, it is important that the post-IPO governance structure is considered by the issuer and its shareholders early in the IPO process. Key considerations include: one-tier versus dual boards, composition of the board and committees, board parity obligations, constraints relating to employee representatives and employees shareholder representatives, and management incentives post-IPO (free share plans, IPO bonuses for key managers, employee offerings, etc.).

iii Governance of a French limited liability company

French law provides for two alternative management systems in a French limited liability company (SA): one-tier board structure, with a board of directors; or dual board structure, with a management board and a supervisory board.

Many of the largest listed companies in France have selected a one-tier board structure.

In an SA with a board of directors, the position of general manager may either be held by the chair of the board of directors or by another person. One or more additional deputy general managers may also be appointed to assist the general manager in the daily general management of the issuer.

In an SA with a management board and supervisory board, all management board members are granted management powers. Within the limits of the corporate purpose of

22 In certain cases, it may be possible to comply with alternative corporate governance frameworks, such as the Middlenext Corporate Governance Code.

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the company and those powers expressly granted by law to the supervisory board and the shareholders, the management board, as a collegial body, is vested with all powers to act in any circumstances in the name of the company. The chair of the management board and one or several management board members (if this power was granted by the supervisory board in accordance with the articles of association of the company) represent the company in regard to third parties (management board members who are granted this power are general managers of the company). The powers of the general manager and of all other managers can be limited internally by a shareholders' agreement, by-laws or the board of directors, but these limitations will not deprive the general manager of its general management powers and do not bind third parties.

Additionally, French corporate governance rules require that certain thresholds for appointment of independent directors[23] and female board membership for boards of directors and supervisory boards be met, as follows: (1) a minimum of 50 per cent independent directors is required if the company is not controlled by one or several controlling shareholders, (2) a minimum of 33.3 per cent independent directors is required if the company is controlled by one or several controlling shareholders, and (3) a minimum of 40 per cent female board members is required in all cases. French corporate governance rules also provide guidance as to the establishment of certain committees that should assist the work of the board, including an audit committee, a compensation committee, and a nomination and governance committee.

23 A director is independent when he or she does not have any relation of any kind with the company, its group or its management that may jeopardise his or her free judgement.

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Chapter 6

GERMANY

Alexander Rang and Caspar Schmelzer[1]

I INTRODUCTION

In line with global equity markets, activity in the German market for initial public offerings (IPOs) is particularly strong when financial markets show a stable positive trend. High market volatility, mainly driven by the global financial crisis in 2008 and political developments since mid-2016, has emphasised the cyclical nature of the IPO market. Nevertheless, since 2008 the regulated market in Germany saw over 110 IPOs.[2]

In 2018, despite trade tensions, uncertainty regarding Brexit, a shifting domestic political landscape and a substantial correction to German indices, investor confidence, high liquidity, positive valuations and historically low interest rates have helped the German market to resist the downward trend in European IPOs and record its strongest year since 2000. In 2018, the number of listings on Prime Standard (see Section II.i) increased 23 per cent from 13 in 2017 to 16.[3] The proceeds from IPOs hosted by the Frankfurt Stock Exchange (FSE) totalled approximately €10.7 billion, representing about 30 per cent of the 2018 European IPO market. Three of the five largest European IPOs in 2018 (Knorr-Bremse, €3.9 billion; Siemens Healthineers, €3.7 billion; and DWS Group, €1.2 billion) took place in Frankfurt. Investors' appetite for companies focusing on one industry or product (pure play) resulted in an increase in IPOs of divisions of large listed companies. Prominent examples in 2018 include the IPOs of Siemens Healthineers and DWS Group. This trend is expected to continue and be increased further by activist shareholders pushing for the breakup of conglomerates into pure play investment opportunities.

Recent years have shown that the IPOs of certain issuers can successfully be completed without significant participation of retail investors. Accordingly, in some instances issuers refrained from public offers and instead relied entirely on private placements of their shares with qualified investors. Following the successful completion of these private placements, the shares are admitted to trading. Although this approach was originally favoured for IPOs of small and medium-sized enterprises (SMEs), the Evonik IPO in 2013 demonstrated the strategic use of private placements for large companies and initiated a run of recent examples, including the IPOs of Hella, Schaeffler and Jost. Private placements are primarily preferred because of greater flexibility of the IPO process, but entail a different liability regime.

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1 Alexander Rang is a partner and Caspar Schmelzer is a senior associate at Hengeler Mueller.

2 Statistics of Deutsche Börse Cash Market, found at: www.deutsche-boerse-cash-market.com/dbcm-en/instruments-statistics/statistics/primary-market-statistics.

3 ibid.

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II GOVERNING RULES

The regulatory framework governing the public offer or admission to trading of equity securities in Germany is strongly influenced by EU directives and, as of 21 July 2019 with the entering into force of the European Prospectus Regulation,[4] is almost completely directly regulated via applicable EU regulations, which require no implementation into German law for their full effect. EU legislation has achieved a high level of regulatory harmonisation with respect to the listing and trading of securities in the European Union. The EU regulatory framework conforms to global standards and shares regulatory similarities with other prominent global markets.

i Main stock exchanges

Although a number of major German cities host stock exchanges (e.g., Berlin, Düsseldorf, Hamburg, Hannover, Munich and Stuttgart), the only significant German stock exchange is the FSE. It is operated by Deutsche Börse AG, a listed company offering numerous trading platforms, including specialist floor trading and, most importantly, the electronic, secondary reference market Xetra. With around 1,000 different share securities, more than 90 per cent of all trading in shares at all German exchanges and almost 180 participants from 18 countries, Xetra is a leading trading centre globally, boasting some of the highest trading volumes in the world.[5] In January 2019, the order book turnover at Xetra stood at €112.3 billion.[6]

Trading of securities on the FSE can take place on two markets: the EU-regulated market (comprising the segments Prime Standard and General Standard) and the exchange-regulated market (the Open Market) (comprising the segments the Quotation Board and Scale), each with differing transparency levels and listing requirements. As at 1 January 2019, the shares of more than 10,000 companies were traded on the markets of the FSE. Approximately 450 of these were listed on the EU-regulated market: 309 on Prime Standard and 145 on General Standard. The majority of the shares were listed on the Open Market, of which 51 are listed in the new SME segment, Scale.[7]

The markets of the FSE are differentiated by the level of transparency they demand from issuers; as a general rule, fewer transparency requirements mean lower listing costs. Prime Standard involves the most thorough transparency requirements of any German market, some of which go beyond those mandatory under EU and German law. It is therefore suited to large corporate entities offering a higher quality of investment, capable of complying with reporting obligations expected from a discerning international market. These post-admission obligations include the holding of annual analysts meetings and quarterly financial reports in addition to the transparency requirements under EU and German legislation, such as semi and annual financial reports adhering to the German Securities Trading Act (WpHG) and the publication of inside information pursuant to the *ad hoc* requirements of the EU Market Abuse

4 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.
5 Website of the Deutsche Börse Group, see: www.deutsche-boerse-cash-market.com/dbcm-en/secondary-market/xetra.
6 Website of Xetra, see: https://www.xetra.com/xetra-en.
7 Statistics of Deutsche Börse Cash Market, found at: www.deutsche-boerse-cash-market.com/dbcm-en/instruments-statistics/statistics/listes-companies.

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Regulation (MAR).[8] Furthermore, it is only upon listing in Prime Standard that companies may be included in the indices DAX, MDAX, TecDAX and SDAX. Prime Standard resembles the Premium segment of the Main Market at the London Stock Exchange (LSE).

General Standard, in comparison, requires disclosure on the basis of mandatory (minimum) EU or German statutory regulation, and therefore caters to medium-sized issuers more concerned with a cost-efficient listing entailing fewer post-admission obligations. The reduction in required transparency makes this market segment more fitting for companies aiming at the domestic capital market.

As a reaction to possible market manipulation, Deutsche Börse AG, together with the Federal Financial Supervisory Authority (BaFin)[9] and market participants, restructured the Open Market in 2012, leading to the replacement of the former Entry Standard with Scale on 1 March 2017.[10] The Open Market of the FSE roughly corresponds to the Alternative Investment Market operated by the LSE.

As listing requirements and post-listing transparency obligations are less comprehensive and laborious than on the EU-regulated market, the Open Market enhances access for SMEs and growth companies for which a listing may otherwise be too burdensome.[11] Scale enhances transparency requirements compared with those of the low-cost Quotation Board, setting more conditions upon a listing to strike a balance between costs and rewards of a listing of an SME.[12]

The following preconditions must be met for admission to trading of securities on Scale or the Quotation Board: there must be no prior admission to trading on a regulated market of the FSE, the securities must have an International Securities Identification Number and be freely fungible, proper performance of the transactions must be guaranteed and no official prohibitions may prevent stock exchange trading.[13]

For admission to trading of securities on the Quotation Board, among other requirements, they must be admitted to trading on a stock exchange recognised by Deutsche Börse AG[14] and the request to trade must be made by a specialist.[15] As there is no obligation that the issuer of the securities is involved in the admission to trading, unlike the regulated markets of the FSE, the trading of large numbers of securities of foreign issuers takes place on the Quotation Board.

8 Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 (as amended).

9 BaFin is an independent federal regulator headquartered in Bonn and Frankfurt, and supervised by the Federal Ministry of Finance.

10 Harrer in Drinhausen/Eckstein, *Beck'sches Handbuch der AG*, 3rd Edition, 2018, § 20 Der Börsengang, Mn. 49.

11 As at January 2019, Scale comprised 51 companies, including six new companies listed in 2017 and 2018, while the remaining number consists of companies already listed on the former Entry Standard, which met the Scale requirements: See www.xetra.com/xetra-en/instruments/shares/new-issues/.

12 See Deutsche Börse Group, FAQs Scale, the new listing segment, p. 6 f. found at: https://www.deutsche-boerse-cash-market.com/dbcm-en/primary-market/market-structure/segments/scale.

13 General Terms and Conditions of Deutsche Börse AG for the Regulated Unofficial Market (Freiverkehr) on Frankfurter Wertpapierbörse, § 7, Version 02.01.2019.

14 ibid. § 12(1).

15 ibid. § 10(1).

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Of the companies listed on the segments of the EU-regulated market of the FSE, issuers based in Germany make up the overwhelming majority, while foreign companies comprise less than 10 per cent of the companies admitted on Prime Standard.[16]

The inherent benefits of the FSE's size and liquidity mean that a dual listing on another stock exchange in conjunction with the listing on the FSE is seldom pursued by German issuers.

ii Overview of listing requirements

Securities can either be listed on the EU-regulated market or on the exchange-regulated market. The specific market on which securities are listed determines the listing requirements of the relevant German stock exchange. Issuers seeking admission to the EU-regulated market will have to adhere to stringent, harmonised EU securities legislation, being either directly applicable or adopted by Germany. Those issuers seeking admission to the exchange-regulated market will be subject to the applicable regulatory provisions of the individual stock exchange to which they will be admitted. However, certain post-listing obligations are stipulated by EU legislation and apply irrespective of the market segment, such as the MAR.

In regard to the regulated market of the FSE, the initial procedural step for listing shares involves the company and the co-applicant (e.g., an underwriting bank), filing an admission application electronically, which is signed by both parties and submitted with all supporting documents. To qualify as a co-applicant there are numerous requirements to be met, including having the status of a credit institution or similar, satisfying certain capital requirements and being admitted for trading on a German stock exchange. The FSE has published a dedicated application form on its website. This form specifies the categories of information to be included and a checklist of documents to accompany the application.

Subject to certain exemptions, a public offering or admission of securities to trading on an EU-regulated market requires the prior publication of a prospectus approved by the relevant applicable supervisory authority of the home Member State of the issuer. Substantial portions of the offering and listing prospectus are mandatory and implement global standards as established in EU regulations.[17]

Based on the new EU Prospectus Regulation coming into effect on 21 July 2019 and related national legislation, the prospectus may be drawn up in English, including a German translation of the prospectus summary.

There are numerous conditions to be satisfied before a listing on a regulated market can be completed. The submission of an approved prospectus is the central requirement, but it is also necessary for an issuer to provide audited financial statements and to evidence an operating history of a minimum of three years. Furthermore, the issuer must, for example, secure a free float of at least 25 per cent of the issued shares (subject to an exception where a lower free float, but at least 10 per cent, allows an orderly trading of shares with a sufficient

16 Statistics of Deutsche Börse Cash Market, found at: www.deutsche-boerse-cash-market.com/dbcm-en/instruments-statistics/statistics/listes-companies.

17 Currently, these standards are defined by Commission Regulation (EC) No. 809/2004 of 29 April 2004 (as amended). However, this regulation will be repealed by the new EU Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017). Further, the mandatory contents of prospectuses will in the future be governed by delegated acts, which were adopted by the European Commission in March 2019. Drafts of these delegated acts can be found at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2169999_en.

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diversification) and evidence an estimated market value of not less than €1.25 million. Admission to Prime Standard additionally requires the appointment of at least one designated sponsor for the shares.

iii Overview of law and regulations

EU and German laws applicable to listing and post-listing obligations on the FSE's EU-regulated markets are found mainly in the German Stock Exchange Act (BörsG),[18] the German Stock Exchange Listing Regulation,[19] the German Securities Prospectus Act (WpPG)[20] and the WpHG[21] (implementing the disclosure requirements of the EU Transparency Directive),[22] and the various rules and regulations of the FSE, which can be found on its website.

In line with the growing European harmonisation of capital markets law, directly applicable EU regulations not requiring implementation through domestic legislation form mandatory law to be applied to an IPO on an EU-regulated market. In this respect, the EU Prospectus Regulation governing the contents of prospectuses approved in EU Member States, and the MAR having specific significance in the regulation of insider information and managers' transactions, are especially relevant.

The EU Prospectus Regulation seeks to facilitate easier access to capital markets, particularly for SMEs, by simplifying prospectus requirements or even dispensing with the need for a prospectus. Further, it is aiming for lighter disclosure requirements for secondary issuances of companies already listed on an EU-regulated market. From a practical perspective, a number of revisions to the current prospectus regime will force market participants to review established drafting practices (e.g., regarding disclosure on risks, pricing, the length and format of the prospectus summaries, or the incorporation of documents by reference).

The MAR aims to improve market integrity and investor protection in the European Union. Through the MAR, the European Union also seeks to address, to a certain degree, the globalisation of financial markets and the emergence of new trading platforms by providing a harmonised European regime regulating market abuse. The predecessor regulations of the MAR were only applicable to issuers listed on an EU-regulated market (e.g., Prime Standard or General Standard), whereas the MAR also applies to issuers whose shares are listed on exchange-regulated markets (e.g., the Open Market), provided that the issuers actively sought their listing.

EU prospectus laws grant a regulatory remit to the competent authority of the home Member State of the issuer. For equity securities, the competent authority is always that at the registered seat of the issuer. This means that BaFin is responsible for German issuers of equity securities, and foreign EU issuers on German markets are to first receive prospectus approval from the competent authority in their home Member State. As an additional step, listing and admission to trading on the FSE is handled by its admissions office, regardless of the origin of the approval.

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18 German Stock Exchange Act (BörsG) of 16 July 2007, BGBl. I p. 1330 (as amended).

19 Stock Exchange Admission Regulation of 9 September 1998, BGBl. I p. 2832 (as amended).

20 German Securities Prospectus Act (WpPG) of 22 June 2005, BGBl. I p. 1698 (as amended). However, the WpPG will for the most part be superseded by the new EU Prospectus Regulation.

21 German Securities Trading Act (WpHG) of 9 September 1998, BGBl. I p. 2708 (as amended).

22 Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 and the German implementation of the Act Implementing the Transparency Directive Amending Directive of 20 November 2015, BGBl. I p. 2019 (as amended).

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The European Securities and Markets Authority (ESMA) indirectly influences the German IPO process by adopting interpretation guidelines for European securities directives and regulations, which are generally followed by BaFin, in an effort to enable cooperation between European national regulatory authorities. In this regard, in January 2019, ESMA issued guidance for a no-deal Brexit addressing how issuers who chose the United Kingdom as their home Member State can choose a new home Member State, and clarifying the (very limited) extent to which a prospectus approved by the UK securities regulator may continue to be used in the European Union.[23]

As a market regulated by the FSE by means of, *inter alia*, the Deutsche Börse AG General Terms and Conditions for the Regulated Unofficial Market of the Frankfurt Stock Exchange, the Open Market is not directly regulated by EU law. EU law does, however, still apply, alongside the FSE Exchange Rules, for example, in regard to the obligations resulting from a listing, such as insider trading rules under the MAR.

III THE OFFERING PROCESS

The decision to take a company onto the FSE initiates various work streams. To manage the significant documentary requirements involved in the IPO process, an issuer usually establishes a data room. The governance structure of the issuer will have to be reviewed and may have to be aligned further with the expectations of equity capital markets investors. Further corporate preparatory steps may include the changing of the company's legal form,[24] fine tuning of the capital structure, providing for contingent and authorised capital and cleaning up of the group structure. In terms of marketing the IPO, the initial and central joint task of the involved underwriters and the issuer will be to develop the issuer's equity story, and prepare a marketing strategy, with the aim of building buyer interest and developing a fair price for the shares. This involves preparing an analyst presentation with which the securities prospectus for the offering and listing of the shares must be consistent. Though different tasks will have precedence at different stages of the offering process, the crucial challenge is to keep the separately conducted legal and marketing work streams consistent as regards material content.

i General overview of the IPO process

Straightforward IPO preparations will generally span four to six months, and can be divided into the following four phases:

a creating IPO readiness (about six months prior to completion): initial preparation for the IPO, which may include appointment of the lead bank and issuer's counsels, changes to the financial reporting, the corporate governance and legal form of the issuer, and the establishment of a data room;

b execution phase (about 90 days): determination of the deal structure, and business, financial and legal due diligence; the drafting of the prospectus and further legal documents; and preparation of the analyst presentation, possibly holding pilot fishing presentations;

23 ESMA Q&As Prospectuses, Questions 103 and 104, as amended on 31 January 2019, found at www.esma.europa.eu/press-news/esma-news/esma-qas-clarify-prospectus-and-transparency-rules-in-case-no-deal-brexit.

24 The legal forms entitled to perform issuances of equity securities are stock corporations, European stock companies, partnerships limited by shares or real estate investment trusts (REITs) (German REITs must be stock corporations pursuant to the German REIT Act of 28 May 2007, BGBl. I p. 1693 (as amended) (REITG).

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c regulatory review period (about 40 to 50 days): various filings of prospectus versions with BaFin, determining valuation, analyst presentation, publication of pre-deal research and pre-deal investor education; and
d marketing and settlement (about 10 days): approval of prospectus by BaFin, filing of listing application with the FSE, execution of the underwriting agreement, public marketing, building of order book, pricing, allocation, trading and settlement.

In line with international market practice, there are several key parties involved in a German IPO:
a Issuer's counsel, who are mandated to provide the issuer with legal advice pertinent to the transaction. This includes undertaking the necessary legal due diligence, preparing a prospectus for approval, reviewing and negotiating the underwriting documentation, ensuring that publicity relating to the IPO is controlled, and issuing legal opinions and disclosure letters to the underwriters.
b Auditors are needed to verify the financial information in a prospectus against audited annual accounts of the past three years and (where relevant) reviewed interim financial statements. At the later stages of the IPO process, the auditors issue comfort letters to the underwriters, giving differing levels of assurance for the accuracy of financial information in the prospectus.
c Large companies seeking a listing on the FSE will usually have selling shareholders. These shareholders will either be exiting their investment by way of the IPO or intending to raise additional capital for the issuer while retaining their shareholding, or a at least a portion thereof. Selling shareholders are usually represented by their counsel who provides them with advice on the underwriting agreement and the transaction from a shareholder's perspective.
d Investment banks are tasked with structuring the offering and coordinating, as well as managing the different channels of the offering. The global coordinators advise the issuer and coordinate on a global basis if there are offerings on more than one market. The bookrunners maintain the order book for the shares. The underwriting banks provide an underwriting for the shares to be offered.
e Finally, underwriters' counsel will usually be mandated to provide the underwriter with legal advice pertinent to the transaction (e.g., underwriting agreement, research publication). This usually consists of undertaking the necessary legal due diligence, reviewing and commenting on the prospectus, preparing an underwriting agreement, managing the admission procedure, and issuing legal opinions and disclosure letters to the underwriters.

The documentation standards typically applied to a German IPO reflect international market practice. Apart from the mandatory securities prospectus, the documents essentially required for the implementation of an IPO normally include an underwriting agreement, a pricing agreement, an agreement among managers, lock-up agreements, legal opinions from the issuer's and banks' counsels, comfort letters from the issuer's auditors and certificates issued by the management of the issuer.

ii Process management

The strategic allocation of party resources within the preparation process, especially for the issuer and the auditors, is an increasingly important consideration in light of a prospectus

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approval process consisting of three rounds of BaFin comments parallel to the analyst presentation and pre-marketing efforts, and, potentially, the preparation of the financials to be referred to in the prospectus and the limited response time generally at play in tight transaction timelines. However, these timing constraints can be mitigated through proper process management. At the start of the preparation process, and in a timely manner prior to the filing of the prospectus, BaFin should be contacted to agree on an individual timetable for the prospectus approval process. This ensures adequate drafting periods between receipt of comments from BaFin and resubmission of the prospectus. It is key for the offering process generally, and for the approval process particularly, that the issuer's counsel addresses potential obstacles early in the process. This may include, for example, reaching an agreement on exceptions from the otherwise required completeness of the prospectus upon its first filing, the inclusion of *pro forma* figures, or the necessity of a profit forecast based on previous or intended forward-looking communication of the issuer. In this respect, it helps that BaFin pursues a very constructive approach. Normally, this allows solving these issues in a very pragmatic and, even more importantly, reliable manner early in the process. It also warrants a smooth execution of the transaction in accordance with the envisaged timeline.

iii Considerations for foreign issuers

Foreign and domestic issuers are largely subject to the same legal requirements. This is, for example, the case in respect of financial information relied upon and presented in a prospectus by a foreign issuer. The financial information must comply with standards set in the EU Prospectus Regulation, meaning that the EU-adopted International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) are to be upheld. Where an alternative accounting standard is apparent on inspection of the issuer's financial statements, it must first be determined that the alternative accounting standards can be considered equivalent to IAS and IFRS.[25] For example, the accounting standards prevalent in the United States, Canada, Japan, China and Korea are usually considered valid for listing purposes on German markets.

There are three key considerations a foreign issuer must make before intending to list shares in Germany:

a the shares must satisfy the legal definition of securities in the BörsG (e.g., they must be tradable and fungible);
b the shares must be eligible for common depository safekeeping at Clearstream; and
c the shares must be eligible for an admission to trading on a regulated market in Germany.

In respect to the latter requirement, the shares must be represented by a share certificate valid under German law. Specifically, the share certificate must confer shareholders' rights to the respective holders of co-ownership interests in the share certificate. In certain circumstances, it may be challenging for foreign companies seeking to list in Germany to show that these requirements are met in relation to the form and quality of share certificates.

25 Kunold in Assmann/Schlitt/von Kopp-Colomb, *WpPG/VermAnlG*, 3rd Edition, 2017, EU-ProspektVO, Anh. I, Mn. 171. Financial statements must include a balance sheet, an income statement, a statement showing either all changes in equity, or changes in equity other than those arising from capital transactions with owners and distributions to owners, a cash flow statement, and the accounting policies and explanatory notes.

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IV POST-IPO REQUIREMENTS

A listing on EU-regulated and exchange-regulated markets in Germany entails post-admission obligations for an issuer, which, in line with EU capital market rules, aim to ensure investor protection. EU regulations specifically focus on measures to combat insider trading and fraud by establishing transparency principles and measures against market abuse.

As discussed above, issuers have an option between Prime Standard – which, because of the FSE Exchange Rules, imposes additional disclosure obligations beyond the transparency obligations under mandatory EU law and is therefore better suited to those aiming at international investors – or General Standard with gradually less stringent ongoing transparency requirements, but still subject to the EU regulation.

Post-admission obligations of Prime Standard in respect of financial reporting include the publishing of financial statements in English and German, although English statements alone are sufficient in the case of a non-German issuer. Annual, half-yearly and quarterly financial statements must be published respectively within four, three and two months of the end of the relevant reporting period.

Other events requiring issuers on Prime Standard to make public disclosures include material events expected to have a significant influence on the share price (*ad hoc* disclosure), managers' transactions and notification of changes in shareholder voting rights for holdings equalling at least 3 per cent of all voting rights – notification necessary at the following thresholds: 3, 5, 10, 15, 20, 25, 30, 50 and 75 per cent of voting rights.[26]

An issuer on Prime Standard must ensure that an analyst meeting takes place at least once a year in order to publicise important elements of the annual financials. A continuous updating, publication and transmission of a financial calendar, including the most important corporate action events of the issuer, must be ensured. The issuer must transmit all above-mentioned reports and documents to Deutsche Börse AG via the Exchange Reporting System.

The post-admission obligations on the General Standard segment are significantly less than those of Prime Standard. Although the obligation to publish annual and half-yearly financial statements mirrors that of Prime Standard, quarterly statements are not required, and the English language alone is sufficient for publication.

The obligations in relation to *ad hoc* disclosure, managers' transactions and notification of changes in shareholder voting rights apply equally to issuers on General Standard.

The main objectives of the MAR are to secure market integrity and guarantee the harmonisation of investor protection throughout the European Union. The concrete legal mechanisms applied by the regulation to achieve this in respect of all EU-regulated markets include the obligation to publicise insider information by means of *ad hoc* disclosure and the provisions regulating managers' transactions and insider dealings. The provisions governing *ad hoc* disclosure stipulate that, subject to exceptions, inside information shall be disclosed without delay. An exception to this general rule applies where a delay is justified because the issuer's need to delay its publication outweighs the market's need for the information. In the case of a delay of an *ad hoc* disclosure of insider information, the issuer is subject to stringent documentation and monitoring requirements. Also, once the withheld insider information is published, BaFin requires a notification to this effect, with an explanation of the reasons for a delay and a clarification of how the record-keeping obligations under the MAR were complied with.

26 Additional notification obligations apply to financial instruments.

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Further legal obligations arise for companies incorporated under German law upon listing on a regulated market in Germany. Annually, the management board and the supervisory board of listed companies must declare whether the company complies with the recommendations of the German Corporate Governance Code. If the company does not comply with recommendations of the Code, it must provide reasons for any lapse (the 'comply or explain' approach). Furthermore, where the listed company is subject to the relevant provisions of the Labour Codetermination Act, each sex must be represented by at least 30 per cent on the supervisory board. This board composition requirement must be complied with by the supervisory board as a whole. Under certain conditions, however, the employees' and the shareholders' representatives may require, by a majority vote, that this gender diversity requirement be fulfilled by each of them separately.

V OUTLOOK AND CONCLUSION

Because of the wide-ranging harmonisation of European capital markets law, the rules and regulations governing an IPO in Germany correspond to those of the other EU Members States. By and large, German capital markets standards, documents and market practices follow the same basic principles as US and established Asian market practices.

European harmonisation continues. To this end, the European Commission has created the capital markets union (CMU) initiative to deepen and further integrate the capital markets of the 28 EU Member States. This initiative demonstrates the transition of political prerogatives away from reactionary crisis management towards proactive measures fostering real growth of the European economy. Another more specific aim of the CMU is to facilitate alternative non-bank funding channels to improve capital allocation and the efficiency of the EU financial system as a whole. In November 2018, the European Commission recalled the key CMU building blocks delivered since 2015 and called for renewed efforts to complete it before the May 2019 European Parliament elections. It called on the European Parliament and the Council to accelerate work on the pending 10 proposals to ensure that all are completed by the end of the legislative cycle.[27]

A significant challenge currently facing CMU initiatives are the effects of the United Kingdom's departure from the European Union, which, depending on the relationship between them post-Brexit, could entail substantial disruption to equity capital flows. There are also some concerns that the CMU reforms may serve to hinder the market through overregulation. For example, concerns have been voiced that the new rules introduced around equity research may lead to a reduction and consolidation of investment research.

The German IPO market is an established market with a proven track record of successfully hosting large issuances. This has made it an attractive market for private equity firms seeking exits from their investments in dual-track processes, where the IPO remains a viable option even though the trade sale often gains the upper hand. Spin-offs and carve-outs of German corporates and financial institutions (e.g., Uniper, innogy, Siemens Healthineers, DWS Group) dominated the German IPO market in the past few years, especially as regards the larger transactions. This trend is likely to continue for the medium term. Apart from these transactions, it will remain key to de-risk IPO transactions and reduce the time to market in view of the current uncertainties in global politics: for example, through anchor investors, cornerstone investments and private placements prior to an IPO.

27 The CMU action plan is available at: www.ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en.

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Chapter 7

INDIA

Bhakta Batsal Patnaik and Rachana Talati[1]

I INTRODUCTION

The Indian economy has witnessed a gradual recovery from 5.6 per cent gross domestic product (GDP) growth in 2012 to 2013 to 6.7 per cent growth in 2017 to 2018.[2] It is forecast to reach 7.3 per cent in 2018 to 2019.[3] According to the annual report published by the Securities and Exchange Board of India (SEBI), for 2017 to 2018 there were 201 initial public offerings (IPOs), whereas in the previous year there were 105, depicting an increase of 91.4 per cent. Proceeds raised through IPOs in 2017 to 2018 nearly tripled to 836.84 billion rupees as compared with 290.78 billion rupees in 2016 to 2017.[4] Further, 31 out of the 45 IPOs on the main board raised 770.88 billion rupees, with an issue size of 5 billion rupees or more.[5]

The companies recently listed on the stock exchanges in India were from diverse sectors, such as consumer services, healthcare, hotels, airlines, food and beverages, entertainment, footwear, textile and insurance, as opposed to the previous trend, where only companies in certain sectors, such as banking, finance and information technology, would contemplate undertaking an IPO.

SEBI recently notified the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018 (the ICDR Regulations), which superseded the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009 (the ICDR 2009) in their entirety. This was done to, among other things, align the provisions of the ICDR Regulations with the Companies Act 2013, as amended (the Companies Act 2013), simplify the language and the structure of the ICDR Regulations, and separate the chapters based on the type of offering. The ICDR Regulations came into force in November 2018.

An IPO in India may comprise a fresh issuance of securities, an offer for sale of securities by the existing holders of securities or a combination of both. Further, an issuer proposing to list its securities on the stock exchanges in India may opt to list on the Main Board, the SME Exchange or the Institutional Trading Platform. The SME Exchange is a trading platform of

1 Bhakta Batsal Patnaik is a partner and Rachana Talati is a senior associate at Trilegal.
2 International Monetary Fund – IMF Country Report No. 18/254, available at https://www.imf.org/en/Publications/CR/Issues/2018/08/06/India-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-Executive-46155, last accessed on 14 January 2019.
3 ibid.
4 Securities and exchange Board of India Annual Report 2017-18, available at www.sebi.gov.in/reports/annual-reports/aug-2018/annual-report-2017-18_39868.html, last accessed on 14 January 2019.
5 ibid.

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a recognised stock exchange having nationwide terminals permitted by SEBI but does not include the Main Board. The Institutional Trading Platform is a trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria laid down by SEBI. This chapter will be limited to the listing of equity shares on the Main Board as issuers predominantly opt to list on the Main Board in India.

II GOVERNING RULES

i Main stock exchanges

The two primary stock exchanges in India are BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE).

BSE was established in 1875 and was the first stock exchange in Asia and the fastest stock exchange in the world with a speed of six microseconds.[6] BSE provides a platform for trading in equities, currencies, debt instruments, derivatives and mutual funds, as well as trading in equities of small and medium-sized enterprises. The SME platform targets small and medium-sized enterprises whose post-issue face value capital is less than or equal to 250 million rupees, and post issue paid-up capital is less than or equal to 100 million rupees. The S&P SENSEX of BSE is the benchmark, market-weighted index that monitors the performance of the 30 largest, most liquid and financially sound companies across crucial sectors of the Indian economy, listed at BSE.[7]

NSE began operations in 1994 and is the leading stock exchange in India and the second largest in the world by the number of trades in equity shares from January 2018 to June 2018.[8] NSE provides a platform for trading in equity and equity-linked products, including mutual funds and institutional placement programmes, and trading in derivatives and debt. The key index of NSE is NIFTY 50. It monitors the performance of stocks of 50 companies accounting for 12 sectors of the economy.[9]

It is essential for the entities that wish to list on the stock exchanges in India to conform and comply with initial listing and continued listing requirements under the uniform listing agreement, the ICDR Regulations, as amended, and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, as amended (the Listing Regulations).

The regulatory framework in India does not recognise the concept of dual listing. The securities laws as well as company laws will have to be overhauled to facilitate dual listing.

6 BSE – Introduction, available at www.bseindia.com/static/about/company_overview.html, last accessed on 31 January 2019.

7 Asia Index Pvt Ltd, S&P BSE SENSEX, available at www.asiaindex.co.in/indices/equity/sp-bse-sensex, last accessed on 14 January 2019.

8 National Stock Exchange – About NSE, available at www.nseindia.com/global/content/about_us/about_us.htm, last accessed on 14 January 2019.

9 National Stock Exchange – Indices, available at www.nseindia.com/products/content/equities/indices/nifty_50.htm, last accessed on 14 January 2019.

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ii Overview of listing requirements

Any issuer proposing to undertake an IPO is required to comply with certain independent requirements of the relevant stock exchange on which it intends to list its equity shares as well as the eligibility requirements laid down by SEBI in the ICDR Regulations and the Listing Regulations. In addition, the issuer must also comply with the Companies Act 2013 read along with the rules thereto, the Securities Contract (Regulation) Act 1956 and the Securities Contract (Regulation) Rules 1957, each as occasionally amended, and the foreign investment laws in India.

The minimum percentage of equity shares required to be offered to the public in an IPO by the issuer is as follows:

a at least 25 per cent of each class of equity shares must be offered to the public, if the post-IPO equity share capital of the issuer is less than or equal to 16 billion rupees;

b a percentage of equity shares equivalent to 4 billion rupees must be offered to the public, if the post-IPO equity share capital of the issuer is more than 16 billion rupees but less than or equal to 40 billion rupees; and

c at least 10 per cent of each class of equity shares must be offered to the public, if the post-IPO equity share capital of the issuer is more than 40 billion rupees.

Companies that fall under points (b) and (c) are required to increase their public shareholding to at least 25 per cent within three years of the date the securities are listed.

Requirements for undertaking an IPO

The issuer must meet certain criteria laid down by SEBI to undertake an IPO, including the following:

a it must have net tangible assets of at least 30 million rupees calculated on a restated and consolidated basis, in each of the preceding three full years (of 12 months each), of which not more than 50 per cent are held in monetary assets;

b it must have an average operating profit of at least 150 million rupees, calculated on a restated and consolidated basis, during the preceding three years (of 12 months each) with operating profit in each of these preceding three years;

c it must have a net worth of at least 10 million rupees in each of the preceding three full years (of 12 months each) calculated on a restated and consolidated basis;

d if it has changed its name within the past year, it must have earned at least 50 per cent of the revenue, calculated on a restated and consolidated basis, for the preceding full year from the activity indicated by the new name;

e the issuer, its promoters, promoter group, directors or selling shareholders should not be debarred from accessing the capital markets by SEBI; however, the restriction is not applicable if the period of debarment is already over at the time of filing the draft offer document;

f the promoters or directors were not or are not also promoters or directors of any other company that is debarred from accessing the capital market under any order or directions of SEBI; however, the restriction is not applicable if the period of debarment is already over at the time of filing the draft offer document;

g the issuer, its promoters and directors should not be categorised as wilful defaulters by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India (RBI);

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h all existing partly paid equity shares of the issuer have been either fully paid up or forfeited; and

i any of the promoters or directors of the issuer should not be categorised as a fugitive economic offender under the Fugitive Economic Offenders Act 2018.

If the issuer does not satisfy the criteria specified in points (a) to (d), it may undertake an IPO through the book-building process, wherein at least 75 per cent of the net offer to the public must be compulsorily allotted to qualified institutional buyers, failing which, the subscription monies must be refunded and the IPO fails.

Further, in terms of the ICDR Regulations, an issuer cannot undertake an IPO if there are any outstanding convertible securities or any other rights that would entitle any person listing any option to receive equity shares.

Statutory lock-in

At least 20 per cent of the post-issue paid-up capital held by the promoters is required to be locked in for three years. The remaining shareholding of the promoters and all other shareholders is subject to a one-year lock-in period from the date of allotment in the IPO. This, however, is not applicable to equity shares (1) allotted to employees, both current and past, under any stock option scheme prior to the IPO; (2) held by or transferred to an employee stock option trust pursuant to exercise of options by the employees, both current and past; or (3) held by a venture capital fund or alternative investment fund of category I or category II or a foreign venture capital investor.

If the post-issue shareholding is less than 20 per cent, alternate investment funds, foreign venture capital investors, scheduled commercial banks, public financial institutions or Insurance Regulatory and Development Authority of India-registered insurance companies may contribute for the purpose of meeting the shortfall in minimum contribution as specified for the promoters, subject to a maximum of 10 per cent of the post-issue capital of the issuer without being identified as a promoter.

The 20 per cent lock-in requirement is not applicable if the issuer does not have any identifiable promoters.

Rejection criteria

SEBI may also reject the draft offer document in accordance with the ICDR Regulations and Securities and Exchange Board of India (Framework for Rejection of Draft Offer Documents) Order 2012 on various grounds, such as:

a the ultimate promoters are unidentifiable;

b the purpose for which the funds are being raised is vague;

c the business model of the issuer is exaggerated, complex or misleading, and the investors may be unable to assess risks associated with such business models;

d there is a sudden spurt in business before the filing of the draft offer document and replies to the clarification sought are not satisfactory; or

e outstanding litigation that is so major that the issuer's survival is dependent on the outcome of the pending litigation.

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iii Overview of law and regulations

SEBI was established in 1992 in accordance with the provisions of the Securities and Exchange Board of India Act 1992, as amended. SEBI is an autonomous body established to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and connected matters.

The ICDR Regulations, issued by SEBI, contain detailed provisions governing the IPO and provide detailed guidelines in relation to:

a disclosure requirements;
b formats of the various due diligence certificates to be provided by the merchant bankers appointed for the IPO;
c eligibility requirements;
d publicity guidelines;
e the method for undertaking the IPO, including the opening and closing of the issuance; and
f conditions relating to pricing in IPOs.

In addition to the ICDR Regulations, the Listing Regulations, issued by SEBI, cover principles, common obligations and continued disclosure requirements for all entities that have already been listed on any of the stock exchanges in the country. The Listing Regulations also lay down all the conditions of corporate governance to be followed by a listed entity.

When an entity is undertaking an IPO, it is required to comply with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015 (the Insider Trading Regulations) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (the Takeover Regulations), each as occasionally amended. The Insider Trading Regulations, which were notified in January 2015, have widened the scope of insider trading regulations in India by making it applicable to entities that are proposed to be listed. In terms of the Insider Trading Regulations, no issuer is permitted to communicate, provide or allow access to any unpublished price-sensitive information relating to a company whose securities are listed or proposed to be listed, or any person, including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. When an investor is investing in equity shares of the issuer, it must ensure that the acquisition does not attract the provisions of the Takeover Regulations.

In addition, an entity is required to comply with, among others, disclosure requirements specified under the Companies Act 2013 read along with the relevant rules thereunder. The entity is also required to comply with the various circulars and guidelines occasionally issued by the RBI in relation to the foreign investment. The transfer of shares between an Indian resident and a non-resident does not require prior approval of the relevant governmental authorities, provided that activities of the investee company are under the automatic route under the foreign direct investment policy and do not attract the provisions of the Takeover Regulations; the non-resident shareholding is within the sectoral limits under the foreign direct investment policy; and the pricing is in accordance with the guidelines prescribed by the relevant governmental authorities such as SEBI and RBI.

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III THE OFFERING PROCESS

i General overview of the IPO process

An IPO process in India typically takes seven to nine months. However, the timeline may vary depending upon factors such as the complexities involved in the transaction, including restructuring of the issuer, preparation of *pro forma* financial statements if the issuer has acquired or divested business recently, compliance with law, receipt of all necessary regulatory approvals and other market conditions.

The key parties involved in an IPO process are as follows.

Merchant bankers

The issuer is required to appoint at least one or more merchant bankers, registered under the Securities and Exchange Board of India (Merchant Bankers) Regulations 1992, and at least one of them must be the lead merchant banker. SEBI holds the merchant bankers primarily responsible for ensuring compliance with the disclosure requirements and other rules relating to the IPO process. The issuer can file the offer documents with SEBI only through a merchant banker.

Legal counsel

Indian legal counsel to the issuer undertakes legal due diligence, advises on the Indian laws applicable to the issuer and the IPO, and assists in drafting the non-business sections of the offer document. Merchant bankers typically appoint a separate law firm to act as their Indian legal counsel in the transaction.

International legal counsel undertakes legal due diligence, advises on international legal and regulatory issues relating to offer, sale and distribution of shares, and assists in drafting the business-related sections of the offer document in larger transactions.

Auditors

Auditors audit and restate the issuer's financial statements for inclusion in the offer document. They verify and certify the accuracy of the financial statements presented in the offer document, and also issue 'comfort letters' to the merchant bankers at various stages in the IPO process.

Registrar to the IPO

The registrar to the IPO is required to accept application forms from the investors in the IPO; process application forms; and coordinate the process for allotment of equity shares and refund of subscription monies where equity shares are not allotted to the investor.

Designated intermediaries

Designated intermediaries are entities that are authorised to collect the application forms from investors intending to subscribe in the IPO. Designated intermediaries include the merchant bankers, syndicate members, collecting depository participants, sub-syndicates or agents, self-certified syndicated banks (SCSBs), registrar and share agents, and registered brokers.

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Sponsor banks

Sponsor banks are bankers to the issue registered with SEBI and have been recently introduced to effectuate a Unified Payments Interface (UPI) as a payment mechanism for bids submitted by Retail Individual Investors (RIIs) through intermediaries. They are appointed by the issuer and are responsible for (1) initiating a mandate request (i.e., requesting the RIIs to authorise blocking of funds that is equivalent to their application amount), (2) receiving status of block request from the RII and sharing it with the stock exchanges, and (3) ensuring subsequent debit of funds to the issuer's account in the case of allotment.

Advertising agency

An advertising agency is responsible for the publicity-related activities regarding the IPO, and also provides the necessary information to the merchant bankers to enable them to submit a compliance certificate to SEBI.

Monitoring agency

The ICDR Regulations require that if the issue size of the IPO (excluding the offer for sale by selling shareholders) exceeds 1 billion rupees, the issuer is required to ensure that the utilisation of IPO proceeds is monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as the banker of the issuer. The monitoring agency will be required to submit its report to the issuer in the format specified in the ICDR Regulations on a quarterly basis until at least 95 per cent of the proceeds of the issue (excluding the proceeds raised for general corporate purposes) have been utilised.

Brief overview of the timelines for the listing process

Below is a brief step-by-step overview of the listing process in India.

Step No.	Particulars	Timelines (due date)
1	Kick-off meeting and commencement of due diligence process.	T-120
2	The legal counsels along with the help of the issuer and the merchant bankers conduct the due diligence of the issuer and prepare the draft offer document.	T-90
3	Execution of offer agreement and registrar agreement: the offer agreement between the merchant bankers and the issuer sets out the mutual rights, obligations and liabilities relating to the IPO. It sets out, among others, the roles and responsibilities of the merchant bankers, the conditions precedent to the merchant bankers' obligations, representations and warranties from the issuer and merchant bankers, details of the indemnity provided by the issuer to the merchant bankers, and provisions for termination of the merchant bankers' engagement. If the IPO has an offer for sale component, the selling shareholder is also a party to the offer agreement. The registrar agreement sets out the duties of the registrar and the responsibilities of the issuer and the registrar regarding each other.	T
4	Filing of the draft offer document (Draft Red Herring Prospectus (DRHP)) with SEBI.	T
5	The DRHP filed with SEBI is made public for comment for at least 21 days of the date of the filing, by hosting it on the websites of SEBI, recognised stock exchanges where specified securities are proposed to be listed and the merchant bankers associated with the IPO.	T+21
6	Receipt of in-principle approval from the stock exchanges.	T+21–25
7	Receipt of SEBI final observations:[1] SEBI must provide observations or changes to be made to the DRHP within 30 days of (1) the date of receipt of the DRHP; (2) the date of receipt of satisfactory reply from the merchant bankers, where SEBI has sought any clarification or additional information from them; (3) the date of receipt of clarification or information from any regulator or agency, where SEBI has sought any clarification or information from such regulator or agency; or (4) the date of receipt of a copy of the in-principle approval letter issued by the stock exchanges.	T+45
8	Filing of the updated DRHP with SEBI.	T+55

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Step No.	Particulars	Timelines (due date)
9	Grant of SEBI approval for filing with the relevant Registrar of Companies (RoC).	T+57
10	Execution of the syndicate agreement, the share escrow agreement[2] and the cash escrow agreement: the syndicate agreement sets out the roles and obligations of, and the relationship between, the merchant bankers and the other banks in the underwriting syndicate. This agreement lists out the role and obligations of each syndicate member. The issuer and the selling shareholders, if any, are confirming parties to the syndicate agreement. The cash escrow agreement sets out the arrangement for collection of application or bid amount from anchor investors. This agreement is entered into among the issuer, the merchant bankers, the syndicate members, the escrow collection banks and the registrar (and the selling shareholders, in the case of an offer for sale). This agreement also provides for the arrangement by which the funds in the escrow accounts are transferred to the refund account or the public issue account, as applicable. The share escrow agreement sets out the terms whereby the selling shareholders agree to place their respective offered shares in escrow in accordance with the terms of that agreement.	T+57
11	Filing of the Red Herring Prospectus (RHP) with the RoC.[3]	T+58
12	Grant of approval by RoC.	T+59
13	Publication of the price band advertisement.[4]	T+60
14	Transfer of shares from the selling shareholder account to the public issue account bank.	T+61
15	Opening of the IPO.[5,6]	T+62
16	Closing of the IPO.[7]	T+65
17	Filing of the Prospectus with RoC.	T+66
18	Execution of the underwriting agreement: an IPO must be underwritten by merchant bankers and their respective syndicate members for which purpose the underwriting agreement is entered into by the merchant bankers, the syndicate members and the issuer, on the pricing date. Underwriting agreements for Indian IPOs contain provisions such as representations and warranties, covenants, termination provisions and indemnities. The underwriting in Indian IPOs is usually a 'soft underwriting' as primarily the issuer offers securities directly to potential investors and underwriters commit to purchase securities that remain unsubscribed after the pricing process is complete and the minimum subscription has been received.[*]	T+67
19	Finalisation of the basis of allotment.[*]	T+68
20	Allotment of shares to the applicants and credit of funds to the public issue account bank.[*]	T+69
21	Application for final listing and trading approvals with the stock exchange or exchanges.[*]	T+70
22	Commencement of listing and trading.[*]	T+71

1 The issue may be opened within 12 months of the date of the issuance of the observations by SEBI.
2 The share escrow agreement is not required where there is no offer for sale component in the public issue.
3 The RHP filed with the RoC contains all the details except for information in relation to the issue price and underwriting commitment. This offer document can be used for the purposes of marketing.
4 The price band advertisement can be announced at least two working days before the issue opening as per the ICDR Regulations, instead of five working days under the erstwhile ICDR 2009.
5 A public issue shall be kept open for at least three working days but not more than 10 working days when there is a revision in price band.
6 The issue period can be extended for a further minimum of three days in the case of *force majeure* events, bank strikes and similar circumstances under the ICDR Regulations.
7 'Working days' means all days other than the second and fourth Saturday of the month, Sunday or a public holiday, on which commercial banks in Mumbai are open for business; however, with reference to (1) announcement of price band; (2) bid or offer period, 'working day' shall mean all days, excluding Saturdays, Sundays and public holidays, on which commercial banks in Mumbai are open for business; and (3) the period between the bid or offer closing date and the listing of the equity shares on the stock exchanges ('working day' shall mean all trading days of the stock exchanges, excluding Sundays and bank holidays).
* Pursuant to a recent circular, SEBI has reduced the duration of the period between issue closure to listing from six to three working days. This change will be implemented over the course of three phases, effective from January 2019. While Phase I and Phase II will continue to operate with the existing T+6 timelines, Phase III will operate with the T+3 timeline. However, SEBI is yet to notify the timelines for Phase III.

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ASBA process

SEBI has mandated that all investors (except anchor investors) applying in an IPO are required to only use the Application Supported by Blocked Amount (ASBA) facility for making payment. In the ASBA mechanism, the application money is blocked in the bank account provided in the application form until just prior to the allotment, or withdrawal or failure of the IPO, or withdrawal or rejection of the application, as the case may be. If the bid is successful, the monies are transferred from the bank account to the public offer account opened by the issuer. SEBI, in its effort to reduce the timeline for the period between issue closure and listing, has mandated the gradual discontinuation of the existing process of physical movement of application forms from intermediaries to SCSBs for blocking of funds for applications by RIIs through intermediaries. Instead, all applications submitted by RIIs to the intermediaries have to be through ASBA with UPI as a payment mechanism. For public issues, UPI will allow the facility to block funds at the time of making an application.

ii Pitfalls and considerations

As highlighted earlier, SEBI may reject a draft offer document if it has reasonable ground to believe that, *inter alia*, the ultimate promoters are unidentifiable, the purpose for which the funds are being raised is vague or there is an outstanding litigation that is so major that the issuer's survival is dependent on the outcome of the pending litigation. Accordingly, the issuer must ensure that it does not trigger any rejection criteria prior to the filing of the draft offer document, as issuers whose draft offer documents are rejected are not allowed to access capital markets for at least one year from the date of such rejection, and the period may be increased depending on the materiality of the omission and commission. In addition, SEBI may initiate an action against the merchant bankers or the issuer, in accordance with applicable law.

In addition, the issuer is required to provide detailed disclosures in relation to the purpose for which the funds are being raised, including, among others, the schedule of implementation, deployment of funds, sourcing of financing of funds already deployed, details of all material existing, or anticipated transactions in relation to utilisation of the issue proceeds or project cost with promoters, directors, key management personnel, associates and group companies of the issuer. Further, the amount for general corporate purposes cannot exceed 25 per cent of the amount raised by the issuer through the issuance of specified securities. Accordingly, an issuer is not permitted to create war chests and must provide detailed disclosures in the offer document. Additionally, an issuer is not permitted to recoup its costs from the amount raised pursuant to the IPO. If there is a variation in objects, an exit offer shall be made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of the Companies Act 2013 and the ICDR Regulations.

Identification of promoters has become increasingly complex in recent years owing to the increase in investment by financial and strategic investors. While certain financial and strategic investors have majority shareholding and nominee directors on the board of the issuer, these investors may not be identified as promoters given the nature of the investment in the issuer, and certain other considerations such as lack of involvement in the day-to-day business activities of the issuer. Identification of promoters is subjective and must be dealt with case by case. For example, the issuer would have to check whether (1) any entity has been identified as a promoter in any licences, borrowings, material agreements such as the shareholders' agreements, regulatory or corporate filings; (2) any entity controls management or policy decisions; (3) any entity is entitled to control the decisions of the board of the

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issuer; or (4) any entity is entitled to appoint the majority of directors of the issuer. Once the issuer identifies the promoter, extensive disclosures about the promoter are required to be included in the offer document. This includes legal proceedings involving the promoters, and the source of funds from which the securities of the issuer were purchased. In addition, if the promoter is an individual, details such as date of birth, age, educational qualifications, experience, past positions held and other directorships are required to be provided. If the promoter is a company, details such as a brief history of the promoter, date of incorporation, change in activities, present activities, names of the natural persons in control of the promoter and details of change of management of the promoter have to be provided.

Further, in terms of stock exchange requirements, no single shareholder should be accorded any special rights when the issuer is undergoing an IPO. Accordingly, all special rights granted to a permanent shareholder are required to fall away at the time of listing of equity shares in the relevant stock exchanges. This leads to a fair amount of discussion with the financial, private or strategic investors who prefer to retain a seat on the board of directors of the issuer or certain policy, operational and information covenants, if the investor continues to retain a significant shareholding after the listing of the equity shares of the issuer.

Until recently, if a selling shareholder held convertible securities and intended to offer equity shares in the IPO, it was required to convert all the convertible securities into equity shares prior to filing of the DRHP to offer such equity shares for sale in the IPO. It usually takes four to six months from the date of filing of the DRHP to list equity shares on the recognised stock exchanges. The conversion of securities prior to filing of the DRHP exposes the selling shareholders to greater risks owing to lack of visibility on the pricing and the timing of the IPO for a long period of four to six months. The ICDR Regulations now allow selling shareholders to convert fully paid-up compulsorily convertible securities prior to filing of the RHP (in the case of a book-built issue), provided that the selling shareholder complies with the holding period of one year prior to the DRHP with respect to the securities and provides full disclosures of the terms of conversion or exchange in the draft offer document. This change was incorporated to provide the selling shareholders more flexibility and visibility on the pricing and timelines for the completion of the IPO.

iii Considerations for foreign issuers

A foreign issuer cannot list its equity shares on the stock exchanges in India. A foreign entity can access the Indian capital markets through issuance of Indian depository receipts (IDRs). IDRs are denominated in Indian rupees and issued by a depository. A foreign issuer proposing to issue IDRs should also be listed in its home country; not be prohibited from issuing securities by any regulatory body; and have a track record of compliance with securities market regulations in its home country. There has only been one issuance of IDRs in India to date, namely by Standard Chartered PLC.

If an Indian subsidiary of a foreign entity proposes to list its equity shares, the foreign entity will be named as a promoter. If the immediate holding company is a shell company and does not undertake any substantial business, the entity who has ultimate control over the Indian subsidiary will be required to be named as the promoter as well.

The overall ceiling limit for foreign portfolio investors (FPIs) is 24 per cent of the paid-up capital of the issuer, and for non-resident Indians (NRIs) and overseas citizens of India (OCIs) on a repatriation basis, 10 per cent of the paid-up capital of the issuer. The ceiling limit for FPIs can be raised to the statutory ceiling limits, and the ceiling limit for NRIs and OCIs can be raised to 24 per cent, subject to the approval of the board of directors

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and the shareholders of the issuer. RBI monitors the ceiling limits on a daily basis and has an effective monitoring mechanism in place to ensure that FPIs, NRIs and OCIs do not exceed the aggregate ceiling limit.

IV POST-IPO REQUIREMENTS

Once an entity is listed on the stock exchanges, it must comply with all the requirements of the Listing Regulations, as applicable. The Listing Regulations require the listed entity to make disclosures of any events and information to the stock exchange that is 'material' in the opinion of the board of directors of the entity; shareholding pattern of the entity; and quarterly and annual stand-alone financial results within 45 days of the end of each quarter other than the last quarter, to the stock exchanges on which the securities of the entity are listed.

All listed companies are also required to comply with other SEBI regulations, including the Insider Trading Regulations in relation to treatment of unpublished price-sensitive information. According to these regulations, the board of directors of every entity whose securities are listed on a stock exchange is required to formulate and publish on its official website a code of practices and procedures for fair disclosure of unpublished price-sensitive information, which it would follow in order to adhere to each of the principles set out in these regulations; and a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in these regulations. The listed entity is also required to comply with the public offer requirements under the Takeover Regulations when there is a direct or indirect acquisition of control above the minimum thresholds as prescribed under the regulations.

V OUTLOOK AND CONCLUSION

The year 2019 is the year for general elections in India; it is expected to be dependent on the results of these elections. Markets will hope for a stable government; an unclear verdict will probably be the most disruptive.

Mutual funds and systematic investment plans (SIPs) witnessed significant growth in 2017 to 2018. The mutual funds industry saw investments of 5.1 trillion rupees in the equity market and a gross resources mobilisation of 209.99 trillion rupees during 2017 to 2018 compared with 176.16 trillion rupees during 2016 to 2017 and 137.65 trillion rupees during 2015 to 2016.[10] In 2017 to 2018, the net resources mobilised by all mutual funds in India were 2.72 trillion rupees, out of which 63 per cent was raised through equity-oriented schemes.[11] SIPs have become increasingly popular among Indian investors. The total SIP contribution in 2016 to 2017 amounted to 439.21 billion rupees. In 2017 to 2018, it rose

10 Securities and exchange Board of India Annual Report 2017-18, available at www.sebi.gov.in/reports/annual-reports/aug-2018/annual-report-2017-18_39868.html, last accessed on 14 January 2019.

11 ibid.

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to 671.90 billion rupees and is estimated to reach around 684.79 billion rupees in 2018 to 2019.[12] We believe that both demand and supply of funds is available, and political stability may create a new wave of transactions for the next few years.

On the regulatory side, there could be a significant change to allow equity shares (and not just depository receipts) of Indian companies to list outside India without having to simultaneously list in India, and for equity shares (and not just depository receipts) of foreign companies to list in India. This would create opportunity for both Indian companies and investors.

12 Association of Mutual Funds in India- Mutual Funds, available at https://www.amfiindia.com/mutual-fund, last accessed on 14 January 2019.

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Chapter 8

IRELAND

Matthew Cole and Sheena Doggett[1]

I INTRODUCTION

An officially recognised stock exchange has been in existence in Ireland since the Stock Exchange (Dublin) Act of 1799. In 1971, the Dublin and Cork exchanges merged with the Provincial Brokers Stock Exchange to form the Irish Stock Exchange (ISE), which, in turn, merged with its UK equivalent in 1973 and became the Irish constituent of the International Stock Exchange of the United Kingdom and Republic of Ireland (now the London Stock Exchange (LSE)). The ISE split from the LSE in 1995 to become an independent entity (although it continues to be possible to maintain a dual primary listing and have shares admitted to the official lists in both Dublin and London). The ISE was acquired by Euronext in March 2018 and now trades as Euronext Dublin.[2] Integration into the Euronext group of exchanges, in February 2019, led to a number of changes in terminology and, although there were very few substantive changes, also saw many of the ISE's Listing Rules (the Listing Rules) consolidated into rule books covering the entire Euronext group.

The ISE is the competent authority for listing in Ireland, and the Central Bank of Ireland (the Central Bank) has been responsible for prospectus scrutiny and approval since December 2011.

The ISE maintains three markets that admit equity securities: an EU-regulated market called Euronext Dublin (known until February 2019 as the Main Securities Market); the junior Euronext Growth market (previously the Enterprise Securities Market (ESM)); and the unchanged Atlantic Securities Market (ASM).

Following a difficult period, the Irish equity markets have seen an upturn in initial public offering (IPO) activity in recent years, driven initially by IPOs of real estate investment trusts (REITs) in 2013 and 2014. Since 2013, there have been nine listings on Euronext Dublin, including three REITs and two move-ups from Euronext Growth.[3] In the same

1 Matthew Cole and Sheena Doggett are partners at A&L Goodbody.

2 Throughout this chapter we will use the term 'ISE' rather than 'Euronext Dublin' when discussing the stock exchange to avoid confusion with its regulated market, which is now also called Euronext Dublin.

3 Green REIT plc; Hibernia REIT plc; Irish Residential Properties REIT plc; Hostelworld Group; Permanent TSB Group Holdings plc (move-up from Euronext Growth with fundraising); Dalata Hotel Group (move-up from Euronext Growth); AIB Group plc; Cairn Homes plc (dual listing having previously obtained listing on the Main Market of the LSE); and Glenveagh Properties plc.

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period, there were 12 IPOs on Euronext Growth, including one REIT.[4] As at February 2019, there were 29 issuers listed on Euronext Dublin and 24 on Euronext Growth. The ASM was launched in 2015, but as at February 2019 does not have any constituent companies.

II GOVERNING RULES

i Main stock exchanges

Euronext Dublin

Euronext Dublin is the principal trading market of the ISE and admits equity, debt instruments and investment funds. It is a 'regulated market' for the purposes of the Markets in Financial Investments Directive (MiFID),[5] and issuers are therefore required to comply with EU legislation such as the Prospectus Directive,[6] the Prospectus Regulation[7] and the Transparency Directive.[8]

A primary listing requires an admission of securities to trading on Euronext Dublin and admission to listing on the ISE's Official List, and by virtue of the latter the listed company becomes subject to the full requirements of the Listing Rules, which are now contained in Rule Book II of the consolidated Euronext Rule Book. An Irish company seeking a listing on Euronext Dublin must apply for a primary listing, unless the company has or intends to have an overseas primary listing on a recognised stock exchange and its primary market is in a country other than Ireland.

Like a premium segment listing on the LSE, a Euronext Dublin primary listing indicates high standards of corporate governance, and issuers become subject to a number of obligations that are 'super-equivalent' to the minimum standards of regulation prescribed by European legislation. These are designed to enhance investor protection and include provisions on related-party and substantial transactions (which may require shareholder approval), sponsors (a sponsor must be retained for the duration of a Euronext Dublin listing), and compliance with codes relating to corporate governance and directors' dealing in the issuer's securities. Many of these super-equivalent standards apply to primary- and dual primary-listed companies only. A company with a primary listing on an overseas stock exchange may apply for a secondary listing on Euronext Dublin, which will subject it to less onerous obligations.

Through an agreement reached between the ISE and the LSE in 1995, an issuer may maintain a dual primary listing and have its shares admitted to the official lists in both Dublin and London on a primary basis. The procedure to effect a dual listing is very similar to applying for a single primary listing, and the Central Bank and Financial Conduct Authority (FCA) in the United Kingdom will maintain a regular dialogue with each other throughout the process.

4 Falcon Oil and Gas Ltd; Mincon Group; GameAccount Network plc; Dalata Hotel Group; Mainstay Medical International plc; Applegreen plc; Malin Corporation plc; Draper Esprit plc; Venn Life Sciences Holdings plc; Greencoat Renewables plc; VR Education Holdings plc; and Yew Grove REIT plc.

5 Directive 2014/65/EC & 15 May 2014.

6 Directive 2003/71/EC & 4 November 2003.

7 The Prospectus Regulation (2017/1129) was published in the Official Journal on 30 June 2017 and entered into force on 20 July 2017. It will repeal the Prospectus Directive with effect from 21 July 2019, except for a limited number of provisions that were repealed in August 2018 by the Irish Prospectus (Directive 2003/71/EC) Amendment Regulations 2018.

8 Directive 2004/109/EC & 15 December 2004.

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Euronext Growth

Euronext Growth is an exchange-regulated (i.e., regulated by the ISE) equity market for small to medium-sized issuers, and is a multilateral trading facility (MTF) for the purposes of MiFID. Euronext Growth has been modelled very closely on the LSE's AIM, with reduced admission criteria, no requirement for a prior trading record and no minimum free float requirement. The one notable difference is that all Euronext Growth applicants are required to have a minimum market capitalisation of €5 million, in an attempt to prevent shell companies from undermining the credibility of the market. Since February 2019, the rules for Euronext Growth issuers (the Euronext Growth Rules for Companies) have been contained in the Euronext Growth Markets Rule Book, with the Irish specific rules contained in chapter 5. Though re-ordered, they are substantively unchanged from the old ESM Rules for Companies – which were virtually identical to the AIM Rules – allowing applicants the option of a dual listing by coordinating an IPO to achieve admission to both markets using the same timetable and information document (or admission document on AIM). Of the 24 companies listed on Euronext Growth as at February 2019, 20 are also listed on AIM.

An issuer with a primary listing on Euronext Dublin or Euronext Growth may be eligible to be quoted on the ISE quotient indices (the Irish equivalent of the FTSE indices), provided the listed securities are ordinary shares (or equivalent) admitted to trading, and the issuer is incorporated or has its centre of economic interest in either Ireland or Northern Ireland.

ASM

The ASM is also an MTF and is designed to be compatible with the Securities and Exchange Commission (SEC) requirements of companies listed on the New York Stock Exchange (NYSE) or Nasdaq. Primarily designed for companies already listed on one of these markets, issuers can avail of a dual quotation with trading in euros and US dollars.

ii Overview of listing requirements

Euronext Dublin

A Euronext Dublin issuer must appoint a sponsor for the duration of its listing, which must be registered with the ISE. The sponsor is the primary point of contact between the ISE and the issuer throughout the application process. The sponsor is responsible for various matters relating to the listing, including ensuring the issuer's suitability for listing prior to making any submission to the ISE.

Applicants to Euronext Dublin must comply with the Listing Rules for admission to the Official List, and the Admission to Trading Rules, contained in chapter 6 of Rule Book I of the Euronext Rule Book (the Admission to Trading Rules), for the admission of securities to trading. The following are the key listing requirements under these rules for a primary or dual primary listing on Euronext Dublin:

a the issuer must be validly established and operating in conformity with its constitution, and its securities must conform with the law of the issuer's country of incorporation, be freely transferable and fully paid;

b the issuer should have a minimum market capitalisation of €1 million (although the ISE may make an exception if there will still be an adequate market for the shares);

c preparation of a prospectus complying with relevant EU legislation that is reviewed and approved by the Central Bank (or passported in if the issuer's home Member State is not Ireland). The requirement for a prospectus is triggered by the application for

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transferable securities to be admitted on a regulated market, irrespective of whether there is also an offer being made of transferable securities to the public in the European Economic Area (EEA);

d the issuer must have published or filed audited consolidated accounts covering a period of at least three years, ending no more than six months before the date of the prospectus (although this condition can be modified or waived by the ISE);

e the issuer must generally:
- control the majority of its assets;
- be carrying on an independent business as its main activity; and
- possess a three-year revenue-earning record that supports at least 75 per cent of its business (100 per cent for an issuer seeking a primary listing only);

f the issuer satisfies the ISE that it has sufficient working capital available for at least 12 months following the date of publication of its prospectus;

g the issuer's securities are eligible for electronic settlement;

h the issuer maintains a free float in one or more EEA Member States of 25 per cent (the ISE may relax this requirement in certain circumstances); and

i an issuer seeking a primary listing must be able to carry on its business independently of any controlling shareholder (a person who either controls 30 per cent or more of the votes in the issuer or who has the right to appoint a majority of the board of directors), and all transactions and relationships between the issuer and any controlling shareholder must be at arm's length and on a normal commercial basis.

Most of the conditions referred to above apply equally to secondary listings, except for the requirements relating to the publication of accounts and the conditions relating to assets, business activities and working capital.

Euronext Growth

A Euronext Growth issuer is required to appoint a 'Euronext Growth Advisor' approved by the ISE (equivalent to a nominated adviser on AIM) for the duration of its listing. The role of a Euronext Growth Advisor is broadly similar to that of a sponsor on Euronext Dublin. In particular, he or she is responsible for assessing the appropriateness of an applicant for admission. In light of this responsibility, there are no other specific eligibility requirements that apply to companies seeking admission to Euronext Growth, except that there must usually be a minimum market capitalisation of €5 million.

An information document containing prescribed information set out in the Euronext Growth Rules (similar in format to a prospectus) is required to be published in connection with the applicant's admission to Euronext Growth and must be approved by the Euronext Growth Advisor. He or she must make a declaration to the ISE that the admission document complies with the relevant requirements of the Euronext Growth Rules.

Applicants already listed for 18 months on one of 12 'designated markets'[9] can avail of a fast-track admission process, which dispenses with the requirement for an information document but instead requires a detailed pre-admission announcement.

9 As at March 2018, the designated markets are: Euronext Dublin, ASM, Main Market of the LSE, AIM, Deutsche Borse, NYSE, Nasdaq, Nasdaq OMX Stockholm, TMX Group, Johannesburg Stock Exchange, Australian Stock Exchange and Swiss Exchange.

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ASM

An ASM issuer must appoint an 'ASM Advisor' approved by the ISE for the duration of its listing. An ASM applicant must meet a number of listing requirements, of which the most important include:

a the issuer must be seeking admission, or be admitted, to the NYSE or Nasdaq;
b a three-year revenue-earning record reflected in published or filed audited accounts;
c the issuer satisfies the ISE that it has sufficient working capital available for at least 12 months;
d the ability of the issuer to carry on its business independently of any controlling shareholder;
e a minimum market capitalisation of US$100 million (although the ISE may make an exception if there will still be an adequate market for the securities);
f the issuer's securities must be eligible for electronic settlement; and
g the issuer must have a free float on admission of 15 per cent.

Applicants already listed on the NYSE or Nasdaq for 18 months are not required to publish an admission document and can utilise a fast-track admission process (unless they are required to publish a prospectus by virtue of making an offer of transferable securities to the public in the EEA). Other applicants must produce an admission document, but should usually be able to incorporate by reference information contained in its SEC registration statement or filings.

iii Overview of law and regulations

Laws and regulations applicable to IPOs in Ireland are derived from EU directives and regulations, domestic statutes, and implementing regulations and guidelines. The key laws and regulations are set out below.

Prospectus Regulations and Rules

The Prospectus Directive (until it is repealed by the Prospectus Regulation in July 2019), the Irish Prospectus Regulations (as amended)[10] and the Prospectus Rules issued by the Central Bank are the primary sources of prospectus law in Ireland.

The Irish Prospectus Regulations (as amended) implemented the Prospectus Directive in Ireland. They provide that a prospectus required to be published in connection with a public offer of securities or an admission to trading on Euronext Dublin must:

a contain, as a minimum, the information prescribed by the Prospectus Regulations;
b be approved by the relevant competent authority; and
c be published in accordance with the specific requirements of the Prospectus Directive.

The Central Bank's Prospectus Handbook draws together a number of sources of information relating to Irish prospectus requirements and procedures, and is intended for use by issuers and their advisers. It also contains the Prospectus Rules and associated guidance, which cover the structure and content of a prospectus, the procedures for submission, review, and passporting, and applicable fees.

10 Prospectus (Directive 2003/71/EC) Regulations 2005.

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Listing Rules, Admission to Trading Rules, Euronext Growth Rules and ASM Rules

The Listing Rules, which are broadly comparable to the listing rules of the FCA in the United Kingdom, set out the detailed procedure for making an application for admission of an issuer's securities to the Official List of the ISE. They also contain requirements in relation to particular transactions effected by an issuer once listed and the continuing obligations that a listed company is required to observe. Broadly, the object of the continuing obligations is to maintain an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information. The Admission to Trading Rules contain parallel rules and responsibilities in relation to a company's admission to trading on Euronext Dublin.

The Euronext Growth Rules and ASM Rules govern the listing processes and ongoing obligations of issuers admitted to those markets.

Transparency Regulations and Rules

The Transparency (Directive 2004/109/EC) Regulations 2007 (the Transparency Regulations) implemented the Transparency Directive in Ireland. They establish minimum requirements in relation to the disclosure of periodic and ongoing information by issuers, and are supplemented by rules published most recently in November 2016 by the Central Bank (the Transparency Rules), which set out procedural and administrative requirements and guidance in respect of the Transparency Regulations.

The Market Abuse Regulation

The Market Abuse Regulation (MAR) came into effect in July 2016, replacing the previous rules implementing the Market Abuse Directive. It sets out a standardised EU-wide regime dealing with market abuse, market manipulation and insider dealing. It applies equally to issuers on regulated markets such as Euronext Dublin, and MTFs such as Euronext Growth and ASM.

III THE OFFERING PROCESS

i General overview of the IPO process

Depending upon the complexity of the issuer's business and the structure of the offering, a typical Euronext Dublin IPO process takes between four and six months. As an IPO on Euronext Growth will not usually require a prospectus that must be vetted by the Central Bank, the process can be considerably shorter. At present, the new rules around research analysts discussed below do not apply to Euronext Growth IPOs, further shortening the process in comparison with Euronext Dublin.

At the start of the process, the issuer (increasingly in conjunction with a financial adviser) will appoint one or more investment banks as bookrunners or underwriters (one of whom will act as sponsor or Euronext Growth Advisor). Irish lawyers (and UK and US lawyers if a dual listing is contemplated) will also be appointed together with reporting accountants, registrars and financial PR agents. Investment banks will also appoint their own set of lawyers.

Reporting accountants will carry out financial due diligence and produce a long-form report on the issuer's business, a working capital report and a 'financial position and prospects procedures' report (Euronext Dublin only). At the same time, a legal due diligence process will be commenced and will form the basis of the prospectus or information document. The issuer's lawyers will verify the material statements in the prospectus or information document.

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If a prospectus is being produced, an advanced draft is submitted to the Central Bank for review. The Central Bank usually responds with comments within 10 working days (five working days or less for later submissions).

Prior to July 2018, a presentation would usually be given at this stage by the issuer to 'connected' research analysts at the syndicate investment banks, who would subsequently publish research reports on the issuer to coincide with its intention to float (ITF) announcement. However, with effect from July 2018, the FCA introduced new rules in the United Kingdom through its Conduct of Business Sourcebook (COBS), which require the publication of an approved registration document (which is essentially a full prospectus without the summary and securities note sections) before the publication of these connected research reports. This has altered the timetable of most UK Main Market IPOs by requiring earlier approval and publication of the registration document. Though not directly applicable to Ireland, these measures have seen changes to the timetables of Euronext Dublin IPOs as most issuers pursue dual primary listings in Ireland and London, and the COBS applies to research analysts in the United Kingdom, which is where the vast majority of connected analysts covering Irish IPOs are based.

The COBS allows for research to be published immediately following publication of the registration document but only if 'unconnected' analysts at non-syndicate institutions have been briefed at the same time as the connected analysts. Otherwise, there must be a seven-day period following publication of the registration document during which unconnected analysts can be briefed and given the opportunity to prepare research. Though market practice may still evolve, it seems that all issuers have so far chosen this latter course, which has entailed a week-long delay before the publication of research and the ITF. A period of investor education has then followed before the publication of the prospectus summary and securities note with a price range. The issuer will then spend up to two weeks carrying out an investor roadshow, usually encompassing at least Ireland, the United Kingdom and the United States, while the investment banks are book-building on the basis of bids from investors. Recent IPOs have involved significant domestic and US 'cornerstone investors' who sign conditional subscription agreements.

Finally, pricing will occur and a single approved prospectus encompassing the registration document, summary and securities document will be published. On Euronext Growth, the Euronext Growth Advisor will approve the information document and it will be published. For a Euronext Dublin IPO, the issuer's shares will be admitted to trading and the Official List, and credited to CREST accounts. When dealing commences, the IPO is complete.

ii Considerations for foreign issuers

Ireland has a listing regime that should be conducive to primary or secondary equity listings by non-domestic issuers. Ireland has an experienced and pragmatic regulator in the Central Bank, and the ISE has been proactive in marketing Ireland as a listing venue and in creating listing products to attract overseas companies. The ISE's integration into the Euronext group should further enhance its appeal and familiarity to overseas issuers. Dublin is home to sophisticated accountancy and law firms, and has domestic investment banks that offer excellent coverage for Irish listed issuers and can therefore create strong liquidity. These listings have been rare to date (at present, around 80 per cent of issuers listed on Irish markets are incorporated in Ireland). This is, perhaps, unsurprising given the geographical proximity of London with its prestigious and highly liquid markets. Instead, Ireland has become better known as a debt-listing venue through the ISE's highly successful Global Exchange Market.

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This may change following the United Kingdom's exit from the European Union (Brexit), when Euronext Dublin will be the main English-speaking equity market still subject to European legislation and with the benefits of passporting.

IV POST-IPO REQUIREMENTS

i Introduction

An issuer with securities admitted to trading on Euronext Dublin must comply with certain continuing obligations set out in the Listing Rules. Euronext Dublin companies must also comply with the Transparency Regulations and Rules, and have regard to the UK Corporate Governance Code (the Code). In addition, the Admission to Trading Rules and the Irish Prospectus Regulations contain certain continuing obligations for Euronext Dublin companies. Irish companies listed on either the Euronext Dublin, Euronext Growth or ASM must also have regard in general to the provisions of the Irish Companies Act 2014 (the Companies Act). The Irish Takeover Rules and Substantial Acquisition Rules apply to takeovers of listed Irish issuers. Companies admitted to trading on Euronext Growth must comply with continuing obligations contained in the Euronext Growth Rules, and ASM issuers are subject to the provisions of the ASM Rules on a continuing basis. MAR applies to both regulated markets and MTFs, and as such applies to issuers on all three markets.

ii Listing Rules

The Listing Rules impose obligations on Euronext Dublin companies to ensure timely disclosure to the market and equality of treatment of shareholders. Sanctions for breach include the public censure of the issuer, the public or private censure of directors, and the suspension or ultimate cancellation of the issuer's listing.

Where a Euronext Dublin issuer undertakes transactions of a certain size, a notification to the market is required. If a proposed transaction would constitute a 'Class 1 Transaction' because it represents 25 per cent of an issuer's value under a gross assets, profits, market value or gross capital test, it will require shareholder consent. Similarly, related-party transactions generally require prior shareholder approval.

iii The Code

The Code, which was significantly revised in 2018 together with the Irish Corporate Governance Annex (which is contained in the Listing Rules), contains corporate governance guidelines for Euronext Dublin issuers. It sets out good practice recommendations in the spheres of board leadership, accountability, remuneration and shareholder relations.

The Listing Rules require a Euronext Dublin-listed issuer to include in its annual report a compliance statement in respect of the Code, and auditors must review the statement in relation to financial reporting, internal controls and audit committees.

iv Transparency and disclosure

As described in Section II.iii, the Transparency Regulations implemented the Transparency Directive into Irish law. The aim of the Transparency Directive was to harmonise, at EU level, requirements for the provision of financial information, notification of major shareholdings

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and the disclosure of corporate information to shareholders. Most material modifications to the Transparency Directive are, in fact, contained in the Transparency Rules issued by the Central Bank.

The Transparency Regulations require Euronext Dublin issuers to publish their annual financial report within four months of the end of the financial year, and a half-yearly financial report no later than two months after the period to which it relates, containing detailed content requirements.

Under the Companies Act and the Transparency Rules, a shareholder must notify an Irish issuer and the Central Bank when it acquires an interest in 3 per cent or more of the issuer's share capital. Subsequent transactions that change the percentage interest by a whole number (up or down) must also be notified. In the case of non-Irish Euronext Dublin issuers, the thresholds are at 5, 10, 15, 20, 25, 30, 50 and 75 per cent (i.e., the thresholds set out in the Transparency Directive). When a shareholder ceases to have a notifiable interest, that must also be notified. The notification must be made within two trading days of the transaction, or four days for non-Irish issuers. The issuer must notify the market by no later than the end of the trading day following receipt of a notification.

v Continuing obligations under the Euronext Growth Rules

The key continuing obligations for Euronext Growth issuers are as follows:

a information on new business developments must be notified to the market without delay;

b preparation of half-yearly reports and publication within three months of the period to which they relate;

c preparation of annual accounts and publication within six months of the period to which they relate;

d any documents sent to shareholders must be available on the issuer's website;

e a Euronext Growth issuer must ensure that its directors and certain relevant employees do not deal shares during a close period;

f a Euronext Growth issuer must notify the market without delay of substantial transactions (those representing 10 per cent or more of an issuer's value under a gross assets, profits, turnover, consideration or gross capital test (the ESM Class Tests)) and related-party transactions representing 5 per cent or more of an issuer's value under the Euronext Growth Class Tests;

g reverse takeovers (transactions representing 100 per cent or more of an issuer's value under the Euronext Growth Class Tests) require shareholder approval, as do fundamental changes of business (disposals that when aggregated with disposals in the previous 12 months exceed 75 per cent of an issuer's value under a Euronext Growth Class Test);

h directors must accept full responsibility for compliance with the Euronext Growth Rules; and

i Euronext Growth issuers must retain a Euronext Growth Advisor and broker at all times.

vi Continuing obligations under the ASM Rules

Continuing obligations under the ASM Rules are designed to dovetail with SEC requirements so that an ASM listing does not create a significant extra administrative burden for an issuer. Indeed, the only significant further obligation for NYSE- or Nasdaq-listed issuers is compliance with MAR.

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The key requirements under the ASM Rules are that:

a an issuer that files information with the SEC or makes a public announcement pursuant to the rules of the NYSE or Nasdaq must issue a notification to the market;

b an issuer that discloses a material transaction under SEC rules in accordance with Forms 6-K or 8-K, or undertakes a related-party transaction that is required to be disclosed under Regulation S-K of the US Securities Act of 1933, as amended, or Form 20-F of the US Securities Exchange Act of 1934, as amended, must issue a notification to the market;

c an issuer that files annual or periodic financial reports in the United States must issue an announcement to the market when the accounts are filed with the SEC. If it does not file the accounts, it must prepare and publish them outside of SEC requirements;

d directors must accept full responsibility for compliance with the ASM Rules; and

e ASM issuers must retain an ASM Advisor at all times.

vii Market abuse

MAR applies equally to Euronext Dublin, Euronext Growth and ASM issuers, and contains three core principles:

a a prohibition on market manipulation and unlawful disclosure of inside information;

b restrictions on dealing in securities while in possession of inside information; and

c requirements as to prompt disclosure of inside information to the market.

There are also detailed provisions around the maintenance of 'insider lists' by issuers, and restrictions on dealings by directors and certain senior officers. MAR provides for certain safe harbours from these restrictions relating to share buy-back programmes, stabilisation measures, and market soundings or wall-crossing.

V OUTLOOK AND CONCLUSION

As noted in Section III.ii, the Irish IPO markets will be greatly affected by Brexit. What remains to be seen is whether the net effect will be positive or negative. Ireland may benefit as the home to the main English-speaking listing venues remaining within the European Union, and could see a trend of overseas issuers carrying out IPOs in Ireland or taking secondary listings. Depending upon the terms of Brexit, it is possible that UK-incorporated, London-listed issuers will consider electing Ireland as their home Member State to make the Central Bank their home regulator for the purposes of the Prospectus Regulation.

Equally, Brexit will pose a number of challenges to the Irish markets, some of which may not crystalise for a number of years. For instance, Ireland does not currently have its own securities settlement system. Since the de-merger of the ISE and LSE, Irish issuers listed in Dublin or London, or both, have used the UK-based CREST settlement system. Following a transition period, this will need to be replaced by an EU-based system. Furthermore, the United Kingdom may take advantage of Brexit by discarding European legislation that some issuers might consider to be onerous (such as MAR), making London a more attractive listing venue to those issuers at the expense of Ireland and continental Europe. In any event, the fallout from Brexit, combined with the acquisition of the ISE by Euronext, means that the next few years will be a defining period in the history of Irish equity capital markets.

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Chapter 9

ISRAEL

Nitzan Sandor and Sharon Rosen[1]

I INTRODUCTION

Local trade in securities began in the 1930s, before the establishment of the state of Israel. The Tel Aviv Stock Exchange (TASE), Israel's sole stock exchange, was established in September 1953 by a number of banks and brokerages, referred to as TASE members. Following the increase in listing of securities for trade on the TASE during the 1960s, the Israeli Securities Law 1968 (the Securities Law) was enacted and the Israel Securities Authority (ISA), the primary regulator for the Israeli securities market, was established.

The wave of initial public offerings (IPOs) that began in 2017 continued during the first half of 2018. However, the second half of 2018 experienced a sharp decrease in the number and volume of IPOs and securities offerings, resulting in a total of 14 equity IPOs on the TASE during 2018, compared with 17 in 2017 and 14 equity IPOs during 2012 to 2016. At the end of 2018, 448 companies had equity listed for trade on the TASE.[2]

Public offerings of debt are very common in Israel, with approximately 66 billion shekels raised in total in traded bonds offerings during 2018. Unlike US or European bond markets, which are structured as dealer-based over-the-counter markets, most Israeli corporate bonds are listed for trade on the TASE and the vast majority of the trading volume in exchange-listed bonds takes place on the exchange.

Over the past few years, the Israeli corporate bond market has become increasingly attractive to foreign issuers, with a growing trend of IPOs of debt in Israel by non-Israeli companies (primarily, US real estate companies with income-producing real estate, typically issuing the debt through subsidiaries incorporated in the British Virgin Islands), aiming to benefit from the relatively low interest rates, high liquidity, low offering costs and short 'time to market' offered by the local market. The aggregate amount of debt raised in bond issuances by non-Israeli issuers in 2018 was approximately 5.8 billion shekels, compared with approximately 850 million shekels in 2011. Though US real estate companies continue to be the primary type of foreign issuers of corporate bonds in Israel, this trend has expanded in recent years to foreign issuers from other industries, including US business development companies.

A recent development with regard to this trend is the dual listing of shares on the TASE of issuers whose shares are listed on certain leading global stock exchanges, enabling the issuers to benefit from the special disclosure regime (the Dual-Listing Regime) that is available to

1 Nitzan Sandor and Sharon Rosen are partners at Fischer Behar Chen Well Orion & Co.

2 '2018 Annual Review' published on the TASE website at https://info.tase.co.il/Heb/Lists/gen_res/0133_annual_review/2018_annualreview_heb.pdf.

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dual-listed companies under the Securities Law, and the public issuance of debt in Israel pursuant to offering documents that are primarily based on the disclosure documents prepared under the laws of the jurisdiction of the foreign exchange, as further explained below.

IPOs in Israel are regulated by the ISA and the by-laws of the TASE.

II GOVERNING RULES

i Main stock exchanges

The TASE is the only stock exchange in Israel. It primarily attracts domestic issuers, from all industries.

Trading on the TASE is carried out between the current TASE members on behalf of their customers. With physical trading floors long abolished, the TASE's electronic platform, the Tel Aviv Continuous Trading (TACT) system, handles trades for all traded financial instruments. The TASE also operates a separate electronic trading platform known as TACT Institutional, designed for trading in privately placed securities between institutional and qualified investors.

Israel is known as one of the major sources of cross-listed companies listed on Nasdaq. As at 31 December 2018, of the 448 Israeli companies whose shares were traded on the TASE, 57 were dual listed on the TASE and a foreign exchange, the large majority on Nasdaq.[3]

A fast track for dual listing on the TASE is available under the Dual-Listing Regime for both domestic and foreign companies that have been traded for more than one year on certain foreign exchanges (Nasdaq, the New York Stock Exchange (NYSE), the NYSE American, the London Stock Exchange (LSE) Main Market or High Growth Segment, the Stock Exchange of Hong Kong (HKEX) primary listing, the Singapore Stock Exchange (SGX) Mainboard or primary listing, and the Toronto Stock Exchange (TSX) primary listing), or that have a market cap on such exchanges of at least US$150 million. The listing procedure under the dual-listing track involves the filing of a simple registration form, which contains certain basic details regarding the issuer and the securities being registered, and incorporates, by reference, certain disclosure documents of the issuer previously filed with the foreign exchange where its shares are traded. Dual-listed companies are exempt from the ongoing Israeli reporting requirements, and are required to file with the ISA and the TASE the same reports and filings (in English) as they file in the jurisdiction of the non-Israeli exchange.

The TASE maintains numerous equity and bonds indices, the most significant of which is the TA-125 Index, which is considered the benchmark index for the Israeli economy. A large portion of trading on the TASE is attributed to traded index-linked financial instruments, particularly exchange-traded notes. Consequently, inclusion in a leading TASE index is highly advantageous to issuers on the TASE, as it creates instant demand for the listed securities. Recent amendments to the TASE by-laws make it a condition for a non-Israeli issuer in many of the TASE's indices to have a 'nexus' (as defined in the TASE by-laws) to Israel.

ii Overview of listing requirements

Pursuant to the Securities Law, to list shares on the TASE a company must have only one class of voting shares ('one share, one vote'), subject to certain limited exceptions that apply to dual-listed companies, based on ISA pre-rulings and Israeli case law.

3 2018 annual review published by the TASE.

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The TASE maintains listing rules that permit companies offering shares to the public for the first time in Israel to list under one of three listing alternatives. Emphasising the liquidity of the securities after the IPO, the TASE requires a minimum public float value and rate, and minimum distribution of public holdings under each alternative. The three different procedures allow issuers to adopt an appropriate listing regime in view of its shareholders' equity, public float, period of activity and company valuation requirements, as summarised in the table below.

Parameter*	**Alternative 1**	**Alternative 2**	**Alternative 3**
Shareholders' equity after listing (million shekels)	25	35	-
Public float value (million shekels)	20	30	80
Period of activity	12 months	12 months	-
'Added value'** in 12 months before listing (million shekels)	4	-	-
Value of public float derived from the shares issued to the public (million shekels)	20	20	80
Value of the company's shares (million shekels)	-	-	200

* In addition, the TASE established rules that enable research and development companies to list their shares under more lenient terms than those set forth in this table, with an aim to attract high-technology companies in their early stages. Certain additional exemptions are available to certain types of issuers under TASE by-laws.
** Profits before taxes plus employment expenses, depreciation and net finance expenses.

In addition, there are minimum public float rate requirements (ranging from 25 per cent to 7.5 per cent, depending on company valuation) and a requirement for a minimum distribution of public holdings (of at least 100 public holders, each holding shares worth at least 16,000 shekels).

Listing rules for a series of corporate bonds require companies to have, upon listing, shareholders' equity ranging from 16–24 million shekels; however, certain listing alternatives provide an exemption from this requirement. In addition, the value of the issued bonds must exceed 35 million shekels and there is a minimum distribution requirement of 35 holders, each holding bonds worth at least 200,000 shekels.

TASE listing rules establish a lock-up period that applies to shares held by pre-IPO shareholders of all newly listed companies (of 18 months for major shareholders and nine months for other shareholders, except that commencing three months post listing, 2.5 and 12.5 per cent of the pre-IPO shares may be sold monthly by such shareholders, respectively), other than sales in a public sale offer and, commencing six months after the listing date, sales in off-market transactions provided that the buyer undertakes to subject the shares to the remaining lock-up period.

The cost of listing on the TASE is based on the size of the IPO (0.02 per cent of the proceeds for shares and 0.01–0.02 per cent of the proceeds for bonds), plus a fixed processing fee of several thousand shekels. In addition, a processing fee is required to be paid to the ISA of 0.03 per cent of the IPO proceeds, plus a fixed fee of several thousand shekels (25 per cent of the fees paid to the ISA are returned if the IPO is not consummated).

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iii Overview of law and regulations

The Securities Law and regulations promulgated thereunder regulate the offering of securities in Israel, post-IPO reporting and compliance requirements. The Securities Regulations (Details, Structure and Form of Prospectus and Draft Prospectus) 1969 (the Prospectus Regulations) set forth the disclosure requirements applicable to a prospectus, which is the primary document used for the offering of securities to the public in Israel. The Securities Regulations (Offer of Securities to the Public) 2007 regulate the methods for offering securities to the public in Israel.

The Israeli Companies Law 1999 (the Companies Law) and regulations promulgated thereunder regulate the corporate and governance requirements that apply to Israeli private and public companies (including foreign companies listed on the TASE, with the exception of foreign companies dual listed on exchanges eligible for the Dual-Listing Regime). The Companies Law is generally based on US and English corporate law; however, as the large majority of Israeli public companies have a controlling shareholder holding 50 per cent or more of the shares, many of the Israeli corporate governance rules are aimed at mitigating agency problems related to potential conflicts of interest between the controlling shareholder and minority shareholders.

The ISA was established under the Securities Law, with the primary function to protect the interests of the public investing in securities. The ISA has the responsibility (among others) to review prospectuses in public offerings and approve them for public filing, and to oversee public company compliance during and following the IPO. The ISA also oversees the fair and proper operation of the TASE, and licenses and regulates underwriters and distributors. Additional functions of the ISA include the regulation of mutual funds, investment advisers and trading platforms. It has investigative powers with regard to violations of the laws under its supervision, including the authority to conduct criminal investigations, as well as administrative enforcement powers. The supervision regime under the Securities Law is predominantly disclosure-based and, generally, the ISA does not examine the quality of the company or the securities offered.

As Israeli institutional investors are typically the major investors in Israeli IPOs, in debt IPOs the legal and commercial terms of corporate bonds are greatly influenced by the investment rules that apply to such investors, which include (among others) requirements for special approval procedures for investment in corporate bonds that do not contain certain covenants and limitations on the issuer, as set forth in the applicable regulations and guidelines and in the policies of such investors.

III THE OFFERING PROCESS

i General overview of the IPO process

Although the large majority of IPOs in Israel are structured as primary offerings (i.e., investment in the issuer against the issuance of securities), in recent years several offerings included a secondary offering (i.e., the sale of securities by existing shareholders).

Key players

The key players involved in the public offering process include the issuer's internal team, outside legal advisers, auditors, offering managers (underwriters and distributors), underwriter counsel (typically only in underwritten IPOs) and appraisers, if the issuer's financial statements are based on material appraisals.

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The Securities Law distinguishes between underwritten and non-underwritten offerings. In an underwritten public offering, in addition to advising on the pricing and participating in the marketing of the offering, underwriters commit to the effectuation of the offering by undertaking to buy the securities to the extent that they are not purchased by the public, and they also sign the prospectus, thereby assuming liability under the Securities Law for disclosure included in the prospectus. Conversely, the distributors' role is limited to the marketing and distribution of the securities, without assuming any liability for disclosure in the prospectus. The large majority of underwriters and distributors licensed in Israel are Israeli underwriters, although several international investment banks are registered as underwriters. In an underwritten IPO, the consortium of underwriters typically retains a separate counsel and accounting firm, and conducts independent legal and financial due diligence, whereas in most IPOs that are not underwritten, distributors do not conduct due diligence or require opinions of counsel and reliance letters (with the exception of certain offerings by non-Israeli issuers, where it is customary for distributors to sign the prospectus and conduct due diligence). The majority of debt and equity IPOs in Israel are not underwritten.

Offering documents

The primary offering document in an Israeli IPO is the prospectus, which is prepared in Hebrew in accordance with the Prospectus Regulations, and typically includes the following information:

a details of the offering, and a description of the securities offered and the underwriting agreement;
b a detailed description of the issuer's business;
c risk factors;
d major shareholders;
e use of proceeds;
f certain corporate governance matters and related-party transactions;
g financial statements, which are typically prepared in accordance with International Financial Reporting Standards, although non-Israeli issuers may prepare financial statements in accordance with US generally accepted accounting principles or international accounting standards as adopted by the European Union;
h material appraisals, if information in the financial statements is based on such appraisals;
i rating reports in a debt offering, which is rated by a recognised rating agency;
j board discussion and analysis (which is substantially similar to management's discussion and analysis in a US offering);
k management certifications on the adequacy of internal controls over financial reporting; and
l an opinion of counsel in a standard form, relating to the authority to offer the securities and the due appointment of the issuer's directors.

Typically, an IPO prospectus is structured as a 'prospectus subject to completion', which includes the anticipated amount and price of the offered securities, and may be supplemented prior to the public offering by a 'supplementary notice' filed not later than 75 days after the publication of the prospectus and at least five trading hours prior to the closing of the offering. The supplementary notice includes the final amount and price of the offered securities (subject to certain limitations on the scope of changes that may be made to the amount and price in the supplementary notice).

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An Israeli IPO prospectus may also serve as a 'shelf prospectus', allowing the issuer to issue additional securities to the public in a relatively short and straightforward process during a period of 24 months after the IPO (which may be extended by an additional 12 months), provided that the issuer, its officers and controlling shareholder meet certain conditions, primarily relating to the absence of violations of disclosure laws.

If the issuer is eligible to list under the Dual-Listing Regime (i.e., its securities are listed on Nasdaq, NYSE, NYSE American or LSE (Main Market or High Growth Segment), HKEX, SGX (Mainboard and primary listing) or TSX (primary listing)), subject to the approval of the ISA, it may prepare a prospectus comprising an offering document prepared in English in accordance with the securities laws applicable to it (e.g., the requirements of Forms S-1 or S-3 for a US domestic issuer, Forms F-1 or F-3 for a foreign private issuer, and Form N-2 for closed-end management investment companies) and an Israeli 'wrapper', which primarily includes details of the offering and a description of the offered securities. Certain US-listed companies, including (among others) US business development companies and a real estate investment trust, have relied on this exemption to offer debt securities and preferred shares only in Israel, using offering documents that were mainly based on disclosures prepared in accordance with US securities laws.

In debt offerings, the offering documents would also include the indenture entered into between the indenture trustee (typically a local trust company) and the issuer. The Securities Law sets forth certain mandatory provisions that apply to the indenture, such as certain mandatory events of default, duties of the trustee and other provisions.

Offering process

An IPO in Israel typically takes three to five months, depending on (among other things) the complexity of the issuer's operations, the issuer's readiness for an IPO and market conditions.

After a preparation period of internal reorganisation, engagement of advisers, preliminary discussions on pricing and the IPO structure, due diligence, drafting of the prospectus and preparation of the financial statements, the first draft of the prospectus is approved by the company's board of directors, signed, and filed with the ISA and the TASE. Drafts of the prospectus may be filed confidentially, although marketing may only begin after the public filing of a draft prospectus or a prospectus.

The ISA review of the prospectus typically includes the review by accounting and legal reviewers. It is common for the review process to include at least one in-person meeting with the ISA staff at the ISA's offices. The TASE's review process is generally more technical, and is designed to ensure compliance with the TASE by-laws and listing requirements. During the review process, several additional drafts of the prospectus are typically filed with the ISA and the TASE. If the company has publicly filed a draft prospectus during the process, it is required to publicly file any subsequent draft simultaneously with its filing with the ISA and TASE. Once a near final prospectus is ready, the ISA's prospectus committee reviews and approves the prospectus. Subject to the committee's approval, the ISA chairperson then issues a permit to publish the final prospectus, which is subsequently publicly filed.

The marketing of the offering typically commences before the final prospectus is filed, following the publication of the first public draft of the prospectus. The marketing stage usually includes an investor roadshow and negotiations with investors on the terms of the offering, and in debt offerings, on the legal and commercial terms of the bonds.

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The Securities Law provides that securities offered to the public under a prospectus must be sold at an equal price to all buyers, with the exception of reasonable early commitment fees and distribution fees.

IPOs in Israel may be effected in one of two methods.

Uniform offering

Almost all offerings of securities in Israel are made through a uniform offering, which is essentially a 'Dutch auction' that is open to all investors (including retail investors) on equal terms and does not involve a book-building process. It is prohibited to state a maximum price (or minimum interest rate) for the securities offered, although the ISA has recently proposed to amend the Securities Law to cancel this prohibition.

To enhance the likelihood of a successful offering, the issuer typically obtains early commitments from 'classified investors' (primarily, certain types of institutional investors as well as entities with shareholders' equity exceeding 50 million shekels) to place bids at the public auction in specified amounts and prices, in return for an early commitment fee (a discount on the purchase price). Early commitments are also provided through an auction open to classified investors. Up to 95 per cent of the amount offered to the public can be secured through early commitments, depending on the size of the offering.

After the classified investor auction and before the public auction, the company files a supplementary notice (or the final prospectus, as applicable), detailing the final offered amount of securities and minimum price of the securities offered, as well as the early commitments obtained by the issuer.

Bids at the public auction are placed through TASE members. Classified investors that provided an early commitment are given precedence in allocation over bids made by the public for the same price, unless the offering is more than five times oversubscribed.

Two types of overallotment options are available to the issuer in a uniform offering, exercisable within one business day following the closing of the offering: the issuer may issue up to an additional 15 per cent of the offered amount to classified investors who provided early commitments and, if the offering was oversubscribed, the issuer may issue up to an additional 15 per cent of the offered amount to all investors who bought securities in the offering.

Non-uniform offering

In a non-uniform offering, the allocation of securities among investors is made by the underwriter and the issuer, which may conduct a book-building process. A non-uniform offering is not open to the public (although it may be combined with a tranche of up to 30 per cent of the offered amount, which may be offered to the public through a uniform offering), and only certain types of institutional investors may participate in such offering. In addition, an underwriter must underwrite at least 25 per cent of the offering, sign the prospectus and assume liability for the disclosure included in the prospectus, although the ISA has recently proposed to abolish the requirement for underwriting in non-uniform offerings.

The limitation on the types of investors who may participate in the offering and the underwriting requirement, coupled with the fact that the Israeli market is accustomed to the Dutch auction uniform offering method, make the non-uniform offering method significantly less popular in Israel and it is rarely used.

In a non-uniform offering, the issuer may grant the underwriter or underwriters an overallotment option to purchase up to an additional 15 per cent of the amount offered, during the 30 days from the closing of the IPO, to sell the securities or cover a short position taken in connection with the offering.

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ii Pitfalls and considerations

Among the matters to consider before commencing an IPO process in Israel are the following.

Potential liability and the importance of conducting a comprehensive due diligence review

Pursuant to the Securities Law, a prospectus must contain all information that may be material for a reasonable investor, and shall not contain any 'misleading information'. The offeror (the issuer or selling shareholder), the directors, chief executive officer, controlling shareholder of the issuer, and the underwriter or underwriters – if the offer is underwritten – bear criminal, administrative and civil liability for misleading information included in the prospectus, including the failure to disclose material information. The liability also extends to experts who provided an opinion or report that was included in the prospectus (typically, audit reports, appraisals and opinions of counsel) with regard to a misleading item contained in such opinion or report. The Securities Law sets forth certain defences against liability, including the 'due diligence defence', which is available to persons who have taken all adequate measures to ensure that the disclosure does not include any misleading information and believed in good faith that no such misleading information was included; however, Israeli case law has narrowly interpreted this defence. In underwritten IPOs, the common practice is for the underwriter to receive comfort letters and negative assurance letters from the issuer's external counsel and officers; however, it is not common practice for the issuer to obtain such letters in IPOs that are not underwritten (which is the majority of Israeli IPOs in recent years).

Marketing restrictions

It is important to adhere to the publicity guidelines, as the ISA has in the past halted IPOs that did not follow the legal restrictions on marketing. Generally, the offer of securities to the public in Israel is only permitted based on a publicly filed draft or final prospectus. This general rule has been interpreted to apply to a wide range of communications, including advertisements, media interviews and investor presentations, and issuers must be mindful of the fact that all such communications during a 'quiet period' commencing one month prior to the publication of the prospectus may be deemed to violate the rule. Although the ISA has established guidelines permitting 'test-the-water' exercises with certain types of classified investors before the public filing of a draft prospectus, interaction with such investors must cease at least 15 days prior to the filing of the prospectus, and all material information provided to such investors must be included in the prospectus. It is common practice to publicly file investor presentations to avoid the risk of material information not being included in the prospectus.

Future application of Israeli corporate governance rules

Israeli companies with publicly traded equity or debt securities are subject to a relatively onerous corporate governance regime, which requires special approval processes for related-party transactions, including the requirement for the approval of the audit committee, board of directors and the majority of the minority shareholders for certain transactions with a controlling shareholder or in which a controlling shareholder may have a conflict of interest. In addition, a company with publicly held securities must appoint at least two 'external directors' who are not affiliated with the company or its controlling shareholder (subject to limited exceptions). The compensation of directors and officers of a public company is also subject to certain limitations and approval requirements under the Companies Law.

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Stabilisation

Although local regulation permits stabilisation activities under certain conditions, in light of the nature of the offering structure in Israel, post-IPO stabilisation is not common practice and there are no recent precedents for such stabilisation activities. The Securities Law and the Securities Regulations (Stabilisation) 2012 set forth strict limitations on post-IPO stabilisation activities, mainly consisting of a requirement that any transaction for the purchase on the TASE of offered securities during the 30-day period following the public offering must be made by one designated pricing underwriter and that the identity of the seller is not known to the stabilising underwriter, as well as limitations on the transaction prices and disclosure obligations relating to the stabilisation activities.

iii Considerations for foreign issuers

Historically, foreign companies typically listed on the TASE in connection with the acquisition (or contemplated acquisition) of an Israeli company listed on the TASE (such as Perrigo's listing in 2005, Mylan's listing in 2015 and IFF's listing in 2018). However, in recent years, there has been an increase in the number of foreign-listed companies as a result of the recent trend of debt IPOs in Israel by US companies and the listing of the bonds for trading on the TASE.

Substantially the same listing requirements and procedures that apply to the listing of securities on the TASE by Israeli issuers apply to listings by non-Israeli companies. In addition, a non-Israeli issuer is required to provide to the TASE an opinion of foreign counsel confirming that, under the laws of the issuer's country of organisation and, if applicable, under the rules of the foreign exchange on which the issuer's securities are traded, the issuer may issue securities to the public in Israel in the manner contemplated in the prospectus, and the securities are freely tradable on the TASE. Before the listing of a foreign issuer, the TASE may also seek to regulate certain issues related to withholding tax on dividends and interest (to the extent applicable).

One important consideration for non-Israeli issuers is the future application of Israeli corporate law to the issuer. Although the Companies Law primarily only applies to companies organised under the laws of the state of Israel, the Securities Law applies certain corporate governance provisions of the Companies Law to non-Israeli companies that offer their shares or debt to the public in Israel. These provisions include (among others) limitations on related-party transactions and transactions with a controlling shareholder, and requirements relating to the composition of the board of directors, audit committee and compensation committee, including a requirement to appoint external directors, the fiduciary duties of directors, restrictions on distributions and tender offer rules. The ISA is authorised to exempt a foreign issuer from the application of all or part of the provisions of the Companies Law, if it determines that the home country laws provide sufficient protection for investors. In addition, foreign issuers listed under the Dual-Listing Regime are exempt from the application of the Companies Law.

The structure of the prospectus for offers by non-Israeli issuers that are not listed under the Dual-Listing Regime is generally the same as those of Israeli issuers, and the prospectus must be prepared in Hebrew, subject to certain exceptions. In addition, the ISA typically requires the issuer to include a comparison between Israeli corporate law and the corporate law of the issuer's jurisdiction of incorporation.

Issuers listed under the Dual-Listing Regime benefit from various exemptions relating to the structure, format and content of the prospectus and, subject to the approval of the ISA,

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publish a prospectus comprising an offering document prepared in English in accordance with the foreign securities law and an Israeli wrapper. Dual-listed issuers are required to provide the ISA with an opinion of foreign counsel confirming, among other matters, that the prospectus filed in Israel complies with the prospectus requirements of the foreign securities law that would have applied to the offering if it were made in the jurisdiction of the foreign exchange where the issuer's securities are listed, subject to certain exceptions.

IV POST-IPO REQUIREMENTS

Following the IPO, listed companies are subject to ongoing reporting and disclosure obligations, including, among others:

a an annual report consisting of a comprehensive description of the issuer's business and certain corporate governance matters, audited annual financial statements, and management discussion and analysis;

b quarterly reports consisting of material updates to the annual report accompanied by reviewed quarterly financial statements, and management discussion and analysis. Certain issuers that are deemed 'small corporations' with no traded debt securities may exempt themselves from the quarterly reports requirement and only file semi-annual reports;

c reports relating to the occurrence of certain events set forth in the relevant Israeli securities regulations, such as changes in management, adoption of certain resolutions by the issuer's corporate organs and changes in the holdings of major shareholders; and

d immediate reports upon the occurrence of material or extraordinary events.

The ongoing reporting requirements apply to both Israeli and foreign issuers, except that, as previously discussed, companies subject to the Dual-Listing Regime are exempt from the large majority of Israeli reporting requirements, provided that they are required to file with the ISA the same reports and filings (in English) as they file in the jurisdiction of the foreign exchange on which they are also traded.

Following the IPO and listing on the TASE, the issuer is subject to general provisions of the Securities Law, such as the prohibition on insider trading and market manipulation, in addition to many of the Israeli corporate governance rules, subject to certain exceptions, as described above.

V OUTLOOK AND CONCLUSION

Following a strong start to 2018, the second half of 2018 was characterised by a sharp decrease in the number and volume of equity and debt IPOs in Israel, and a significant rise in bond yields, particularly bonds of US real estate issuers. The TASE and the ISA are continuing to promote various initiatives to encourage non-Israeli issuers to list on the TASE, including a recent ISA legislative proposal to allow foreign issuers of securities in Israel to file their reports in English instead of Hebrew, and the recent publication by the ISA of a comprehensive bulletin clarifying the rules that apply to the public offering of securities, listing and delisting, and ongoing disclosures by dual-listed companies.

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Chapter 10

ITALY

Enrico Giordano and Federico Amoroso[1]

I INTRODUCTION

The Italian initial public offering (IPO) market experienced its first successful season during the 1990s, in large part owing to the privatisation of state-owned industrial and financial companies such as Eni, Enel, Leonardo SpA, Autostrade, IMI, the Instituto Nazionale Previdenza Sociale, INA and Credito Italiano.

A second wave of IPOs characterised the market in the 2000s, as a number of internet companies, public utilities, oil companies and fashion brands decided to go public.

The global financial crisis affecting capital markets, starting in 2007, and the ensuing economic downturn suffered at the national level, especially during 2011 and 2012, resulted in a significant reduction in the number of IPOs launched on the Italian market until 2013, which marked the beginning of a slow but steady recovery, in the wake of a new privatisation pipeline announced by the Italian government.

In fact, the aggregate capital raised through Italian IPOs totalled approximately €2.9 billion in 2014,[2] €5.7 billion in 2015,[3] €1.4 billion in 2016,[4] €5.4 billion in 2017[5] and €2 billion in 2018.[6]

Although 2017 has seen a brilliant performance of the Italian IPO market, led by the IPO of the Italian tyre manufacturer Pirelli (which amounted to approximately €2.6 billion and represented the largest IPO in Europe during 2017), IPO activities significantly slowed down, especially in the second half of 2018, when several equity capital market transactions were withdrawn or cancelled because of the markets' generally higher volatility. This trend has been only partially offset by the increasing number of small and medium-sized enterprises (SMEs) seeking access to capital markets through listing on multilateral trading facilities such as AIM Italia (AIM).

As at 28 December 2018, the Italian primary IPO venues (the Online Stock Market (MTA) and AIM) included 357 listed companies, with an aggregate market capitalisation totalling approximately €543 billion (33.5 per cent of GDP), with a decrease of 15.7 per cent as compared with the aggregate market capitalisation registered at the end of 2017.[7]

The Italian Securities and Exchange Commission (CONSOB) is an independent public supervisory authority that regulates financial markets and listed companies, and is responsible for authorising the publication of prospectuses in the context of IPOs.

Borsa Italiana SpA (Borsa Italiana), which belongs to the London Stock Exchange Group, is a private company that organises and manages the Italian Stock Exchange, and is responsible for establishing the relevant admission requirements.

1 Enrico Giordano and Federico Amoroso are partners at Chiomenti.

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II GOVERNING RULES

The governing rules are as follows:

a Legislative Decree No. 58 of 24 February 1998, as subsequently amended and supplemented (the Italian Financial Act) (in particular, Articles 94 to 101);[8]

b CONSOB Regulation No. 11971 of 14 May 1999, as subsequently amended and supplemented (the CONSOB Issuers Regulation) (in particular, Articles 3 to 13);[9]

c the Italian Stock Exchange Regulation (in particular, Articles 2.1.1 to 2.2.3), together with its Implementing Instructions (in particular, Titles IA.1 and IA.2);[10]

d Regulation (EU) No. 2017/1129 of 14 June 2017 (the New EU Prospectus Regulation) and the relevant implement regulations;[11] and

e the Self-Regulation Corporate Governance Code approved by Borsa Italiana in July 2015 (the Corporate Governance Code), which sets forth the principles, guidelines and recommendations listed companies should abide by in the establishment and maintenance of their corporate governance structure.[12]

i Main stock exchanges

Borsa Italiana currently organises and manages several trading venues catering to various types of issuers and investors.

Regulated markets

The main regulated markets of the Italian Stock Exchange specifically aimed at IPOs are the MTA and the Market for Investment Vehicles (MIV).

The MTA is a regulated market for shares, convertible bonds, warrants and options rights.

The shares listed on the MTA can be classified as blue-chip, star or standard, depending upon the size of the relevant issuer as well as the specific respective admission requirements to be met.

In particular, the MTA is composed of three different segments:

a the blue-chip segment, dedicated to companies with capitalisation exceeding €1 billion;

b the STAR segment, dedicated to medium-sized enterprises with capitalisation between €40 million and €1 billion, which, to remain listed on this segment and benefit from its advantages, undertake to comply with stringent requirements in terms of liquidity, transparency and corporate governance; and

c the Standard segment, dedicated to all other companies with capitalisation ranging between €40 million and €1 billion.

8 An English translation of the Italian Financial Act is available on CONSOB's website: www.consob.it.

9 An English translation of the CONSOB Issuers Regulation is available on CONSOB's website: www.consob.it.

10 An English translation of the Italian Stock Exchange Regulation and its Implementing Instructions is available on Borsa Italiana's website: www.borsaitaliana.it.

11 The English version of the New EU Prospectus Regulation is available on www.eur-lex.europa.eu.

12 An English translation of the Corporate Governance Code is available on Borsa Italiana's website: www.borsaitaliana.it.

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The MIV is a regulated market reserved for a specific type of issuers such as, *inter alia*, investment companies and real estate investment companies, private equity funds, closed-end real estate funds and special purpose acquisition companies (SPACs).

Multilateral trading facilities

The main multilateral trading facilities of the Italian Stock Exchange are AIM and the Global Equity Market (GEM).

AIM is a multilateral trading facility dedicated to Italian SMEs with high growth potential.

GEM is a multilateral trading facility dedicated to the trading of shares of non-Italian issuers already traded on other regulated markets in EU Member States or in other Organisation for Economic Co-operation and Development member countries, which can be admitted without being required to publish a prospectus.

ii Overview of listing requirements

The Italian Stock Exchange Regulation provides for different sets of listing requirements depending upon the exchange the relevant company is applying to.

MTA

To be eligible for the admission to listing, an issuer must be duly incorporated pursuant to the relevant laws of its country of incorporation and conduct business operations capable of generating revenues directly or through its subsidiaries, and in conditions of management autonomy.

Companies applying for admission to listing on the MTA are required to comply with the following requirements:

- *a* expected minimum capitalisation of €40 million (and, with regard to the STAR segment, lower than €1 billion);
- *b* at least three years of establishment prior to the relevant application;
- *c* preparation of financial statements – also on a consolidated basis – in accordance with International Accounting Standards or International Financial Reporting Standards as consistently applied in the European Union, and reviewed by external auditors for the past three financial years;
- *d* adoption of a management control system and a three-year business plan;
- *e* implementation of a corporate governance structure complying with the specific rules set forth in the Italian Financial Act and the recommendations contained in the Corporate Governance Code; and
- *f* minimum free float of 25 per cent (provided that the Italian Stock Exchange may grant the admission to listing even with a lower free float as long as a regular market functioning is ensured) or, with regard to the STAR segment, 35 per cent.

The listing requirements on the MTA do not differ significantly from those applicable to the Main Market of the London Stock Exchange (even though, in the United Kingdom, the shares must have an expected minimum aggregate value equal to only £700,000, provided that the UK Listing Authority may admit securities of lower aggregate value if it is satisfied there will be an adequate market for such shares).

However, the listing rules of the main US exchanges such as Nasdaq and the New York Stock Exchange provide for more stringent liquidity requirements as well as for the

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satisfaction of at least one of certain financial standards, respectively based on earnings, capitalisation on cash flow, capitalisation on revenues or assets on equity over a given time prior to the admission to listing.

AIM

The Italian Stock Exchange Regulation does not provide for any minimum or maximum capitalisation thresholds in relation to companies listing on AIM. Moreover, the AIM rules do not mandate any minimum duration or the adoption of any specific corporate structure.

The only requirement expressly provided for companies listing on AIM is represented by a minimum free float of 10 per cent (to be divided among at least five professional investors or 10 investors, including two professional investors).

A pivotal element of the listing on AIM is the appointment of the nominated adviser (Nomad), an investment bank or financial intermediary required to assist the relevant issuer during both the admission process and the entire time the company continues to be listed.

During the preliminary stage of an IPO, on AIM, the Nomad evaluates the potential appreciation of the company by the investors and, on the basis of this appraisal, advises the company on the actual feasibility of a listing process.

Following the admission to AIM, the Nomad carries out guidance by supporting the relevant issuer as long as it remains on the market, and ensuring its compliance with the market rules and requirements.

The procedure for admission to AIM is flexible and based only on an admission document and audited financial statements for one financial year.

The admission document contains general information on the company's business, management and shareholders, and its key financial information, but does not present the level of detail or the degree of complexity of a prospectus.

iii Overview of law and regulations

With specific reference to IPOs, the Italian Financial Act contains the general provisions governing the offering of financial instruments to the public and, in particular, sets forth general principles and rules concerning:

a the preparation and contents of the prospectus;
b the prospectus liability regime;
c the validity of the prospectus;
d CONSOB's powers in relation to the envisaged offering;
e the exemptions from the obligation to publish a prospectus; and
f the advertising activities related to the envisaged offering.

The CONSOB Issuers Regulation is designed to implement the Italian Financial Act's aforementioned general rules and, therefore, governs at a detailed level the authorisation process of the prospectus before CONSOB.

The EU Prospectus Regulation sets forth in detail:

a the format and the minimum information requirements to be included in the prospectus;
b the ways in which certain information may be incorporated by reference in the prospectus;
c the methods of publishing the prospectus; and
d the methods of disseminating advertisements in respect thereof.

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The Italian Stock Exchange Regulation (together with its Implementing Instructions) includes, *inter alia*, all the provisions concerning:

a the admission requirements and procedure;
b the roles and tasks of the sponsor and the specialist;
c the suspension or revocation of listing; and
d the participation of market operators.

CONSOB constitutes the central supervisory authority in the context of the IPO process and pursues the twofold objective of protecting the investors while ensuring the efficiency, transparency and development of the domestic capital markets.

In the context of an IPO, CONSOB reviews the prospectus and authorises its publication.

Pursuant to Article 94(1) of the Italian Financial Act, anyone intending to carry out a public offering for sale or subscription of securities is required to publish a prospectus before carrying out such offer. The publication of the prospectus is subject to CONSOB's prior approval.

CONSOB is therefore required to verify the completeness of the prospectus and to ensure that all of the information contained therein is consistent and comprehensible. The prospectus must contain – in a manner that is easy to analyse and understand – all the information necessary for prospective investors to make an informed assessment of the relevant issuer, the securities being offered and the relevant rights attached thereto.

CONSOB generally monitors the compliance of the entire IPO process with the Italian legal and regulatory framework, and has enforcement and sanctioning powers in the event of any breaches.

III THE OFFERING PROCESS

i General overview of the IPO process

Expected time frame

The IPO process covers a time span of approximately three to six months.

The introductory phase of an IPO entails activities such as corporate restructuring (where necessary), as well as the definition of the business plan and the implementation of International Accounting Standards in the preparation of the financial statements. Moreover, during this stage, the relevant issuer should select and appoint its financial and legal advisers and the underwriters, set up a data room for the due diligence activities to be carried out by its legal advisers and the underwriters, and start a preliminary dialogue with CONSOB and the Italian Stock Exchange.

The duration of this first stage depends upon a number of factors, including the initial corporate structure of the issuer and the need to create a sufficiently strong equity story prior to commencing the actual IPO process.

During the second stage of the IPO, the relevant issuer drafts the prospectus, together with its legal advisers and subject to review by the underwriters and, should the IPO entail an international offering, the international offering circular.

This stage generally takes two months and ends with the formal filing of the prospectus with the Italian Stock Exchange. The practice of making an informal filing of the prospectus in advance has become increasingly common, as it enables the issuer to adjust the document in accordance with the regulator's preliminary indications prior to the formal commencement of the approval and admission process.

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Following the formal filing of the prospectus, CONSOB may declare it to be incomplete within 10 business days; the issuer or offeror must then supplement or complete the documentation within 10 business days following the receipt of CONSOB's requests.

Once the documentation has been completed, a maximum term of 70 business days will begin to run, during which CONSOB may request additional information if reasonable.

Despite the rather long regulatory terms (as the approval process may take up to 95 calendar days from filing), in practice, shorter terms may be agreed with CONSOB, subject to all the documentation being prepared in a complete and accurate manner, and the issuer or offeror's promptness in providing the additional information the regulator may request.

As a general estimate, the approval process may take six to 10 weeks from the formal filing of the prospectus.

Once the authorisation to publish the prospectus has been obtained, the issuer generally executes the underwriting agreement concerning the retail tranche of the offering, which commences the following week on the basis of a previously approved price range.

In tandem, the issuer starts its roadshow activities and the institutional underwriters engage in the book-building activities, which will result in the determination of the final price of the shares (by taking into account, among other things, the quality and quantity of the orders received from institutional investors, and the quantity of orders received from retail investors) and the execution of the institutional underwriting agreement.

Trading generally starts in the week following the closing of the institutional placement.

The actual placement and admission process then takes approximately three weeks.

Main players

Global coordinators constitute the first tier of the underwriting syndicate of the IPO and are selected by the issuer to act as coordinators for public and institutional offerings.

In such capacity, in addition to their commitment to purchase, or subscribe for, a predetermined quantity of the shares being offered, they:

a generally oversee the IPO process;
b coordinate the underwriting syndicate;
c advise the company on, among other things, the offering strategy, timing, business preparation and compliance with exchange listing requirements;
d provide the company with information on market conditions and their impact on the offering on an ongoing basis; and
e estimate demand for the company's shares.

The issuer generally selects from among the global coordinators one bank or intermediary to act as stabilisation agent, engaged to carry out stabilisation activities, such as the exercise of the overallotment or greenshoe options, to mitigate the underpricing risk following the admission to listing.

Moreover, as far as the retail tranche of the relevant offering is concerned, one global coordinator is also appointed to act as the party in charge of the placement, which may be held liable for any material false information or omissions contained in the prospectus, unless it proves to have adopted a certain standard of diligence and care in the review of such document.

Bookrunners represent the second tier of the underwriting syndicate.

In this capacity, they:

a undertake to purchase, or subscribe for, a given amount of the shares;
b market the IPO to institutional investors; and
c carry out research on the issuer through their independent research departments.

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The sponsor is a financial intermediary who supports the issuer in connection with its admission to listing on the MTA and in its relationship with the Italian Stock Exchange during the entire IPO process.

In particular, upon submission to the Italian Stock Exchange of the application for the admission to listing on the MTA, the sponsor is required to:

a disclose any relationship (credit, shareholding, etc.) existing between the group of the issuer and its material shareholders and the sponsor's group;

b confirm that the Italian Stock Exchange has been provided with all the data and information gathered while performing its activities;

c declare that the managing and supervisory bodies of the issuer have been adequately informed as to the duties and obligations arising from listed company status;

d confirm the adoption by the issuer of a management control system consistent with the one described in the relevant memorandum; and

e release a specific statement concerning the provisional data, estimates and forecasts included in the business plan filed with the Italian Stock Exchange upon submission of the application.

The sponsor also carries out post-listing activities, such as the publication of at least two financial analyses on the relevant issuer per year, as well as further analyses upon the occurrence of extraordinary corporate events, and the organisation of meetings between the issuer and the financial community at least twice a year.

The specialist is a financial intermediary with market-making functions that undertakes to support the liquidity of one or more equity securities.

The appointment of a specialist is mandatory for companies seeking admission to listing on the STAR segment of the MTA and on AIM.

The role of the company's legal advisers in an IPO is to provide guidance on the legal aspects of the offering such as legal structuring and timing, compliance with securities and corporate laws, and obtainment of governmental approvals.

Moreover, lawyers assist in coordinating the due diligence activities and draft the offering documentation, as well as negotiating the underwriting agreements drafted by the underwriters' counsel.

Legal advisers are also involved in the preparation of other documents, including, without limitation, publicity memoranda, research report guidelines, listing applications, legal opinions, etc.

External auditors support the issuer throughout the entire IPO process.

The typical documents prepared by independent auditors in an IPO include, among other things:

a reports on the issuer's financial statements;

b an opinion on the reasonableness of the basic assumptions made, the correct application of the methods used and the appropriateness of the accounting policies adopted in the preparation of *pro forma* data;

c a report on the procedures followed by the issuer in preparing its business plan;

d a report on the estimates and forecasts included in the prospectus; and

e various comfort letters addressed to the sponsor and the underwriters.

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Documentation required

The prospectus must be drawn up in accordance with the schemes annexed to the EU Prospectus Regulation, and is composed of three different parts:

a the registration document, which contains all the information on the issuer;
b the note on the financial instruments, which contains all the information on the shares, the offerors and the placement agents; and
c the summary note, which contains the main information on the transaction that is most relevant for the investor in non-technical language.

To reduce overall processing times, an issuer may decide to separately file these sections, thereby obtaining separate authorisations.

In addition to the prospectus, an issuer is obliged to file a number of additional documents with CONSOB and the Italian Stock Exchange, including:

a a copy of its current by-laws, accompanied by a copy of the by-laws to enter into force upon admission to listing;
b the corporate resolutions related to the issuance of the shares and the application for the admission to listing;
c the auditors' report on the latest financial statements;
d a memorandum describing the management control system; and
e a three-year business plan.

Upon the occurrence of a new event, or detection of a material error or inaccuracy during the period lapsing between the publication of the prospectus and the final closing of the offering, the relevant issuer will be obliged to publish a supplement to the prospectus, subject to CONSOB's prior authorisation.

The approval process for a supplement to the prospectus is designed to allow for prompt publication thereof and lasts for up to seven business days.

Upon publication of a supplement to the prospectus, any investor who has already agreed to purchase, or subscribe for, the shares being offered may exercise a withdrawal right within the following two business days.

An international offering circular (IOC) is the document used by the underwriters for purposes of the international institutional placement of the shares.

Its contents must be consistent with the information contained in the prospectus, but the IOC is not subject to any specific approval by CONSOB or the Italian Stock Exchange.

The main contractual documents to be entered into in an IPO are the engagement letter of the global coordinators, the retail underwriting agreement, the institutional underwriting agreement and the sponsorship agreement.

ii Pitfalls and considerations

A company going public should carefully consider:

a the engagement of first-tier advisers and underwriters, as planning, preparation and deep knowledge of the market are key factors for the success of an IPO;
b the ongoing compliance monitoring of the IPO process to avoid any sanctions (including any delays or suspension of the offering) and the consequential reputational harm; and
c any information to be disclosed in the prospectus, including risk factors and forward-looking statements, as the offerors (companies and selling shareholders) are subject to a strict prospectus liability regime, pursuant to which they are liable for

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losses suffered by an investor who has relied on the truthfulness and completeness of the information if such information turns out not to have been truthful or complete, subject to the burden of proof of having adopted 'all diligence' to ensure that the information was true and consistent with facts.

iii Considerations for foreign issuers

The Italian legal and regulatory framework does not provide for a different procedure or for specific rules applicable to foreign issuers seeking admission on the Italian Stock Exchange.

However, the Italian Stock Exchange Regulation requires foreign issuers incorporated in non-EU countries to prove the absence of any hindrances to their substantial compliance with the Italian Stock Exchange Regulation, its Implementing Instructions or any other laws and regulations applicable to them in respect of the information to be made available to the public, CONSOB and the Italian Stock Exchange.

Moreover, foreign issuers in general are required to give evidence as to the absence of any hindrances to the exercise of all the rights attached to the securities to be listed.

IV POST-IPO REQUIREMENTS

Listed companies are subject to a comprehensive and broad array of post-listing obligations and requirements in terms of disclosure, reporting and corporate governance.

i Disclosure obligations and requirements

A company that applies for the admission to listing is required to adopt specific procedures for the internal treatment and the external disclosure of documents and information concerning its business, with a specific focus on price-sensitive information.

The legal regime concerning treatment and disclosure of price-sensitive information has recently tightened because of the entry into force of Regulation (EU) No. 596/2014 of 16 April 2014 (the Market Abuse Regulation (MAR)), which has introduced stricter requirements to prevent market manipulation conduct.

Moreover, listed issuers are subject to specific rules in relation to, among other things:

a the disclosure of transactions involving its shares, any financial instruments linked thereto and, following the implementation of the MAR, any of its listed debt financial instruments carried out by persons having access to price-sensitive information such as directors, statutory auditors or key officers;

b the disclosure of related-party transactions;

c the disclosure of material shareholdings and any changes thereto;

d drawing up, maintaining and updating an insiders list; and

e financial reporting.

ii Corporate governance requirements

The Corporate Governance Code sets out high corporate governance standards for listed companies in line with international best practices.

The Italian Financial Act sets out the 'comply or explain' principle, requiring listed companies to disclose information about their compliance with the Corporate Governance Code in an annual formal report on corporate governance.

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The Corporate Governance Code recommends that the entire board of directors be entrusted with the primary responsibility for determining and pursuing the strategic targets of the company, as well as:

a the examination and approval of the strategic, operational and financial plans of the company;
b the evaluation of the general performance of the company;
c the resolutions on material transactions; and
d the periodic evaluation of the performance of the board and its committees.

In light of the above, directors are designated as either: executive, namely, those vested with management powers; or non-executive, whose role is to enhance the board's discussion and to provide an independent unbiased opinion on the proposed resolutions, particularly those where the respective interests of executive directors and shareholders may not be aligned, such as executive director remuneration, and the internal control and risk management systems.

Although independence of judgement is required of all directors, certain board members must meet specific independence requirements set out in the applicable laws and regulations, and recommended by the Corporate Governance Code.

The Code recommends the division of key management competences, particularly those of the chair and CEO. Where these two offices are held by the same person, the Code recommends the appointment of a 'lead independent director' to act as the representative of non-executive and independent directors within the board.

The general meeting appoints the board through a slate election system. At least one director must be appointed from the minority slate that obtained the highest number of votes, and the relevant director must be free of any direct or indirect link with the shareholders who filed or voted in favour of the slate that obtained the majority of votes.

Gender balance must be on a ratio of at least 1:3 (either way).

Further, the applicable laws and regulations, and the Corporate Governance Code, require that there be a minimum number of independent directors on the board.

The Code also requires the board of directors to establish internal committees, consisting mostly of independent directors (except in special cases):

a the control and risk committee, which supports the analysis and decisions of the board of directors relating to internal control and risk management, and the approval of periodical financial reports;
b the remuneration committee, which submits proposals or opinions to the board of directors concerning the remuneration of executive directors, and for the periodic assessment of the adequacy, the overall consistency, and the actual implementation of the remuneration policy for directors and key managers of the company; and
c the appointments committee, which formulates opinions and recommendations to the board regarding the board's size, composition and professional skills, and submits specific proposals if the company approves the adoption of an executive director succession plan.

The functions of the appointment committee and the remuneration committee may be joined under one single committee.

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Committee members are elected from among the members of the board of directors. As a general rule, internal committees have exclusively advisory and propositional duties, as any resolution concerning the matters falling within their respective competences should in any case be adopted by the board of directors.

The board of statutory auditors is entrusted with supervisory duties over:

a the compliance of the management of the company with general law and by-laws;
b the observance of principles of good management;
c the adequacy of the company's organisational structure as well as the adequacy and effectiveness of the internal control and risk management system; and
d the actual implementation of corporate governance rules as provided by the Corporate Governance Code.

The Board of Statutory Auditors is composed of three or five statutory auditors, appointed by means of a slate voting system. The chair of the board must be a member elected from the slate filed by the minority shareholders, and must be free of any direct or indirect link to the shareholders who filed or voted in favour of the slate that obtained the majority of the votes. Again, gender balance must be on a ratio of at least 1:3 (either way).

Statutory auditors must meet certain stringent professionalism, independence and integrity requirements.

V OUTLOOK AND CONCLUSION

Following the downwards trend in 2018, the outlook on the IPO market for 2019 seems slightly more positive. If, on the one hand, the current market situation may push certain family-run companies to evaluate delisting options, on the other hand, a fair number of IPOs are currently rumoured or have otherwise already been formally announced. Moreover, certain transactions pulled from the market in 2018 while at an advanced stage of execution, may be quickly re-ignited to exploit any favourable market windows in the forthcoming months.

Even though IPOs have partially lost their original industrial fundraising purpose, and the current low-rates environment companies may still find it more convenient to seek financing through debt capital markets, IPOs may still retain their appeal as an exit strategy for private equity investors, especially in the case of companies generating revenues on a global basis and, therefore, only partially affected by domestic market disruptions.

Another positive element is represented by SPACs, which have now become widely accepted as an alternative instrument to pursue listing objectives, with benefits in terms of both transaction timing and costs.

Moreover, the scope extension of the favourable tax regime applicable to investments in equities under the individual savings plans should represent an additional incentive for SMEs to go public, as retail investors would benefit from reduced tax rates on their investments in equity portfolios across several additional industries (including real estate companies, originally excluded from the exempted equities basket).

A number of successful, family-run SMEs, which still represent the core of the Italian economic system, may evaluate an IPO process in light factors such as, *inter alia*, succession issues in key management and executive roles, undercapitalisation, internationalisation and business expansion plans, and a renewal of fragmented shareholders' bases. Finally, the new

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offering and listing instruments provided under the New EU Prospectus Regulation (such as the Growth Prospectus for SMEs) may simplify the IPO process and incentivise companies seeking funds to pursue an IPO path.

The reprisal of the Italian IPO market is also expected to involve new sectors in addition to key national industries, with specific focus on new realities such as fintech companies (as attested by the forthcoming IPOs of Nexi and SIA, leading companies in the electronic payments industry).

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Chapter 11

LUXEMBOURG

Frank Mausen and Paul Péporté[1]

I INTRODUCTION

Key international players consider Luxembourg to be one of the most attractive business centres in the world. With approximately 148 registered banking institutions, a successful investment fund industry with about 3,950 funds managing net assets of approximately €4,207 billion and a dynamic insurance sector, Luxembourg offers a full range of diversified and innovative financial services.[2]

The main advantages of Luxembourg include its:

a continued affirmation of an AAA rating for long-term and short-term sovereign credit;
b sound public finances;
c rapid regulatory process;
d business-friendly attitude of the authorities;
e large network of double taxation treaties;
f efficient immigration procedures;
g recognition as an innovative hub for fintech; and
h state-of-the-art company laws.

To maintain the attractiveness of Luxembourg in a context where the regulatory framework becomes increasingly harmonised, there are clear signals that the Luxembourg authorities want to differentiate themselves from their foreign counterparts with regard to quality of service, responsiveness and approachability.

The above are all factors to consider when selecting the optimal location in which an initial public offering (IPO) vehicle should be established. Given the benefits offered, Luxembourg is increasingly the jurisdiction of choice for initiating IPO transactions.

II GOVERNING RULES

i Main stock exchanges

The Luxembourg Stock Exchange (LuxSE) operates two markets: an EU-regulated market named Bourse de Luxembourg (BDL) and an exchange-regulated market named Euro MTF, which does not qualify as a regulated market within the meaning of Directive 2014/65/EU, but rather as a multilateral trading facility (MTF). In addition, since 12 January 2018 the

1 Frank Mausen is a partner and Paul Péporté is counsel at Allen & Overy.
2 www.alfi.lu/statistics-figures/luxembourg.

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LuxSE offers the possibility for issuers to have securities admitted on its official list without being admitted to trading on any market through the creation of a dedicated section of the LuxSE's official list, namely the LuxSE Securities Official List (the LuxSE SOL).

Issuers whose shares have been admitted to trading on the BDL are subject to European directives applicable to financial instruments, including Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as amended (the Prospectus Directive). Regulation 2017/1129/EU of the European Parliament and of the Council of 14 June 2017 (the Prospectus Regulation), which officially became effective on 20 July 2017, has gradually replaced the Prospectus Directive – its implementation being spread over three years – and will fully enter into force in July 2019. The Prospectus Regulation, which entered into force in July 2017, also provides for an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market of 'securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market' (Article 5(a)).

Because of the European passport provided under said Directive, a prospectus may be used for admission to trading on a regulated market in another European Economic Area (EEA) country without further review or the imposition of further disclosure requirements (except for summary translations, where applicable) by the relevant authority of that EEA country, thereby minimising regulatory arbitrage and offering a single market framework. Prospectuses for the public offering of equity securities within the EEA or admission to trading on a regulated market within the EEA (including the BDL) issued by issuers incorporated in Luxembourg will need to be approved by the Luxembourg competent authority, the Commission for the Supervision of the Financial Sector (CSSF) and, where applicable, subsequently passported into the relevant host Member States in which an admission to trading on a regulated market or a public offering takes place.

The Euro MTF has been a fast-growing market since its creation in 2005. It was created by the LuxSE to provide issuers with an alternative to the EU-regulated market. The LuxSE is responsible for the review and approval of prospectuses for admission to trading on the Euro MTF. The Euro MTF is not an EU-regulated market and is therefore outside the scope of the EU's Prospectus Directive and Directive 2004/109/EC (the Transparency Directive), hence the reporting and transparency requirements are less stringent. It is therefore suitable for those not interested in the European passport but who want a European admission to trading.

As of December 2018,[3] some 35,585 securities were admitted to trading on both markets, 59 per cent of which were admitted to trading on the BDL and 41 per cent of which were admitted to trading on the Euro MTF, which makes the Euro MTF the second-largest MTF in Europe. These numbers include 14,430 bonds and 16,901 structured investments.

Investment funds form another important segment with more than 6,500 separate instruments listed.[4]

With more than 139 listed global depositary receipts (GDRs), the LuxSE is the second exchange in Europe in GDRs.[5] Worldwide, 9 per cent of IPO capital raised via depositary

3 Figures kindly provided by the LuxSE, December 2018.

4 The LuxSE and Deloitte, 'The Luxembourg Stock Exchange: The preferred funds listing destination', p. 4.

5 Figures kindly provided by the LuxSE, December 2018.

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receipts in 2011 was from depositary receipts listed on the LuxSE.[6] In terms of origin of the underlying equity issuers for these depositary receipts, India ranks first with 58 GDRs (42 per cent of GDRs listed on the LuxSE),[7] followed by Taiwan (38 per cent).

GDRs have been present on the LuxSE for some time – the first listing of a GDR took place in 1990.[8] GDRs provide the relevant underlying company with access to international capital markets. Emerging countries looking for international investors see the GDR as a unique solution in terms of flexibility and market exposure.[9]

As far as the equity market is concerned, the LuxSE has more than 27 domestic issuers with equity listed on one of the LuxSE's markets. The trading activity overall is, however, rather limited.

Among these domestic issuers, an increasing number of Luxembourg IPO vehicles serve as holding companies for operational groups operating in other countries (especially Germany). The reasons for using a Luxembourg IPO vehicle (rather than a German vehicle) are diverse – often private equity houses that intend to float one of their investments have already used Luxembourg vehicles to structure their investment and one of the existing top companies is then converted into an IPO vehicle. In other circumstances, Luxembourg vehicles are preferred to other vehicles for corporate governance reasons (increased flexibility of Luxembourg company law compared with other jurisdictions), and issuers are also keen on dealing with the CSSF to have their prospectuses approved rather than another authority (bearing in mind that the CSSF is one of the most popular competent authorities under the Prospectus Directive with more than 1,600 documents approved yearly).[10]

A number of foreign issuers also have their equity listed on the LuxSE. These companies are usually dual-listed, with their equity also being listed on another regulated market within the EEA. For instance, there are a number of German corporates with listings on one or more regulated markets in Germany that also have their shares admitted to trading on the LuxSE's BDL. The dual listing permits issuers to have more flexibility in terms of language for the underlying listing prospectus and to draw up the prospectus in English, rather than in German, which is often considered an important marketing tool in connection with such equity capital market transactions.

ii Overview of listing requirements

Admission to trading and admission to official list

There is a distinction between the requirements for an admission to trading of shares in an issuer to the regulated market of the LuxSE (BDL) and the Euro MTF. Though a prospectus is required in both cases, the underlying regulatory regime differs significantly.

For admission to trading on the Euro MTF, the competent entity for prospectus approval will be the LuxSE. In contrast, for admission to the regulated market of the LuxSE, a prospectus drawn up in accordance with the requirements of the Prospectus Directive is required (the disclosure requirements regarding equity issuers are generally perceived to be more demanding than those for the Euro MTF, which are set by the rules and regulations of the LuxSE).[11] The Prospectus Directive-compliant prospectus is approved by the CSSF if the

6 The LuxSE and Deloitte, 'The Luxembourg Stock Exchange: Your premium listing destination', p. 5.

7 Figures kindly provided by the LuxSE, December 2018.

11 Annexes I and III of European Commission Regulation 809/2004, dated 29 April 2004, implementing the Prospectus Directive, as amended, among others, by the Commission Delegated Regulation (EU) 311/2012 and the Commission Delegated Regulation (EU) 486/2012 (together, Regulation 809/2004)

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issuer is a Luxembourg company (and for third-country issuers if certain conditions are met), whereas an issuer incorporated in an EEA country other than Luxembourg would have the prospectus approved in its jurisdiction of incorporation (the home Member State) and then passported into Luxembourg via the EU passport for an admission to trading on the BDL.

In principle, admission to listing on the LuxSE's official list goes hand in hand with the admission to trading on one of the LuxSE's markets.[12] On request of the issuer or the person seeking the admission to trading, the securities specified in an application form may not, however, be admitted to the official list.[13] As an exception to the above, it is now possible, subject to the conditions set out in the LuxSE's Rulebook – Securities Official List (the SOL Rulebook), to have securities admitted to listing on the LuxSE SOL without the securities being admitted to trading on the LuxSE-regulated market or Euro MTF.

Applicable listing requirements

The requirements for listing securities, which apply equally to securities on the BDL and the Euro MTF, where they are also listed on the official list, are set out in the Grand-ducal Regulation of 13 July 2007, relating to the holding of an official list for financial instruments, as amended (the Listing Regulation). The requirements are outlined below.

The requirements for listing securities on the LuxSE SOL (next to the application for listings itself, which includes the need to provide an 'information notice'), are set out in the SOL Rulebook and are substantially identical to those highlighted below.

Compliance with applicable law[14]

The issuer must conform to the corporate laws and regulations, and their articles, to which it is subject.

Minimum number of investors[15]

A sufficient distribution of shares (or units) to the public of one or more Member States must be achieved at the latest at the time of the admission to the official list. A sufficient distribution is deemed to have been achieved when either the relevant shares and units have been distributed to the public up to at least 25 per cent of the subscribed capital represented by this category of shares and units, or when, owing to the high number of shares and units of a same category and the extent of their distribution to the public, proper operation of the market is assured with a lower percentage.

comprise the disclosure requirements regarding the issuer and the relevant shares that will need to be provided for such a prospectus. Additional Annexes of the said regulation apply (Annex II for *pro forma* financials, where applicable, and Annex XX for the summary).

12 According to the rules and regulations of the LuxSE, an application for admission to trading on one of the securities markets operated by the LuxSE is also deemed to be an application for admission to the official list (Chapter 7, Article 701.1 of the rules and regulations of the LuxSE).

13 The opposite scenario (admission to the official list without admission to trading) is now also possible. Article 701.2 of the rules and regulations of the LuxSE specify that an application for admission to the official list without an application for admission to trading on one of the securities markets opened by the LuxSE is possible subject to conditions set out in the SOL Rulebook.

14 Article 6 of the Listing Regulation and Article 5.3.3.1 of the SOL Rulebook.

15 Article 13 of the Listing Regulation.

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This condition does not apply where the securities are to be distributed through the BDL or the Euro MTF, although in that case, the admission to the official list may only be granted if the LuxSE believes that sufficient distribution through the regulated market will take place within a short time frame. The Listing Regulation also specifies that where the shares and units are admitted to the official list of one or more third countries, the LuxSE may, by derogation, provide for their admission to the official list of the LuxSE when sufficient distribution to the public has been achieved in the third country or countries where they are listed.

A certain level of discretion is left with the LuxSE to assess whether sufficient distribution is deemed achieved. To enable the LuxSE to form an opinion, the relevant issuer or person seeking admission will need to respond to a questionnaire issued by the LuxSE in which the issuer will specify its expectations regarding distribution. There is no minimum number of investors *per se*, and the LuxSE will analyse the overall context. The holding by a single investor, even if accompanied by a limited number of 'strawmen investors' each holding an insignificant portion of the overall equity, is considered insufficient. However, a distribution of the shares among a limited number of investors each holding a reasonable stake in the company would usually be satisfactory to the LuxSE, though, as mentioned, there is some discretion on the part of the LuxSE in this respect.

Article 5.3.1.7 of the SOL Rulebook provides that there are no free float conditions for shares and units admitted to the LuxSE SOL.

Minimum market value of share issuer[16]

The minimum share capital, at the time of listing, must be of at least €1 million, unless the LuxSE is otherwise satisfied that there will be an adequate market for the shares concerned.[17]

Negotiability of securities[18]

Shares and units must be freely transferable. Selling restrictions or lock-ups (for instance, post-IPO management lock-ups) is, however, accepted.

Number of securities concerned[19]

The admission application must, in principle, concern all shares and units of the same category issued. The only exception to this rule (which does not apply to the LuxSE SOL) relates to large blocks of shares that are designed to maintain control of the company, or that are not tradable during a determined period in accordance with agreements, provided that the public is informed of these situations and that there is no risk of these situations causing any prejudice to the holders of the shares for which admission to the official list is being applied.

16 Article 7 of the Listing Regulation and Article 5.3.1.2 of the SOL Rulebook.

17 Also, the condition does not apply for admission to the official list of a further block of shares and units of the same category as those already admitted.

18 Article 11 of the Listing Regulation and Article 5.3.1.6 of the SOL Rulebook.

19 Article 14 of the Listing Regulation and Article 5.3.1.9 of the SOL Rulebook.

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Minimum prior existence[20]

The issuer must have published or filed, in accordance with national law, its annual accounts for the three financial years preceding the application for listing. A derogation is possible[21] and, if obtained, the LuxSE imposes additional post-listing obligations on the issuer via the requirement for publication of quarterly reports over a certain period post listing.[22]

iii Overview of law and regulations

Public offer

According to the act dated 10 July 2005 on prospectuses for securities, as amended (the Prospectus Act 2005), no offer of transferable securities may be made to the public in Luxembourg without the prior publication of a prospectus approved by the CSSF or a competent foreign authority.[23]

Depending on the type of offer and the securities offered, different regimes under the Prospectus Act 2005 apply. Part II of the Prospectus Act 2005 implements the provisions of the Prospectus Directive into Luxembourg law, whereas Part III, Chapter 1 of the Prospectus Act 2005 applies to simplified prospectuses, which must be published for public offers of securities not covered by Part II. The main difference between the two regimes is that only public offers made under Part II can benefit from the European passport for securities. Part III, Chapter 1 is used for public offers in Luxembourg only.

Generally, a prospectus or a simplified prospectus must contain all the information that enables prospective investors to make an informed assessment of the contemplated investment. The contents and format of a Part II prospectus are determined by Regulation 809/2004. Part III prospectuses are either drafted on the basis of Regulation 809/2004 or on the basis of the rules and regulations of the LuxSE.

Part II of the Prospectus Act 2005 provides for exemptions from the obligation to publish a prospectus for certain offers.[24] The obligation to publish a prospectus does not apply to offers to the public of certain types of securities (such as, under certain conditions, securities offered or allotted (or to be allotted) to existing or former directors or employees by their employer whose securities are already admitted to trading on a regulated market or by an affiliated undertaking).

Admission to trading

The admission to trading of securities requires the prior publication of a prospectus in accordance with the Prospectus Act 2005. The regime applicable for admission to trading varies, to a great extent, according to the market on which the admission to trading is sought. Issuers can either request an admission to trading on the regulated market of the LuxSE or the Euro MTF market. Depending on the type of securities for which an admission to trading on the regulated market is sought, Part II or Part III, Chapter 2 of the Prospectus Act 2005 is applicable. As has been seen, only prospectuses approved under Part II can benefit

20 Article 8 of the Listing Regulation and Article 5.3.1.3 of the SOL Rulebook.

21 The derogation must be desirable in the interest of the company or the investors and subject to the LuxSE being satisfied that the investors have the necessary information available to be able to make a well-founded opinion on the company and the shares.

22 Article 702.6 of the rules and regulations of the LuxSE.

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from the European passport. The competent authority for the approval of a Part II listing prospectus is the CSSF, whereas the LuxSE governs the approval of simplified prospectuses under Part III, Chapter 2 of the Prospectus Act 2005.

As previously mentioned, the Prospectus Regulation now provides for an exemption from the obligation to publish a prospectus for the admission to trading on a regulated market (see Section II.i). This exemption is part of the provisions of the Prospectus Regulation that entered into force in July 2017.

Market abuse

Since 3 July 2016, Regulation (EU) No. 596/2014 on market abuse (the Market Abuse Regulation) applies across the European Union, thereby introducing a new market abuse regime. Compared with its predecessor, Directive 2003/6/EC on market abuse, the Market Abuse Regulation has an expanded scope as it directly applies to financial instruments on a wider range of trading venues, including MTFs such as the Euro MTF. This means that issuers with shares on the Euro MTF will also need to comply with the ongoing obligations stemming from the Market Abuse Regulation (which was not the case under the previous Luxembourg regime).

The Market Abuse Regulation prohibits insider dealing and market manipulation (though a number of safe harbours, which are relevant for IPOs, such as the safe harbour for stabilisation transactions, are also provided) and imposes a number of continuing obligations on issuers with equity admitted to trading on a regulated market or an MTF.

The Market Abuse Regulation does not apply in respect of securities only listed on the LuxSE SOL.

Corporate and governance aspects

Where the IPO is made through a Luxembourg-incorporated issuer, the flexible corporate framework is often a driver for selecting the home jurisdiction of the IPO vehicle.

Potential IPO vehicles – corporate form

The most common form for structuring an IPO via a Luxembourg issuer is the Luxembourg public limited liability company (SA). An alternative is the Luxembourg partnership limited by shares with a double shareholder (general partner and limited partner) structure (SCA). In contrast with an SA, control of the SCA may be so structured that it does not necessarily depend on shareholdings.[25] This is the case if a holder of unlimited shares is appointed manager and cannot be removed without such holder's consent. There must be at least one shareholder with unlimited liability, who will carry out the management of the SCA.[26] Typically, only the limited partner shares would be offered to investors or admitted to trading.

Bearer shares versus dematerialised shares and shares in registered form

Historically, IPOs through Luxembourg companies have been structured via the issuance of shares in global bearer form: one or more global share certificates are issued by the company that represent the entire issuance of new shares, which are subsequently lodged with a depositary for entry into the relevant clearing systems. The Luxembourg Act, dated 28 July 2014, on the

25 However, it is possible for an SA to issue non-voting shares. See below.

26 Holders of unlimited shares in an SCA are often limited liability companies, in order to grant protection.

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immobilisation of bearer shares and units (the Immobilisation Act 2014), has been a game changer in this regard. The law imposes the appointment of a Luxembourg depositary that meets the requirements of the Immobilisation Act 2014, with whom all bearer shares must be deposited.[27] For a large number of (recent) IPOs, the appointment of such a Luxembourg depositary has become problematic – the deposit of the global bearer share for the relevant IPO is usually made with a depositary that is linked to the relevant clearing system of the relevant market on which the shares are to be traded, which (as mentioned previously) is often outside of Luxembourg (e.g., where listing of the shares takes place in Germany, there is usually a deposit in Germany for a clearing there).

Therefore, most issuers are now structuring their Luxembourg IPOs through the issuance of dematerialised shares governed by the Luxembourg Act, dated 6 April 2013, on dematerialised securities (the Dematerialisation Act 2013). According to Act, the shares must be registered in the issuance account for the Luxembourg issuer's shares of the same class held with a 'liquidation body',[28] which must be a securities settlement system. Typically, LuxCSD SA, a securities settlement system created in 2010 and jointly owned by the Luxembourg Central Bank and Clearstream International, is appointed as the liquidation body for such Luxembourg issuer IPOs. A Luxembourg principal agent is typically appointed as the 'LuxCSD principal agent', who liaises with LuxCSD.

The single issuance account held with the liquidation body in which the dematerialised shares are recorded indicates the identification elements of these dematerialised shares, the quantity issued and any subsequent changes. In accordance with the Dematerialisation Act 2013, dematerialised shares are only represented by a record in a securities account. Ownership of the shares is established by such registration in a securities account.

Shares in registered form can also be issued by a Luxembourg company. According to Luxembourg company law, the issuer must hold at its registered office a register in which the holders of shares are registered. In the case of shares cleared through clearing systems, the relevant clearing system (or person acting for the account of the clearing system) is entered into the register.

In addition to these existing requirements, on 15 January 2019, the Luxembourg act of 13 January 2019, pertaining to the register of beneficial owners – which will implement the provisions of the Fourth EU Anti-Money Laundering Directive (Directive (EU) 2015/489 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing) into Luxembourg law – was published and provides for the creation of a register of beneficial owners of Luxembourg legal entities. This act entered into force on 1 March 2019 and applies to Luxembourg companies whose shares are admitted to trading (although there will be exceptions; for instance, for companies whose shares are admitted to trading on a regulated market).

27 There is, however, Luxembourg legal literature providing that the Immobilisation Act 2014 does not, in fact, apply to shares in global bearer form (as these are considered not to have the actual characteristics of definitive bearer shares).

28 The Dematerialisation Act 2013 provides that, as an alternative to a 'liquidation body', a 'central account keeper' can be appointed. However, a central account keeper can only be appointed in respect of unlisted securities.

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Flexible corporate law – non-voting shares, nominal value and authorised capital

Both SAs and SCAs may issue non-voting shares. According to the Luxembourg Act, dated 10 August 1915, on commercial companies, as amended (the Companies Act 1915), which has been amended to provide further flexibility for the issuance of non-voting shares by SAs,[29] the maximum number of non-voting shares is to be determined by the general shareholders' meeting, and the financial rights attached to the non-voting shares on a distribution (dividend, repayment or liquidation) are determined in the articles of association of the Luxembourg issuer.

Non-voting shares retain voting rights in relation to any resolutions:

a that may result in an amendment to the rights attached to the non-voting shares;
b on the reduction of the share capital; or
c on the early dissolution of the company.

Holders of non-voting shares are entitled to receive all convening notices and reports sent to the other shareholders.

Luxembourg law allows the issuance of shares with or without nominal value. There is no maximum or minimum nominal value and it is possible to issue various share classes with a different nominal value and proportionate voting rights.

The articles of incorporation of the IPO vehicle can provide 'authorised capital', which is limited to five years but can be renewed. There is no restriction on the size of this authorised capital (versus the actual share capital, etc.).

Beneficiary shares

The Companies Act 1915 provides for the possibility to issue beneficiary shares, which are of a *sui generis* nature and are, strictly legally, neither outright equity nor outright debt. According to Article 430-1 of the Companies Act 1915: 'Shares representing or not the corporate capital and designated by the present law as "beneficiary shares or securities" can be created. The articles of association shall specify the rights attached thereto.'

Although the rules applicable to shares are determined in detail in the Companies Act 1915, beneficiary shares are not otherwise regulated by it. This leaves room for flexibility in terms of structuring. The articles of the relevant Luxembourg issuer can thus provide any allocation of, for instance, the economic rights in respect of such instruments and also permit flexibility for the organisation of voting power.

Corporate governance

Luxembourg company law permits both one-tier (board of directors) or two-tier (management board and supervisory board) systems for SAs. This flexibility allows adaptation to local market needs. For example, IPOs through Luxembourg holding companies that are to be admitted to trading on a German regulated market would tend to make use of the two-tier system, which is more common in the German market. In a single-tier structure, the board of directors is vested with the broadest powers to conduct the SA's business and to represent it, with the exception of those powers expressly reserved by the Companies Act 1915 or the articles to the general shareholders meeting. The same principle applies to the management board in a dual structure, except that the management board's powers are also subject to

29 Prior to these amendments, the total number of non-voting shares in an SA was limited to 50 per cent.

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the powers expressly reserved for the supervisory board. The supervisory board supervises the management board and, where applicable, grants authorisations to it. It cannot, however, interfere in the management of the SA. Members of the management board cannot simultaneously be members of the supervisory board.

In an SCA, the managers are vested with the broadest powers to conduct the SCA's business and to represent it, with the exception of those powers expressly reserved by the Companies Act 1915 or the articles of association for the general shareholders' meeting.

The Ten Principles of Corporate Governance issued by the LuxSE

The Ten Principles of Corporate Governance issued by the LuxSE (fourth edition-revised version of December 2017) (the Ten Principles) generally apply to all companies incorporated in Luxembourg where their shares are listed on a regulated market operated by the LuxSE, namely the BDL. The Ten Principles comprise three types of rules: the compulsory principles themselves (comply), the recommendations (comply or explain) and the lines of conduct, which are indicative only and not compulsory.

The Ten Principles may also be used as a reference framework for other companies; for example, in respect of any company incorporated in Luxembourg, or outside Luxembourg, or any company incorporated in Luxembourg that has asked for its shares to be admitted to a foreign regulated market. However, the Ten Principles are not mandatory under those circumstances.

III THE OFFERING PROCESS

i General overview of the IPO process

Offering process

An IPO is typically organised as a public offering of shares to retail investors in one or more public offer jurisdictions and institutional investors located in such public offer jurisdictions or elsewhere.

The offer process is launched after approval and publication of the public offer prospectus. Typically, the maximum number of shares to be offered and the price range (or a maximum price) are set forth in this prospectus, with the actual number of shares allotted to investors and the final offer price being published at the end of the offering process,[30] once pricing and allotment has been completed at the end of the book-building process (the aim of which is to evaluate the size and price sensitivity of demand from investors).

Typically, an IPO will provide for the issuance of new shares to investors (primary) and the offer for sale of existing shares (held by one or more selling shareholders agreeing to participate in the IPO) to investors (secondary). IPOs with solely a primary issuance are possible as well and would be favoured if the intention was for the company to obtain a maximum of fresh monies to invest. A large secondary would be foreseen where one or more selling shareholders (typically a private equity fund) would like to start taking profits from their investment and start divesting.

30 According to Article 10 of the Prospectus Act 2005, this information can be published by way of a final price notice where the criteria or the conditions in accordance with which the final amount of securities and the maximum price are disclosed in the prospectus. Otherwise, a supplement to the prospectus is required, which triggers withdrawal rights for investors who have already provided their acceptance for a purchase.

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For marketing purposes, the issuer, and the relevant financial institution or institutions appointed by the issuer will advertise the offering through investor road shows, newspaper advertisements, *ad hoc* meetings and discussions with investors, etc. Advertisements in relation to the IPO must meet certain standards according to the Prospectus Act 2005 – they must be clearly recognisable as such, must state that a prospectus has been or will be published, and where investors are or will be able to obtain it. The information in the advertisement shall not be inaccurate or misleading, and must be consistent with the information contained in the prospectus.

Prior to the publication of the public offer prospectus, no communication may be made by any party that would trigger public offering requirements (as the prospectus would need to be approved and published prior to such action).[31] Where certain potential investors are approached (on a confidential basis) prior to any announcement of the transaction to gauge their interest, the provisions regarding 'market soundings' set out in the Market Abuse Regulation need to be taken into consideration (the requirement for the market participant to obtain the consent of the person receiving the market sounding to receive inside information, etc.).

The application for admission to trading in Luxembourg is officially submitted to the relevant exchange during the offering process (although the exchange will, in practice, have been approached informally beforehand). According to the rules and regulations of the LuxSE, the decision for admission takes place within a time frame of a maximum of one month of the receipt of the request. In practice, approvals are obtained within shorter time frames. Also, the LuxSE's role is very limited in the case of an admission to trading on the regulated market of the LuxSE, since the prospectus is vetted by the CSSF or another relevant competent authority, and the LuxSE does not interfere in this regard.

Time frame

The overall time frame required for an IPO is dependent on a large number of factors. This makes it difficult to predict the exact time required for a specific transaction. Initial due diligence within the issuer's group (to enable appropriate prospectus disclosure) is often started long in advance of the entire process. The prospectus drafting process (including the setting up of physical drafting sessions involving all relevant parties) is generally a time-consuming exercise as all parties need to be comfortable with its content.

For the review of the prospectus by the CSSF (if competent), the Prospectus Act 2005 gives the CSSF up to 20 working days to provide comments.[32] In practice, the CSSF reverts with preliminary comments within only a few working days and the detailed set of comments is usually available in less than 20 working days. Subsequent reviews are quicker and the CSSF can be approached beforehand to discuss a bespoke timetable for a specific transaction. Where the prospectus is approved by the LuxSE (for an admission to trading on the Euro MTF), the review time is generally quicker: the LuxSE has indicated that it will make sure it can revert with comments within three working days.

31 According to the Prospectus Act 2005, an 'offer of securities to the public' means a communication to persons in any form and by any means presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities.

32 Article 7 of the Prospectus Act 2005. This 20-working-day period becomes 10 working days if the relevant issuer has already made a public offering or admission to trading on a regulated market in the past.

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The length of the public offer process itself can be fixed as deemed appropriate by the relevant financial institutions. In the case of an IPO of a class of shares that is to be admitted to trading for the first time, the prospectus must be available for at least six working days before the end of the offer.[33]

Parties involved

Typically, an issuer contemplating an IPO is advised by a financial institution, who would in most situations assume the role of lead manager, bookrunner or arranger in connection with the IPO.

Legal advisers are in charge of the drafting of the prospectus, and the underwriting or placement agreement to be entered into with the relevant financial institution appointed, and they advise on the corporate steps to be taken throughout the entire process. They also coordinate between all participants and usually liaise with the competent authority for handling the prospectus approval process and the listing application. Typically, each party (issuer and accompanying bank) would appoint separate counsel.

Listing agents can be appointed to handle coordination with the competent authority and the LuxSE. Any person (lawyer, etc.) can act as a listing agent.

A paying agent is appointed in view of lodging the shares with the relevant clearing system. As we have seen, the agent would act as LuxCSD principal agent if clearing is made via LuxCSD. A clearing is not compulsory in the case of an admission to the LuxSE SOL only.

Auditors need to review the financials referred to in the prospectus and give assurance that they are comfortable with these inclusions (typically, a comfort letter is issued).

Required documentation

As outlined above, a prospectus is required for a public offering or admission to trading of shares. Responsibility for the prospectus lies with the issuer, the offeror or the person asking for admission to trading on a regulated market. The responsible persons must be clearly identified in the prospectus. In Luxembourg, there is no rule or case law according to which prospectus liability would, in the case of a pure secondary offering, have to be shifted entirely to the selling shareholders.

An underwriting or placement agreement is generally entered into with the financial institutions assisting the issuer in the IPOs and relevant selling shareholders (if applicable). These agreements are normally drafted according to international market standards and comprise a detailed set of representations and warranties to be given by the issuer and the selling shareholders.

In view of guiding the transaction parties regarding the type of information on the project that can be discussed outside the working group, which remains confidential, a thorough set of 'publicity guidelines' is usually set up at the beginning of the process. These guidelines also contain the appropriate disclaimers for any communication prior to and during the launch of the IPO. 'Research report guidelines' are often established in view of specifying the interaction with persons establishing reports on the company.

33 Article 16 of the Prospectus Act 2005.

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ii Pitfalls and considerations

Compared with those targeting the Euro MTF, issuers willing to access the regulated market of the LuxSE (assuming the admission to trading and listing is not associated with any public offer) will face higher regulatory hurdles. IPOs involving an admission to trading on the regulated market are therefore more time-intensive and complex. Among the initial challenges, the prospectus approval process is certainly one of the biggest. Equity prospectuses need to follow the most demanding annexes in Regulation 809/2004 (in particular Annex I), and for a number of issuers – specifically those that have undergone a restructuring or made significant acquisitions – additional hurdles often lie with the complex financial history of the underlying group and requirements to draw up *pro forma* financial statements to satisfy the requirements of Annex II of Regulation 809/2004.[34] Further, certain 'specialist issuers' (active in the real estate market or in the minerals sector or start-ups) may face additional hurdles owing to additional information required at European level (such as the need to have specialist reports, etc.).[35]

The recent guidelines of the European Securities and Markets Authority (ESMA) on 'alternative performance measures',[36] which aim at creating further transparency and usefulness of alternative performance measures referred to in prospectuses, and improving the comparability, reliability and comprehensibility of alternative performance measures, are often seen by issuers as additional challenges for prospectus approval.

Further, the introduction of the LuxSE SOL now allows registration of securities solely on the official list without admission of these securities to trading on any of the markets operated by the LuxSE. This is intended to allow issuers to have their securities appear on a widely recognised official list, without the application of a number of capital markets-related EU and national laws that solely focus on securities being admitted to trading. The ongoing disclosure obligations imposed by the SOL Rulebook are limited to certain events affecting the securities and the issuer. These rules are not new, as they have been taken from Chapter 9 of the rules and regulations of the LuxSE. However, none of the information covered in these rules must be made public; it must only be communicated to the LuxSE. The only publication obligation regarding securities admitted to the LuxSE SOL relates to the right of the LuxSE to request an issuer to issue a press release that contains the announcement of a suspension or withdrawal of securities from the LuxSE SOL. This suspension or withdrawal must be formally requested by the issuer, but can also be requested by the LuxSE at its own initiative. As mentioned previously, a clearing is not compulsory in the case of an admission to the LuxSE SOL only.

iii Considerations for foreign issuers

Foreign issuers are, *prima facie*, subject to substantially the same requirements as Luxembourg issuers. Among the challenges to be faced are the requirements regarding financial statements for foreign issuers, especially those stemming from a country outside the EEA. While at the level of the regulated market, European legislation will dictate International Financial Reporting

34 Article 4a of Regulation 809/2004 sets out the additional requirements that apply where the issuer has a complex financial history or has made a significant financial commitment. Article 5 and Annex II of Regulation 809/2004 set out the requirements regarding *pro forma* financials.

35 European Securities and Markets Authority update of the CESR recommendations of 23 March 2011 (ESMA/2011/81).

36 ESMA Guidelines on Alternative Performance Measures (Ref. ESMA/2015/1415).

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Standards (IFRS) (as adopted by the European Union) or deemed equivalent standards; the Euro MTF is more flexible in this regard. Third-country generally accepted accounting principles (GAAP) are generally accepted, subject, where applicable, to the drawing up of statements of main differences between the relevant third-country GAAP and IFRS.

IV POST-IPO REQUIREMENTS

Upon admission of the shares to either the regulated market or the Euro MTF market of the LuxSE, a number of ongoing disclosure and notification requirements apply.[37] Since the Euro MTF is not a regulated market subject to relevant EU directives, the ongoing obligations will be driven by Luxembourg rules and will be less rigorous than those applicable to the regulated market. However, the Market Abuse Regulation has an extended scope of application comprising, since June 2016, MTFs, including the Euro MTF. Given that there is no admission to trading on any market or trading venue, the Market Abuse Regulation does not extend to securities listed solely on the LuxSE SOL.

i LuxSE-regulated market

Briefly, an issuer whose shares are admitted to trading on the regulated market of the LuxSE will, where Luxembourg is the elected home Member State,[38] be subject to the requirements under the act dated 11 January 2008 on transparency requirements for issuers of securities, as amended (the Transparency Act 2008) implementing the Transparency Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as amended. These requirements comprise the need to publish annual and half-yearly financials meeting the requirements of the Transparency Act 2008 (which includes the drafting up of consolidated financials in accordance with EU IFRS); the publication by an issuer of large holding disclosures received from shareholders if relevant thresholds have been crossed (5, 10, 15, 20, 25, 33, 50 and 67 per cent of the total voting rights); and the publishing of the total number of voting rights and capital to allow shareholders to make relevant notifications to the issuer (and the CSSF).

These issuers will also be subject to the ongoing requirements set forth in the Market Abuse Regulation, including the requirement to publish 'inside information' that directly relates to the issuer and to its financial instruments, the need to hold and update insider lists and to make disclosures in connection with the managers' transactions in the securities of the issuer, etc.

The rules and regulations of the LuxSE also impose certain duties on an issuer with shares admitted on the LuxSE's regulated market, though these are duties to communicate certain information (particular securities events, such as the change of the paying agent or the payment of dividends, etc.), as opposed to requirements to publish information. The LuxSE enjoys quite broad powers in that it may ask issuers to communicate to the LuxSE all information that the LuxSE deems useful for the protection of investors or for the due

37 Certain obligations start applying even earlier, such as the obligations stemming from the Market Abuse Regulation.

38 For EEA issuers, the home Member State will be the country of the registered seat of the issuer. In other words, only Luxembourg issuers would have Luxembourg as their home Member State. For non-EEA issuers, different rules apply.

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and proper operation of the market. The LuxSE may even request the publication of relevant information and, if the issuer does not comply with the request, proceed itself with the publication at the issuer's cost.[39]

ii Euro MTF

For issuers whose shares are admitted to trading on the Euro MTF market, the provisions of the Transparency Act 2008 and the Transparency Directive will not apply. Instead, these issuers are subject to the continuing disclosure obligations set forth in the rules and regulations of the LuxSE (in addition to the communication requirements towards the LuxSE already mentioned for the regulated market, which also apply here). According to these supplemental rules, an issuer with shares on the Euro MTF must make available to the public the latest audited annual accounts (drawn up in accordance with national legislation – IFRS are not compulsory). Half-yearly financials are required only if relevant national legislation requires their publication. Amendments of rights attached to the shares, and any communications to holders regarding allotment and payment of dividends, new share issuers, etc., must be published. Large holding disclosure also applies (10, 20, 33, 50 and 67 per cent of the voting rights), although a publication by the issuer is only required where the latter has been made aware of any crossing.[40]

Since June 2016, the ongoing obligations for issuers under the Market Abuse Regulation are also applicable to issuers on the Euro MTF. Accordingly, the obligations described above for the regulated market also apply to the Euro MTF.

iii The LuxSE SOL

For issuers whose shares are admitted to listing on the LuxSE SOL, the SOL Rulebook provides for limited ongoing disclosure requirements. The SOL Rulebook only provides for disclosure obligations in relation to either events that are likely to affect the securities, or to information when the issuer deems it necessary to 'facilitate the due and proper operation of LuxSE SOL' and contains a list of examples of such events. As the Market Abuse Regulation will not be applicable to those issuers, there will not be any specific ongoing disclosure obligations in this respect. However, none of the information covered in these rules must be made public; it must only be communicated to the LuxSE. The only publication obligation relating to securities admitted to the LuxSE SOL relates to the right of the LuxSE to request an issuer to issue a press release that contains the announcement of a suspension or withdrawal of securities from the LuxSE SOL. This suspension or withdrawal must be formally requested by the issuer, but can also be requested by the LuxSE on its own initiative.

V OUTLOOK AND CONCLUSION

We continue to live in challenging times. The financial crisis has morphed from an economic recession into a public finances crisis and, although there are signs of recovery on the horizon

39 Article 908 in Chapter 9, Part I of the rules and regulations of the LuxSE.

40 There is no requirement for the Euro MTF (that is similar to the Transparency Act 2008, for shares on a regulated market) to disclose to the issuer (or the CSSF) any crossing of large holding thresholds.

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for an increasing number of countries, the global economy remains fragile for various reasons (including the political instability in the Middle East and the slowdown of the economies of the BRIC and Next Eleven countries).

International bodies, such as the International Monetary Fund, the Financial Action Task Force, the Organisation for Economic Co-operation and Development and European authorities, want to set aside the competitive distortions that result from a regulatory playing field that is not level, and try to eradicate weaknesses in regulation and supervision that might adversely affect the stability of the international financial systems, by moving towards a single rule book.

The financial sector plays a key role in Luxembourg's economy, and the Luxembourg authorities strive to find the right balance between increased supervision and the need for sufficient room to manoeuvre to allow the financial sector to breathe and develop.

For instance, the Luxembourg Ministry of Finance has relaunched the High Committee for the financial sector to create an institutionalised platform for the exchange of information between key stakeholders of the financial markets and the government, with a view to ensuring that Luxembourg stays at the forefront of economic and financial developments. Several working groups have been set up by the High Committee for the financial sector to modernise Luxembourg's legal framework to respond to the needs of the markets and their players.

Recent changes in Luxembourg company law reinforce the current legal framework and will further increase Luxembourg's attractiveness as the IPO jurisdiction of choice for an increasing number of companies. Established market practice has been embedded in law (thus strengthening legal certainty), and a series of new mechanisms and instruments have been introduced to respond to the demands of a more complex economic environment with a view to increasing the flexibility of Luxembourg company law.

All these changes should contribute to attracting even more interest in Luxembourg as an IPO jurisdiction.

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Chapter 12

PORTUGAL

Eduardo Paulino, Margarida Torres Gama and Un I Wong[1]

I INTRODUCTION

The Portuguese initial public offerings (IPOs) market recorded its peak at the end of the 1980s because of a significant number of IPOs taking place as a result of, among other reasons, the re-implementation and stabilisation of a democratic regime after a 48-year dictatorship; the investor's positivism in the face of Portugal's recent membership of the European Economic Community; and the friendly investment environment incentivised by the Portuguese government through the privatisation policy. The largest Portuguese companies, including banks, and insurance, telecommunications, electricity, and oil and gas companies, were nationalised in 1975 and have subsequently been privatised since the 1980s, in most cases by means of IPOs.

After experiencing rapid growth, the number of IPOs has significantly reduced in recent years, especially since the financial crisis of 2008 – from which the Portuguese IPO market is still recovering.

In recent years, there has been a different market dynamic because of the participation of more privately held companies, and of small and medium-sized enterprises (SMEs). SMEs, unlike state-owned companies (which always opted for the regulated market), have requested to be listed on either the Portuguese regulated market (Euronext Lisbon) or another platform (in particular, multilateral trading facilities such as Euronext Access and Euronext Growth).

Nevertheless, the uncertainty of the global economy and the unfavourable conditions of the international market have hindered investors' confidence. In 2018, the biggest Portuguese food retailer Sonae MC's IPO process in Euronext Lisbon began successfully; however, it was cancelled because of the adverse conditions of the international markets. This also occurred in the IPO in Euronext Growth of the Portuguese start-up company Science4You.

II GOVERNING RULES

i Main stock exchanges

In Portugal, there is currently only one regulated market for the trading of shares, Euronext Lisbon, which is managed by Euronext Lisbon – Sociedade Gestora de Mercados Regulamentados, SA (the Euronext Lisbon Managing Entity). This main stock exchange was

1 Eduardo Paulino is a partner, Margarida Torres Gama is a senior associate and Un I Wong is a junior lawyer at Morais Leitão, Galvão Teles, Soares da Silva & Associados.

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founded in 1769 in Lisbon and was known as the Lisbon Stock Exchange; it later merged with the Porto Stock Exchange and was acquired in 2002 by Euronext, which currently also operates regulated markets in Belgium, France, Ireland, the Netherlands and the United Kingdom.

As provided for under the Markets in Financial Instruments Directive (MiFID) framework,[2] shares may also be traded in multilateral trading facilities and systematic internalisers. There are currently two multilateral trading facilities operating in Portugal – Euronext Growth and Euronext Access – both of which are managed by the Euronext group.

Companies listed by Euronext Lisbon are mainly domestic issuers. There are a few exceptions, where foreign issuers list their shares in Portugal, but this is usually made under a dual-listing structure, meaning that these companies admit their shares in Portugal for capitalisation and expansion strategy purposes, while maintaining simultaneous listing of their share capital in their home stock exchange.

ii Overview of listing requirements

Listing requirements in the Portuguese regulated market are ruled by the Portuguese Securities Code (PSC), by regulations approved by the Portuguese Securities Market Commission (CMVM) and by the Euronext Rule Books, which comprise Rule Book I (harmonised rules, applicable to all Euronext entities) and Rule Book II (non-harmonised market rules, applicable only to the securities markets, non-regulated markets and derivatives markets operated by the Euronext Lisbon Managing Entity).

To be admitted to trading in the Portuguese regulated market, the relevant issuer shall comply with the requirements set forth by Articles 227 and 228 of the PSC.

Notably, the issuer:

a should be incorporated and validly operate in accordance with its respective governing law;

b should prove that its economic and financial position is adequate considering the nature of securities to be listed and the market where the listing is requested;

c shall have carried out its business activity for at least three years; and

d shall have published its annual accounts and financial reports, as required by law, for three years preceding the year when the listing is requested.

If the issuer is a company that has resulted from a merger or split, the requirements referred to in points (c) and (d) must be fulfilled, respectively, by one of the merged companies or the demerged company. Moreover, these two requirements may be waived by CMVM if advisable for the interests of the issuer and investors, and if the requirement referred to in point (b), by itself, allows the investors to make an informed judgement on the issuer and the securities.

Concerning requirements applicable to the shares to be admitted to trading in the regulated market, according to Rule Book I, Euronext must verify whether the shares of the

2 The MiFID framework currently comprises MiFID 2 (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU), MiFIR (Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012) and their respective implementing legislation.

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same class have identical rights, and whether such shares are freely transferable and negotiable in accordance with Portuguese law, as well as whether they are compliant with the issuer's by-laws.

Article 229 of the PSC further requires:

a a minimum public float: a suitable level of public dissemination of shares by the date of admission, which is presumed to be achieved when the shares that are subject to the request of admission to trading are dispersed to the public in a proportion of at least 25 per cent of the subscribed share capital represented by such class of shares, or, if the regular functioning market is ensured, at an even lower percentage; and

b market capitalisation: an expected market capitalisation of at least €1 million. If it is not possible to determine the market capitalisation of the shares, the company's own funds, including the results of the preceding financial year, must be at least €1 million.

In an IPO, the application for the admission to trading and required documentation should be presented to the Euronext Lisbon Managing Entity, generally by the issuer.

The admission to trading in the multilateral trading facilities identified above is, in general, subject to less stringent requirements than those applicable to the admission to trading in the regulated market.

iii Overview of law and regulations

The Portuguese framework for an IPO comprises three main sets of rules:

a the PSC;

b regulations and instructions issued by the CMVM; and

c the Euronext Rule Books.

In addition, the Portuguese legal framework reflects, through either direct application or by means of transposition, EU legislation, most notably the MiFID framework, the Prospectus Directive,[3] the Prospectus Regulation[4] and the new Prospectus Regulation,[5] the Market Abuse Regulation[6] and the Transparency Directive.[7]

3 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, as amended.

4 Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

5 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.

6 Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

7 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended.

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III THE OFFERING PROCESS

i General overview of the IPO process

An IPO in Portugal is conducted through a public offer for distribution of shares, in most cases through an offer for subscription of new shares[8] targeted at undetermined investors. The IPO will entail the subsequent admission of the issuer's shares to trading on a market, most commonly the regulated market. The subsequent overview will focus on IPOs in the regulated market for trading shares in Portugal.

The IPO process normally consists of the following stages.

Preliminary stage

The preliminary stage comprises preparation and study of the company and the transaction, celebration of intermediation agreements and preparation of a prospectus.

In this stage, the company that seeks to go public will often begin with a due diligence process, analysing different aspects of the company's activity, such as legal, tax, financial and others, in which it may be assisted by lawyers, accountants, bankers or other experts.

The issuer shall also select a financial intermediary (e.g., an investment bank) to assist the company in its IPO process (as legally required for all public offers entailing the preparation of a prospectus), as well as to provide underwriting or, more generally, placement services of the company's securities in the market.

A public offer of securities entails the preparation and publication of a prospectus, except in some particular cases foreseen by law. The PSC and the Prospectus Regulation (as well as the new Prospectus Regulation and its implementing and delegated acts) set out in detail various requirements on both the contents and disclosure of the prospectus. In general, the information in a prospectus should be complete, true, up-to-date, clear, objective and lawful, enabling a grounded assessment of, *inter alia*, the offer and the securities, the rights attached thereto, the assets, economic and financial situation, and prospects for the business, and the earnings of the issuer (and the guarantor, if applicable). The prospectus must also include a summary for investors that presents information in a concise way, using non-technical language.

The prospectus shall be drafted in a language accepted by the CMVM. Historically, all prospectuses relating to the offer or listing of equity in Portugal are drafted in Portuguese, but in a recent transaction the use of English was allowed (provided that investors were given a Portuguese translation of the prospectus summary).

Considering that the admission to trading of securities also requires, in general, the publication of a prospectus, usually the offer prospectus is prepared as an offer and listing prospectus.[9]

8 If the IPO entails a share capital increase of the issuer, the shareholders will be entitled to preemption rights in the subscription of the new shares; these rights will be able to be excluded under certain circumstances.

9 An additional possible step in the IPO process is the collection of investment intentions in public, to help determine the price of the offer or assess the potential success of the offer in accordance with the level of demand. The company should issue a preliminary prospectus for this purpose (which needs to be approved by CMVM). Preliminary prospectuses are very unusual in the Portuguese market.

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Preparation of the offer and admission to trading with the CMVM, Euronext and Interbolsa

CMVM

The (offer and listing) prospectus is subject to the approval of the CMVM, as the Portuguese regulatory entity responsible for the regulation and supervision of the securities market and its agents. The request for approval shall be accompanied by corporate documentation (e.g, copies of resolutions of the relevant corporate bodies of the offeror and the issuer, certificates of commercial registry, by-laws and financial statements), as well as agreements and other documentation related to the offer.

The CMVM shall notify the issuer of the approval of the prospectus within a maximum of 20 days from submission of any required additional information, the absence of notification within this period being deemed as a refusal of the approval.

In the case of approval by the CMVM, the prospectus must be disclosed by one of the following means:

a publication in one or more nationwide newspapers;

b a printed version made available to the public, free of charge, in the facilities of the market where the admission to trading is requested, or at the issuer's registered office and at branches of the financial intermediary that is responsible for the placement of the securities;

c an electronic version made available on the issuer's website, or on the website of the financial intermediary that is responsible for the placement of the securities (if it is the case);

d an electronic version made available on the website of the Euronext Lisbon; or

e an electronic version made available on the website of the CMVM.[10]

All marketing materials and publicity in connection to the public offer are subject to prior approval by the CMVM.

Euronext Lisbon

To have its shares admitted to trading in Euronext Lisbon, the issuer must submit an application to the market's managing entity, together with the information required by the PSC and Euronext's Rule Book 1[11] (part of which coincides with the information that shall be provided to the CMVM for the purposes of approval of the prospectus). The required documentation and information include, for instance, evidence that adequate procedures are available for the clearing and settlement of transactions in respect of the shares, the Legal Entity Identifier code for the issuer, and the identification of the paying agent and the representative for the relations with the market, among others. All documentation shall be submitted in English or in a language accepted by Euronext and, if necessary, translated.

The Euronext Lisbon Managing Entity and the applicant shall jointly agree on a timetable in respect of the admission to trading, and the issuer shall appoint a listing agent, who will be responsible for guiding the issuer through the entire listing process.

10 If the prospectus is disclosed as provided for in points (a) or (b), it should also be disclosed as set out in point (c).

11 Available at https://www.euronext.com/en/regulation/harmonised-rules.

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The decision on the admission shall be taken by the Euronext Lisbon Managing Entity within 30 days of receiving a complete set of the required documentation and information (unless otherwise agreed with the issuer). The admission decision shall remain valid for a maximum of 90 days, except if the Euronext Lisbon Managing Entity becomes aware that any information provided regarding the application for the admission to listing has changed during this period. This period maybe extended by no more than 90 days at the request of the issuer.

Interbolsa

Simultaneously with the above-mentioned proceedings, the issuer shall register the shares with the Portuguese Centralised System of Registration of Securities managed by Interbolsa – Sociedade Gestora de Sistemas de Liquidação de Sistemas Centralizados de Valores Mobiliários SA, which is mandatory for the shares admitted to trading in the Portuguese regulated market.

Execution of the offer

After publication of the prospectus, the period for the acceptance of the offer begins. The acceptance of the offer is performed by means of subscription or acquisition orders placed by the investors with the relevant financial intermediaries.

It is common for the final price of the offer not to be set out in the prospectus, which is only determined at the end of the offer period, taking into account the book-building. The prospectus must nonetheless include a maximum price, and the orders already placed for the acquisition of shares will be able to be withdrawn by the investors for no less than two business days after the pricing announcement.

Assessment and publication of results, and admission to trading

After the end of the offer period, the results of the offer are immediately assessed and published, and the shares are admitted to trading.

ii Pitfalls and considerations

Despite the advantages it may bring for the purposes of raising capital for the growth of a company, an IPO (more relevantly in regulated markets) is a complex process, involving significant risks and costs.

In terms of costs, in addition to those related to legal, accounting and marketing advisory services (many of which arise not only in the launch of the operation – for instance, for the preparation of the prospectus and of the financial statements – but are instead ongoing and inherent to the quality of the listed company), an issuer who applies for the admission to trading on the regulated market is required, *inter alia*, to pay annual listing fees and other fees charged by the Euronext Lisbon, which vary according to the type of securities, the nature of the issuer and the amount of market capitalisation.

Issuers should also consider that the publication of a prospectus for the purposes of offering and listing shares entails liability of the issuer (and the offeror), the members of its management bodies and some other entities involved in the offer and listing, for damage caused by the non-compliance of the information contained in the prospectus with the applicable requirements (most notably its truthfulness and completeness).

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Additionally, going public means a company must meet and maintain certain standards of corporate governance, responsible management, information (in the prospectus and afterwards) and transparency, which, once again, involve ongoing costs and may imply changes in the company's corporate structure.

Also to be borne in mind by public companies and their shareholders are the specificities of the legislation governing the former type of companies, including the provisions regarding mandatory takeovers, according to which anyone whose holding in a public company exceeds one-third or half of the voting rights attributable to the share capital has the obligation of launching a takeover for the totality of shares and other securities issued by the company that granted the right to their subscription or acquisition.

iii Considerations for foreign issuers

Portuguese law does not make a distinction in terms of requirements between domestic and foreign issuers, except where the securities are not listed in a regulated market located or operating in the European Union, in which case CMVM may, for the purposes of the admission to trading in Portugal, request the issuer to present a legal opinion to attest the compliance of the issuer and the securities with its governing law.

In any case, the listing in Portugal of securities subject to the law of another EU Member State may not be conditioned on the prior admission of the securities to trading in the regulated market located and operating in that Member State.

The EU passporting framework, implemented into Portugal by the PSC, allows – in relation to a public offer to be undertaken in Portugal and in another EU Member State – the use of the prospectus approved by the competent authority of the other EU Member State in Portugal, provided that the CMVM receives the following from the competent authority:

a a certificate of approval, which attests that the prospectus has been prepared in accordance with the Prospectus Directive, and that justifies, if it is the case, the waiver of the inclusion of information in the prospectus; and

b a copy of the referred prospectus and a translation of the respective summary, if applicable.

The CMVM may also approve a prospectus for a public offer of distribution of securities of an issuer with headquarters in a non-EU country and drafted according to the governing law of that non-EU Member State, provided that the following requirements are met:

a the prospectus has been drafted in accordance with the international rules set by international organisations of securities' supervisors, including the rules of the International Organization of Securities Commissions; and

b the prospectus contains information, notably financial information, equivalent to the information required by the PSC and the Prospectus Regulation.

IV POST-IPO REQUIREMENTS

An IPO is a transformative process for a company and encompasses various changes in terms of duties and compliance for the issuer. The company that is subject to the IPO process will be qualified automatically as a publicly held corporation or public company. This qualification gives rise to a broad set of obligations related to reporting, disclosure and corporate governance.

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i Disclosure of information

Information is fundamental for guaranteeing equality among investors. Accordingly, a listed company has the duty to disclose its inside information to the public, namely any event that has already occurred, is ongoing or may be reasonably expected to occur, regardless of the degree of materialisation, which, if known, would likely be used by investors as a basis for their investment decision, considering that it would likely have a significant effect on the price of the relevant security. Nevertheless, in certain cases and under certain conditions, disclosure will be able to be deferred.[12]

A listed company is further required to disclose a defined set of financial information (which includes the management report, the annual accounts and the statutory audit report) within four months of the closing of the financial year, and maintain it, available to the public, for 10 years. The publication of certain half-yearly and (in some cases) quarterly information is also required.

The PSC additionally imposes on companies listed in Portugal the duty to disclose, *inter alia*:

a notices convening general meetings of the holders of listed securities;

b the issue of shares and bonds, with an indication of beneficial privileges and guarantees, including information on any procedures for their allotment, subscription, cancellation, conversion, exchange or repayment;

c amendments to the details that have been required for the admission to trading of securities; and

d the acquisition or disposal of own shares, whenever as a result thereof the proportion of the same exceeds or falls below the thresholds of 5 per cent and 10 per cent, respectively.

In turn, CMVM Regulation No. 5/2008 (as amended) imposes the disclosure of:

a the exercise of subscription, incorporation and acquisition rights in relation to securities, namely as a result of mergers or demergers;

b the exercise of any rights to convert securities into shares;

c changes to the attribution of voting rights in qualifying holdings;

d any filing for insolvency, a judgment initiating the insolvency proceedings or dismissing the filing for insolvency, and the approval and official confirmation of the insolvency plan;

e the increase or reduction of share capital;

f information on applications for admission to regulated markets and respective decisions; and

g convening of a general meeting to determine the loss of public company status.

According to Articles 16 and 17 of the PSC, public companies should disclose qualified shareholdings, as defined therein, as well as certain cases where a shareholder reaches or exceeds certain thresholds of the voting rights corresponding to the capital, or reduces its holding to an amount lower than any of those thresholds.

The CMVM may waive some of the disclosure duties referred to above, if disclosure could be against the public interest or could be deemed significantly detrimental to the issuer, if the omission of disclosure would not likely mislead the public in the assessment of the securities.

12 Under the terms of the Market Abuse Regulation.

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ii Corporate governance

Public companies obey specific corporate governance rules (including in respect of disclosure), most notably set out in the Companies Code, the PSC, CMVM Regulation No. 4/2013 and the recommendations included in the 2018 Corporate Governance Code of the Portuguese Institute for Corporate Governanc.

Regarding the annual corporate governance report, the issuer of shares admitted to trading in the regulated market located or operating in Portugal shall disclose in a chapter of its annual management report the structure and practices of the company in terms of corporate governance, containing at least the information listed in Article 245-A of the PSC. A model of the corporate governance report is available in CMVM Regulation No. 4/2013.[13]

V OUTLOOK AND CONCLUSION

Though complex, the regulatory regime for IPOs in Portugal draws almost completely from EU legislation, being thus aligned with the equivalent regimes in other EU Member States and relatively stabilised; accordingly, no major changes are expected in the near future, except perhaps for the entry into force of the (non-revolutionary) new European Prospectus Regulation.

Most interestingly, for the purposes of reducing costs, there is an increasing trend of companies resorting to alternative (and less burdensome) ways to capture new investors and funding, other than IPOs in the regulated market. A recent and successful case is the subscription of 369 per cent in the public offer of distribution of the share capital of the peer-to-peer crowdfunding platform Raize, and its admission to trading in Euronext Access. Another example is the launch of the offer and admission to trading in Euronext Growth of the share capital of the Portuguese toy company Science4you (which was, however, cancelled owing to adverse market conditions). In 2018, almost half of the Portuguese shares were negotiated outside of the regulated market, according to statistics published by the CMVM.[14]

13 This regulation also comprises a list of the minimum information that should be made available on the issuer's website, which includes: (1) the company's name, public company status, headquarters and other information mentioned in Article 171 of the Commercial Companies Code; (2) the articles of Association; (3) the identity of corporate body members and the market liaison officer; (4) the investor's support office or equivalent structure, its duties and access means; (5) the financial statements, which should be made available for at least five years; (6) half-yearly calendar of events, released at the beginning of each half-year, including, *inter alia*, the general meetings, disclosure of annual and half-yearly accounts and, as applicable, quarterly accounts.

14 https://www.jornaldenegocios.pt/mercados/bolsa/detalhe/quase-metade-das-accoes-sao-negociadas-fora-de-mercado-regulamentado.

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Chapter 13

SINGAPORE

Tan Tze Gay and Wu Zhaoqi[1]

I INTRODUCTION

The Singapore Exchange Securities Trading Limited (SGX-ST) is currently the only approved securities exchange in Singapore.

In 2018, there were 15 initial public offerings (IPOs) in Singapore comprising three Mainboard listings and 12 Catalist listings, which raised approximately S$730 million.

In 2017, total funds raised through IPOs amounted to approximately S$4.7 billion, which is the highest in the preceding four years. This comprised seven Mainboard listings and 13 Catalist listings, including the Mainboard listing of NetLink NBN Trust, which raised approximately S$2.3 billion, making it the second-largest IPO in the Asia-Pacific region in 2017, the fifth-largest IPO in the world in 2017 and the largest IPO in Singapore since 2011.

II GOVERNING RULES

i Main stock exchanges

An issuer can opt to list on the Mainboard or Catalist of the SGX-ST. The Mainboard caters to the needs of more established issuers, with higher entry and listing requirements (such as minimum profit and market capitalisation levels). A Mainboard listing can be a primary or secondary listing.

Catalist caters to the needs of smaller or fast-growing issuers, and has a different model where approved sponsors decide whether an issuer is suitable for listing. A Catalist listing must be a primary listing, and there are no minimum quantitative entry criteria.

Securities that can be listed on the SGX-ST include shares of a company and, in the case of Mainboard listings, units of a business trust (BT), shares and units of an investment fund, and units of a real estate investment trust (REIT).

REITs and BTs accounted for the majority of IPO funds raised over the past four years and, as at 31 December 2018, there are 48 REITs and BTs listed in Singapore.

ii Overview of listing requirements

The general listing requirements for an issuer to list on the Mainboard or Catalist are set out below.

1 Tan Tze Gay and Wu Zhaoqi are partners at Allen & Gledhill LLP.

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Issue manager or sponsor

An issuer seeking a Mainboard listing must appoint an accredited issue manager, and an issuer seeking a Catalist listing must appoint an approved full sponsor, who is responsible for preparing the issuer for listing (as further described below).

Quantitative requirements

Mainboard

An issuer seeking a Mainboard listing must satisfy either one of the profit tests or the market capitalisation test.

For the profit tests, the issuer must either (1) have a minimum consolidated pre-tax profit (based on full-year consolidated audited accounts) of at least S$30 million for the latest financial year and an operating record of at least three years, or (2) be profitable in the latest financial year (pre-tax profit based on the latest full-year consolidated audited accounts), have an operating track record of at least three years and a market capitalisation of not less than S$150 million based on the issue price and post-invitation issued share capital.

Under the profit tests, the issuer must also have been engaged in substantially the same business, and have been under substantially the same management, throughout the three-year operating track record period.

For the market capitalisation test, the issuer must have an operating revenue (actual or *pro forma*) in the latest completed financial year and a market capitalisation of not less than S$300 million based on the issue price and post-invitation issued share capital. REITs and BTs that can meet the S$300 million market capitalisation test but do not have historical financial information can apply under this test if they can demonstrate that they will generate operating revenue immediately upon listing.

Catalist

An issuer seeking a Catalist listing is not required to satisfy any minimum operating track record, profit or share capital requirement. Instead, an approved full sponsor must be appointed who is responsible for assessing whether the issuer is suitable to be listed on Catalist and will proceed to supervise the issuer's compliance with the continuing listing requirements under the listing rules applicable to Catalist listings (the Catalist Listing Rules) for at least three years after listing. When the sponsor ceases to act as such, the issuer must appoint a new sponsor.

Shareholding spread and distribution requirements

Mainboard

For a Mainboard listing, at the time of listing, a minimum of 12–25 per cent of the issuer's shares or units must be in public hands (i.e., persons other than the directors, chief executive officer, substantial or controlling shareholders, or unitholders of the issuer or its subsidiaries, or their respective associates), depending on the market capitalisation of the issuer. In addition, issuers are required to have a minimum of 500 shareholders or unitholders on listing.

Market capitalisation	Post-listing share capital in public hands
Less than S$300 million	25%
S$300 million or more but less than S$400 million	20%
S$400 million or more but less than S$1 billion	15%
S$1 billion or more	12%

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The listing rules applicable to Mainboard listings (the Mainboard Listing Rules) also prescribe the following distribution requirements:

Offer size	Distribution
Less than S$75 million	At least 40% or S$15 million in value of the shares or units offered under the IPO (whichever is lower) must be distributed to investors, each allotted not more than 0.8% or S$300,000 in value of the shares or units offered under the IPO, whichever is lower.
S$75 million or more but less than S$120 million	At least 20% of the shares or units offered under the IPO must be distributed to investors, each allocated not more than 0.4% of the shares or units offered under the IPO.
S$120 million or more	No requirement.

Catalist

For a Catalist listing, at least 15 per cent of the post-IPO issued share capital of the applicant must be held by the public at the time of listing and there must be at least 200 public shareholders. There are no quantitative distribution requirements.

Minimum IPO price and subscription

The minimum IPO price of shares or units listed on the Mainboard or Catalist is S$0.50 or S$0.20 per share or unit, respectively. The board lot size of shares or units listed on the SGX-ST is 100 and, accordingly, the subscription and allocation value of shares or units at IPO on the Mainboard or Catalist for each investor must be at least S$500 or S$200, respectively, and must be based on an integral multiple of a board lot.

iii Overview of law and regulations

Regulatory framework

The SGX-ST and the Listing Rules

The requirements for a company seeking a listing on the SGX-ST are set out in the Mainboard Listing Rules or the Catalist Listing Rules (together, the Listing Rules). The SGX-ST interprets, administers and enforces the Listing Rules and reviews applications for admission to its official list. The SGX-ST will consider whether a listing application satisfies the listing requirements set out in the Listing Rules and will decide whether to issue an eligibility-to-list (ETL) letter, with or without conditions.

The Monetary Authority of Singapore and the Securities and Futures Act

An issuer seeking listing on the SGX-ST will normally do so in conjunction with an IPO of its shares or units.

The offering of shares of a company or units of a BT is primarily regulated by the Securities and Futures Act, Chapter 289 of Singapore (SFA) and the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018 made thereunder.

The offering of units of a REIT is primarily regulated by the SFA and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 made thereunder.

The Monetary Authority of Singapore (MAS) administers the SFA and subsidiary legislation thereunder, and is the primary regulatory authority in connection with the offering of shares or units in Singapore.

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Recent developments

With effect from 26 June 2018, a company may be listed on the Mainboard by way of a primary listing with a dual-class share (DCS) structure if it can establish that it is suitable for listing with a DCS structure. Companies with DCS structures that are listed on the Mainboard are subject to various requirements under the Mainboard Listing Rules, including safeguards against entrenchment and expropriation risks, to help protect the interests of minority shareholders. The SGX-ST will undertake a holistic assessment of the suitability for listing of an issuer with a DCS structure.

III THE OFFERING PROCESS

i General overview of the IPO process

Mainboard

Commencement

The IPO process typically begins with the appointment of an issue manager, lawyers and auditors. It can take up to eight weeks (in some cases longer) for the due diligence process to be completed, the prospectus to be drafted and the accompanying documentation (as prescribed by the Listing Rules) to be prepared. The issue manager may, on behalf of the issuer, consult the SGX-ST to resolve key fundamental issues prior to the submission of an application.

Section A submission

Next, Section A of the Listing Admissions Pack is submitted to the SGX-ST (Section A submission). It sets out the key issues for listing and, additionally, the issue manager must confirm that the issuer has met all the requirements of the Listing Rules relevant to the submission.

Following submission, the SGX-ST will assess whether the key issues identified have been adequately resolved. The issue manager will liaise with the designated SGX-ST officers on queries they may have on the issues identified and if the issue manager is unable to respond to these queries from the SGX-ST within a reasonable period, the submission may be rejected by the SGX-ST. The review period for the matters in the Section A submission may take about six to eight weeks if there is no referral to the Listings Advisory Committee (LAC).

Section B submission and MAS pre-lodgement review

Upon completion of the SGX-ST's review of the Section A submission, and once all necessary documentation has been prepared in compliance with the Listing Rules, the issue manager will submit, on behalf of the issuer, Section B of the Listing Admissions Pack (Section B submission) and a listing application that is accompanied by the documents prescribed by the Listing Rules, including, in particular, the draft prospectus.

The SGX-ST will review the listing application to decide whether the issuer is suitable for admission. The issue manager will liaise with the designated SGX-ST officers on queries they may have on the documents submitted. Once the review is completed, and if the SGX-ST is of the view that the listing applicant is suitable, it will issue an ETL letter, which may contain conditions.

Concurrent with the Section B submission, the draft prospectus may be submitted to the MAS for pre-lodgement review. During the review period, the issuer's lawyers will liaise

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with the designated MAS officers on queries they may have on the draft prospectus. Once the MAS completes its review and queries are addressed to its satisfaction, it will grant the issuer clearance to proceed with lodgement of the preliminary prospectus.

The review period for the matters in the Section B submission and the concurrent pre-lodgement review by the MAS may be about four weeks if no new key issues are raised.

MAS lodgement and registration

Once the ETL letter is issued and pre-lodgement clearance from the MAS is obtained, the issuer can lodge the preliminary prospectus with the MAS, together with the prescribed accompanying documents. The MAS will upload the preliminary prospectus on its website under the Offers and Prospectuses Electronic Repository and Access, where it will be subject to public comment for seven to 21 days.

The MAS may register the prospectus between the seventh and the 21st day of the date of lodgement of the preliminary prospectus (which may be extended to a maximum of 28 days if the MAS gives notice of such extension under the SFA). Once the prospectus is registered, the IPO can commence. The offer period for an IPO must not be shorter than two market days (excluding the date of commencement of the offer period) and normally lasts for three to five days.

Listing

Once the SGX-ST is satisfied that an issuer has met all conditions stipulated in the ETL letter, the issuer will be admitted to the Mainboard and the listing and quotation of its shares or units may then commence.

Catalist

The listing process for a Catalist listing could be significantly shorter than a Mainboard listing.

Following the preparation of the necessary documentation to be submitted to the SGX-ST, the sponsor will submit a pre-admission notification containing the prescribed documents, and after receiving the SGX-ST clearance, lodge a preliminary offer document with the SGX-ST for posting on its Catalodge website.

The preliminary offer document will be exposed for public comments for a minimum of 14 days. Provided that any queries from the public and the SGX-ST are addressed to the SGX-ST's satisfaction, the final offer document will be registered by the SGX-ST and posted on Catalodge. The IPO can commence only after the final offer document is registered. The offer document is not required to be lodged with or registered by the MAS.

Key parties

Issue manager or sponsor

An issuer applying for a Mainboard listing must appoint an accredited issue manager who will act as the sponsor for the listing. The issue manager must be a member company of the SGX-ST, a bank, a merchant or an investment bank, or another similar person who is acceptable to the SGX-ST. The issue manager will typically also be an underwriter.

The issue manager is responsible for preparing the issuer for listing and for the accuracy of the information submitted to the SGX-ST, and is expected to exercise due care and diligence in ensuring accuracy and completeness of the information in the listing application. The issue manager must be satisfied that the issuer is suitable to be listed; meets the admission

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requirements; is sufficiently set up to comply with the continuing listing requirements; and has directors that appreciate the nature of their responsibilities and can be expected to honour their obligations under the Mainboard Listing Rules.

The requirement to have an issue manager ends once the issuer is admitted to the Mainboard, although the Mainboard Listing Rules recommend that the issuer retain the services of the issue manager for at least one year following listing.

In the case of a Catalist listing, an approved full sponsor will be appointed, who is responsible for assessing and determining whether the issuer is suitable to be listed on Catalist and will proceed to supervise the issuer's compliance with the continuing listing requirements under the Catalist Listing Rules for at least three years after listing.

Lawyers

An issuer will normally appoint lawyers to advise on the legal aspects of the listing process, conduct legal due diligence, draft the prospectus, prepare all the legal documentation necessary for the listing process (including the Sections A and B submission documents) and negotiate the legal agreements the issuer enters into.

Lawyers appointed by the underwriter will advise on any legal agreements entered into, assist in the preparation of the prospectus, advise the underwriter on its obligations, conduct legal due diligence and assist with the preparation of the legal documentation necessary for the listing process.

Underwriters

The issuer will normally appoint an underwriter for the offering, who will be obliged to subscribe for or purchase the shares or units that are not taken up by investors. If the IPO is large, there will likely be a syndicate of underwriters.

Auditors

The issuer's auditors will normally be appointed as the reporting accountants who will prepare the auditors' report for inclusion in the prospectus. Auditors are typically required to provide comfort letters to the underwriters and confirmations to the SGX-ST regarding the internal controls of the issuer.

Independent valuer

An issuer that is a property investment or development company must also appoint an independent external valuer to conduct a valuation of all its principal freehold and leasehold properties. The independent valuer will prepare a valuation report for inclusion in the prospectus.

Documentation

Some of the main documents required in an IPO include:

a a prospectus containing the prescribed information under the SFA and regulations thereunder, and the Listing Rules;

b in the case of a Mainboard Listing, a product highlights sheet;

c an underwriting agreement to be entered into between the issuer, the underwriter or underwriters, and the selling shareholders or unitholders (other than the issuer), if any;

d lock-up agreements;

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e comfort letters by the auditors; and
f disclosure letters and legal opinions by the lawyers.

ii Pitfalls and considerations

Conflicts of interest

Under the Listing Rules, conflicts of interest should be resolved or eliminated prior to listing. Conflicts of interest situations include situations in which interested persons (the directors, chief executive officer and controlling shareholder of the issuer and their associates) (1) carry on business transactions with the issuer or provide services to or receive services from the issuer or the issuer and its subsidiaries (the Group), (2) lend to or borrow from the issuer or the Group, (3) lease property to or from the issuer or the Group, or (4) have an interest in businesses that are competitors, suppliers or customers of the issuer or the Group.

The SGX-ST may accept a proposal to resolve or eliminate conflicts of interest within a reasonable period after listing.

Moratorium

Promoters of an issuer (namely its controlling shareholders and their associates and its executive directors with an interest in 5 per cent or more of the issuer's issued share capital (excluding subsidiary holdings) at the time of listing) seeking a Mainboard listing are required to give a contractual undertaking to the issue manager to observe a moratorium on the transfer or disposal of their interests in the shares of the issuer. The purpose of a moratorium is to maintain the promoters' commitment to the issuer and align their interests with that of public shareholders.

The moratorium period varies depending on whether the issuer satisfies the profit tests or the market capitalisation test.

Moratorium period	
Profit tests	**Market capitalisation test**
Promoters' 100% shareholdings at the time of listing for at least six months after listing.	Promoters' 100% shareholdings at the time of listing for at least six months after listing, and at least 50% of original shareholdings at the time of listing (adjusted for any bonus issue or subdivision) for the next six months.

A promoter who has an indirect shareholding in the issuer must also provide an undertaking to maintain its effective interest in the shares under moratorium during the moratorium period, except that where an indirect shareholding is held through a listed company, the promoter's holding in that listed company is excluded from the moratorium.

Further moratorium requirements apply under the Mainboard Listing Rules to investors that acquired and paid for their shares less than 12 months before the date of the listing application, and investors connected to the issue manager.

If the issuer is seeking a Mainboard listing with a DCS structure, holders of the multiple voting shares are required to give contractual undertakings to the issue manager to observe a moratorium on the transfer or disposal of their entire shareholdings in the issuer, in respect of their interests in both the multiple voting shares and ordinary voting shares at the time of listing, for at least 12 months after listing.

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In a Catalist listing, promoters are to give moratorium undertakings in respect of their entire shareholding at the time of listing for at least six months after listing, and no less than 50 per cent of their original shareholding at the time of listing (adjusted for any bonus issue or subdivision) for the next six months.

Section A submission (for Mainboard listings)

The issue manager is required to highlight in the Section A submission the key issues for listing, including whether:

a there is any non-compliance with laws and regulations that may cast doubt on the character and integrity of the directors, key executive officers or controlling shareholders of the issuer;
b there is any non-traditional or complex shareholding structure, such as those resulting from legal restrictions;
c the issuer has not obtained any key approval or licence, or the application for renewal is pending approval or the remaining validity is less than 12 months;
d there has been any non-compliance with laws and regulations by the issuer; and
e the issuer has rectified all material internal control weaknesses.

iii Considerations for foreign issuers

Additional requirements apply to a foreign issuer seeking a listing on the SGX-ST:

a a foreign issuer must have a minimum number of independent directors who are resident in Singapore (two for a Mainboard listing and one for a Catalist listing);
b a foreign issuer must make arrangements satisfactory to the SGX-ST to enable shareholders in Singapore to register their shareholdings promptly; and
c any change in law in the foreign issuer's place of incorporation that may affect or change shareholders' rights or obligations over its securities must be announced on SGXNET immediately.

The constitutive documents of the foreign issuer must also contain the requisite provisions stipulated by the Listing Rules.

IV POST-IPO REQUIREMENTS

An issuer listed on the Mainboard must comply with continuing listing requirements set out in the Mainboard Listing Rules, the key areas of which are listed below. Similar requirements are set out in the Catalist Listing Rules.

i Continuous disclosure obligations

Disclosure of material information

Subject to limited exceptions set out in the Listing Rules, a listed issuer must announce any information known to the issuer concerning it or its subsidiaries or associated companies that is necessary to avoid the establishment of a false market in its securities, or would be likely to materially affect the price or value of its securities.

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Financial reporting

Depending on the issuer's market capitalisation (as at the time of its listing or on the last trading day of each calendar year), the issuer must announce its financial statements on a quarterly or half-yearly basis immediately after the figures are available, but in any event no later than 60 days (in the case of full-year financial statements) or 45 days (in the case of interim financial statements) after the financial period.

Code of Corporate Governance

The issuer must describe in its annual report its corporate governance practices with specific reference to the principles and the provisions of the Code of Corporate Governance. The issuer must comply with the principles of the Code. Where its practices vary from any provisions of the Code, the issuer must explicitly state in its annual report the provision from which it has varied, explain the reason for variation and explain how the practices it had adopted are consistent with the intent of the relevant principle.

ii Changes in capital

A listed issuer is required to obtain the prior approval of its shareholders for:

a the issue of shares or securities convertible into its shares; and

b the issue of shares or convertible securities by its principal subsidiary that results in the principal subsidiary ceasing to be a subsidiary of the issuer or a percentage reduction of 20 per cent or more of the issuer's equity interest in the principal subsidiary.

The issuer may obtain a share issue mandate from its shareholders, subject to the perimeters prescribed by the Listing Rules.

The issue of shares by the issuer must comply with the requirements set out in the Listing Rules, which may include limits on discount to the market price, prohibition on issue of shares to directors and substantial shareholders (unless specific shareholder approval is obtained) and announcement requirements.

iii Interested person transactions

Interested person transactions (IPTs) are transactions between an entity at risk[2] and an interested person.[3] A listed issuer must immediately announce any IPT of a value equal to or greater than 3 per cent of the latest audited net tangible assets (NTA) of the Group.

If the aggregate value of all transactions entered into with the same interested person during the same financial year amounts to 3 per cent or more of the Group's latest audited NTA, the issuer must make an immediate announcement of the latest transaction and all future transactions with that interested person during that financial year.

2 Entity at risk means (1) the listed issuer, (2) a subsidiary of the issuer that is not listed on the SGX-ST or an approved exchange, or (3) an associated company of the issuer that is not listed on the SGX-ST or an approved exchange, provided that the Group, or the Group and its interested persons, has control over the associated company.

3 Interested person means, in the case of a company, a director, chief executive officer or controlling shareholder of the listed issuer, or an associate of any such person or entity.

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The issuer must obtain shareholders' approval for any IPT of a value equal to or greater than 5 per cent of the Group's latest audited NTA, or 5 per cent of the Group's latest audited NTA when aggregated with other transactions entered into with the same interested person during the same financial year (subject to certain exceptions).

An IPT below S$100,000 is not subject to announcement or shareholders' approval requirements.

The issuer may seek a general mandate from shareholders for recurrent transactions of a revenue or trading nature, or those necessary for its day-to-day operations, but not in respect of the purchase or sale of assets, undertakings or businesses.

iv Acquisitions and realisations

The Listing Rules classify transactions[4] into categories depending on the size of the relative figures computed on prescribed bases, such as:

a the net asset value of the assets to be disposed of, compared with the Group's net asset value;
b the net profits attributable to the assets acquired or disposed of, compared with the Group's net profits;
c the aggregate value of the consideration given or received, compared with the issuer's market capitalisation; and
d the number of equity securities issued by the issuer as consideration for an acquisition, compared with the number of equity securities previously in issue.

The transaction is classified as the following: non-disclosable, if all of the relative figures amount to 5 per cent or less; disclosable, if any relative figure exceeds 5 per cent but does not exceed 20 per cent; or major, if any relative figure exceeds 20 per cent. The transaction may also be a very substantial acquisition or reverse takeover if it is an acquisition of assets where any relative figure is 100 per cent or more, or that will result in a change in control of the issuer.

A listed issuer must make an immediate announcement of a disclosable transaction after terms have been agreed. A major transaction must be immediately announced and also made conditional upon shareholder approval. In addition to the foregoing (among other things), a very substantial acquisition or reverse takeover is subject to approval of the SGX-ST.

V OUTLOOK AND CONCLUSION

i Proposed rules

Regulation of issue managers

The SGX-ST is proposing further enhancements to the Mainboard Listing Rules to govern the roles and responsibilities of the issue managers, and set out requirements on the independence of an issue manager, to address the potential conflicts arising from issue managers' relationships with a listing applicant.

4 An acquisition or disposal of assets by a listed issuer or any of its subsidiaries that is not listed on the SGX-ST or an approved exchange, and includes an option to acquire or dispose of assets, but excludes an acquisition or disposal that is in, or in connection with, the ordinary course of its business or of a revenue nature.

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Listing process

Currently, a specific listing application may be referred to the LAC if novel or unprecedented issues are involved, specialist expertise is required, matters of public interest are involved or the SGX-ST is of the view that a referral is appropriate. All other applications (non-referral applications) are provided to the LAC for information, but the LAC still has discretion to convene a meeting for any non-referral application.

Following feedback that the non-referral process may have affected the time to market for listing applicants and given rise to uncertainty in the listing process, the SGX-ST is proposing that information on a non-referral application will be submitted to the LAC after the issuance of the ETL letter rather than before, and any advice or views rendered by the LAC on a non-referral application will be applied on a prospective basis to future listing applications (and will not affect the existing case).

Quarterly reporting

The SGX-ST undertook a public consultation as to whether the requirement for listed companies should be retained or removed, having taken into account feedback regarding compliance costs for listed companies. The SGX-ST also proposed changes to quarterly reporting, such as simplifying the format of the first and third quarter reports by reducing the content.

ii Initiatives

The SGX-ST has pursued various initiatives, including the following:

a a partnership with the Agency for Science, Technology and Research to help start-ups access capital markets;

b a partnership with the Infocomm Media Development Authority (IMDA) to create a streamlined pathway for fast-growing IMDA-accredited companies to access capital markets in Singapore more efficiently for expansion;

c a collaboration with the Tel Aviv Stock Exchange to attract technology and healthcare companies to list on both exchanges;

d a collaboration with Nasdaq to enhance the channels available for companies to access capital market funding in both markets;

e a partnership with Third500 (an affiliate of US investment bank Healthios Capital Markets LLC) to build a pre-IPO and an IPO market for venture-backed emerging growth companies; and

f the launch of the S$75 million Grant for Equity Market Singapore, a three-year initiative where enterprises seeking to raise capital through Singapore's equity market can receive funding for eligible listing expenses.

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Chapter 14

SOUTH AFRICA

Ezra Davids, David Yuill, Ryan Wessels and Mili Soni[1]

I INTRODUCTION

Activity in South African and African capital markets is dominated by the Johannesburg Stock Exchange (JSE), although recent years have seen a number of smaller new exchanges springing up. The JSE remains the dominant exchange in South Africa, however. The JSE attracts listings from various sectors, including mining, oil and gas, property and financial services. According to information released by PricewaterhouseCoopers in 2018,[2] capital raised from 44 initial public offerings (IPOs) by companies on the JSE amounted to US$4.8 billion and represented 52 per cent of the total African IPO capital in the equity space between 2013 and 2017. This excludes the 2018 inward listing of Vivo Energy, which raised approximately US$800 million and had a market capitalisation of approximately US$2.8 billion. The latter half of 2018 saw a slowdown in IPO activity, caused by, *inter alia*, the general domestic and international economic uncertainty, and investors adopting a wait-and-see attitude prior to general elections in May 2019.

Other than the JSE itself, key regulators include the Financial Sector Conduct Authority (FSCA) (established in terms of the Financial Markets Act 2012 (FMA)) and the Companies and Intellectual Property Commission (CIPC).

II GOVERNING RULES

i Main stock exchanges

The JSE is the overwhelmingly dominant licensed exchange for IPOs in South Africa. It comprises two primary boards: the Main Board and an alternative exchange (AltX) for small and medium-sized companies. The AltX prescribes significantly less onerous eligibility criteria for listing than the JSE Main Board and it tends to attract more junior and development companies.

Four new stock exchanges have started trading in South Africa in the past two years, namely ZAR X, 4AX, A2X and the Equity Express Securities Exchange (the last of which is the latest to have debuted). These largely aim to attract smaller companies in the market with lower barriers to entry (i.e., lower costs and less public free float), although, upon launch date, the A2X primarily aimed to commence with secondary listings of large JSE-listed companies.

1 Ezra Davids is chair of corporate and M&A, David Yuill and Ryan Wessels are partners, and Mili Soni is a senior associate at Bowmans.

2 PwC, 2017 Africa Capital Markets Watch. Available at https://www.pwc.co.za/en/publications/africa-capital-markets-watch.html.

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For the time being, the JSE remains South Africa's primary exchange – accordingly, for the purpose of this chapter we have focused primarily on equity IPOs on the JSE, and in particular on the JSE's Main Board.

The South African IPO market primarily attracts domestic issuers, although several international issuers have inward secondary listings on the JSE. A notable trend has been the increased interest of international issuers to have an inward listing on the JSE.[3] Inward listings are largely driven by South Africa's exchange control regulations, which place certain limitations on South African residents' ability to hold shares in international issuers. Foreign shares that are listed on a South African exchange are treated as 'domestic assets' for exchange control purposes, which means that the shares can be held freely by South African residents without restriction. This is particularly relevant for South African institutional investors who have restrictions on the percentage of investments held by them that can be foreign assets.

Domestic companies tend to list on the JSE, although certain large South African companies have dual listings on other exchanges, or have moved their primary listing to a European exchange such as the London Stock Exchange or Frankfurt. Several South African companies, including a number of mining companies, have accessed foreign markets utilising American depository receipts or global depository receipt programmes.

ii Overview of listing requirements

The approval of the relevant exchange is required for the listing of equity securities. The JSE Listings Requirements impose certain eligibility criteria to be met by any company listing on the JSE. To list on the Main Board of the JSE, the criteria include, *inter alia*, three years of audited financials, a recent profit history and a free float of 20 per cent held by public shareholders. The AltX provides less stringent eligibility requirements. The company is also required to appoint a sponsor to officiate liaison between the company and the JSE. All applications for listing must be submitted to the JSE through a sponsor.

Applicants seeking to list any securities on the exchange operated by the JSE are required to submit a number of documents to it for review and approval. The key document that must be prepared (and approved by the JSE) prior to public distribution is a pre-listing statement, which must include the information prescribed under the JSE Listings Requirements. As many large South African IPOs also typically include an international offering component, a South African pre-listing statement circular typically includes a number of elements that are not prescribed under South African legislation, but that international investors would expect to see (including risk factors and a management analysis of the financials).The JSE will also need to approve the company's constitutional documents and the rules of any share incentive scheme. The directors of the company must typically also provide the JSE with a resolution undertaking to comply with the JSE Listings Requirements and accept responsibility for representations made in the pre-listing statement.

To the extent that an IPO also constitutes a public offering of securities in terms of the South African Companies Act of 2008 (the Companies Act), a prospectus will also be required to be prepared and registered with the CIPC. The content requirements for a prospectus are generally similar to those of a pre-listing statement, and the pre-listing statement and prospectus will typically be consolidated where both are required.

3 Loni Prinsloo, 'JPMorgan Sees a Busy Season for London IPOs Out of Africa'. Available at https://www.bloomberg.com/news/articles/2018-06-06/jpmorgan-sees-busy-season-for-london-ipos-coming-out-of-africa.

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The JSE has made provision for an accelerated fast-track listing process for companies listed on one of the major international exchanges that wish to have a secondary inward listing on the JSE. In such a case, an entire pre-listing statement is not required, and the company will be required to publish a pre-listing announcement subject to simpler requirements.

A special purpose acquisition company (SPAC) may also be listed in terms of the JSE Listings Requirements. A SPAC is effectively a special purpose vehicle established for the purpose of facilitating the raising of capital to enable the acquisition of viable assets in pursuit of a listing on either the Main Board or the AltX. Among other criteria for listing as a SPAC, the capital raised by a SPAC must be retained in escrow, and the SPAC must in its pre-listing statement or prospectus disclose to investors the acquisition criteria it will employ to identify viable assets. Within two years of the date of listing, the capital proceeds must be utilised to acquire viable assets, being assets that on their own will enable the SPAC to qualify for a listing on the Main Board or AltX. If an acquisition of viable assets is not completed within two years of the date on which the SPAC is listed (or an alternative date as the JSE may permit), the SPAC is required to return the monies initially invested to its shareholders, plus accrued interest, but minus certain permissible expenses.

Listings on the platforms operated by the smaller exchanges must be made in accordance with their listings requirements, where, in some cases, application may sufficiently be made by filling out a form.

If the IPO is conducted in conjunction with an underwritten offer, the underwriting agreement must be filed with the CIPC and the JSE.

Lastly, although the South African Constitution provides for class actions, the position in South Africa differs from the United States, which has a long history of litigation and class action lawsuits for securities loss gains.[4] No laws have been passed in South Africa to regulate the procedure to be followed for class actions. Several cases brought before the courts have started to build a framework to guide class actions, and although there have not been any class actions involving an IPO-related claim so far, theoretically, this may occur in the future.

iii Overview of law and regulations

The JSE Listings Requirements are the key regulations applicable to all companies listed or that intend to list on the JSE – the key regulator in this regard being the Issuer Division of the JSE. The JSE Listings Requirements are secondary legislation, published by the JSE in accordance with the FMA.

The Companies Act is equally important in an IPO context and regulates the basis on which offers can be made to the public in South Africa. It provides for a number of safe harbours that can be used to avoid an offer being classified as an offer to the public, and thus avoiding, *inter alia*, the prospectus registration requirements referred to above.

The key safe harbours that are typically relied on are offers made to:

a various types of institutional investors, including brokers and pension funds; and

b investors who subscribe in their capacity as principal for shares that are worth a minimum prescribed amount (currently 1 million South African rand).

An offer of securities (including equity and debt securities) to the public can be made only by a South African public company or a company incorporated outside South Africa that has filed its incorporation documents with the CIPC. A public offer will also require the

4 ibid, p.78.

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preparation and registration of a prospectus with the CIPC. The Companies Act also applies if the offeror is a South African company, as it regulates, *inter alia*, the manner in which the offering can be made and prescribes certain corporate governance requirements that must be met by the company. The key regulators in relation to the Companies Act are the CIPC and the Companies Tribunal.

In addition, the FMA regulates and controls, among other things, exchanges, securities and ancillary matters (such as market abuse and insider trading). The FSCA, previously known as the Financial Services Board, is the primary regulator overseeing exchange-related matters.

Exchange controls seek to regulate capital outflows from South Africa. In an IPO context, this *inter alia*, regulates the listing of shares of non-South African companies on the JSE (inward listings). In this regard, the primary regulator is the Financial Surveillance Department (FSD) of the South African Reserve Bank.

III THE OFFERING PROCESS

i General overview of the IPO process

As discussed in Section II.ii, it is necessary for a company to prepare and publish a pre-listing statement in order to be listed on the exchange operated by the JSE. An announcement containing an abridged pre-listing statement must also be published. A pre-listing statement circular must include specific information regarding the company and its business (including its directors and officers, its borrowings, material acquisitions and disposals, related-party arrangements and material litigation); salient details in relation to the offering; and certain historical and *pro forma* financial information (including three years of audited historical financials). As noted above, it has become market practice for South African pre-listing statement circulars, particularly those that relate to an international offering, to include additional non-prescribed information such as risk factors, management analysis of the company's financial conditions and results of operations. Additional information is required for companies from certain sectors. For example, a mining company must include a competent persons report setting out its reserves and resources, and a property company must provide valuation reports on its property portfolio.

If a prospectus is required in terms of the Companies Act, the Act specifies that a prospectus must contain all the information that an investor may reasonably require to assess the assets and liabilities, financial position, profits and losses, cash flow and prospects of the company in which the shares are to be acquired, and to assess the securities being offered and rights attached to them. However, since the content requirements of a prospectus and a pre-listing statement are substantially similar, they will typically be consolidated into the same document.

A company may apply for a dispensation from including certain information (which may be desirable for confidentiality reasons in certain instances) in terms of both the JSE Listings Requirements and the Companies Act.

With regard to the timeline applicable to an IPO in South Africa, this will ultimately vary depending on applicable factors, including the complexity of the transaction, the work involved in preparing the company for listing and life as a public company, market conditions and the timing of the company's financial reporting. It can take between four and 12 months to complete and will also be influenced by factors such as market conditions and appropriate windows for IPO offerings (January, December and April are typically avoided because of South African holidays), and if the offering is international, international offering windows will also be taken into account.

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The process usually commences with a preparatory stage involving extensive due diligence on the company and preparing the company for listing, including converting it to a public company, adopting a new JSE-compliant memorandum of incorporation (i.e., the constitutional document of the company), and putting in place the appropriate board and committee structures and charters. The drafting of the pre-listing statement (circular) or prospectus will also be considered during this stage.

A JSE approval process follows, which usually involves at least three submissions (although often more, by election) to the JSE of the pre-listing statement (circular) and related documents (such as the memorandum of incorporation). The JSE review process commonly takes about three to four weeks, as there are certain prescribed timelines that the JSE is required to follow (five business days for a first submission, three business days for the second submission (informal approval) and two business days for the final submission (formal approval)). Within this period, initial preliminary marketing activities are conducted, subject to the relevant regulatory limitations in this regard in the relevant jurisdictions. If a prospectus is required, it will also need to be submitted to the CIPC for approval. The CIPC now has a specific JSE-dedicated office to streamline this process, and typically this should not significantly delay the overall process.

Where an international issuer has listed shares on the JSE, the FSD of the South African Reserve Bank may need to be approached for prior approval under South Africa's exchange control regulations. Approval may also be required from the relevant sector-specific regulator (e.g., in the banking, insurance, mining and communications sectors).

Once JSE and CIPC approvals have been obtained, the pre-listing statement (including the price range) will then be distributed and a management roadshow will be conducted whereby presentations are made to key investors, domestically and, if applicable, internationally. At the end of the roadshow process, a book-build will be conducted, the listing price determined and allocations made. The results of the book-build and listing price will be announced in a pricing announcement, and closing and settlement will then take place three trading days later, as the JSE operates on a T+3 settlement cycle.

ii Pitfalls and considerations

First, a company should always ensure that a prospectus is prepared, issued and filed with the CIPC in respect of any offer to the public as contemplated in the Companies Act. This is subject to the safe harbour exceptions, which have been set out in Section II.iii.

Second, when providing offering-related documentation to local investors, a company must consider the marketing of securities restrictions under the Companies Act, the Collective Investment Schemes Act 2002 (CISCA), and the Financial Advisory and Intermediary Services Act 2002 (FAIS). For instance, under the Companies Act, an advertisement relating to a public offer must meet certain prescribed requirements. Failure to do so is an offence. However, this only applies in the context of a public offer. CISCA regulates offerings by collective investment schemes, whereas FAIS regulates the provision of any investment advice or recommendation that must typically only be given by a registered financial service provider. A disclaimer is typically included in a pre-listing statement or prospectus, stating that it includes only factual information and does not constitute an investment recommendation or advice.

Generally, any communication made (orally, on the internet or otherwise) or written documentation disseminated – which could reasonably be construed as inviting, inducing or

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influencing investors to participate in an offer of securities or relate to the future profits or losses or valuation of a company or its securities, prior to, during and immediately following an offering of securities – should be:

a fair and accurate, and not misleading or untrue;

b if written, contain appropriate disclaimer language;

c be consistent with (and not contradict) the information that will be contained in any offering document; and

d in a listed context, if it contains any price sensitive information, be released in a way that is appropriate and complies with relevant insider dealing legislation and stock exchange rules.

Typically, in the context of security offerings, publicity guidelines are pre-agreed to effectively manage the release of communication from a regulatory and market practice compliance perspective.

There are no specific restrictions dealing with the publishing of research reports by underwriters, but the considerations set out above apply equally.

Third, a company should be aware of sanctions that securities regulation authorities could impose for breach of securities offering regulations. For instance, a breach of the JSE Listings Requirements would typically be referred to the JSE Investigation Division. The JSE has various remedies available to it, in relation to those persons who fall under its ambit, including issuers and their directors, sponsors and certain advisers (such as JSE-accredited auditors). Remedies include private or public censure, suspension or termination of listing, a fine or withdrawal of accreditation (in the case of sponsors or JSE-accredited advisers).

A breach of the FMA (of insider trading or market abuse rules) can be referred to the FSCA, which was established by the Financial Services Board Act 1990 as an enforcement committee to discipline certain professionals operating in the securities sector. After the FSCA has considered the matter, it may impose an administrative penalty on the person who provides securities services, or it may require this person to pay a compensatory amount. The Directorate of Market Abuse (DMA) is empowered by the FMA, to investigate cases of insider trading, prohibited trading practices and the making of false, misleading or deceptive statements, promises or forecasts in respect of listed securities. The DMA can refer cases of insider trading to the FSCA, which has the power to impose administrative penalties on an offender. The DMA may also hand the matter over to the prosecuting authorities for consideration or take civil action against an alleged offender.

A breach of the Companies Act may expose the company to certain administrative sanctions or financial penalties, or in some cases constitute an offence.

iii Considerations for foreign issuers

The Companies Act provides that an offer of securities to the public may only be made by a South African public company or an international issuer (incorporated outside South Africa) that has lodged its constitution and details of the board of directors with the CIPC.

Prior FSD approval is required by an international issuer wishing to list on the JSE. If a foreign entity is conducting business in South Africa, it may be required to register as an external company. Under the Companies Act, the making or offering of securities should not, in and of itself, constitute 'conducting business'. The JSE requires confirmation that an international issuer has registered as an external company or an opinion that it is not required to do so. In addition, unless the international issuer has at least 20 per cent free float on its South African register, the JSE Listings Requirements stipulate that the foregoing issuer

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must make arrangements to ensure that sufficient scrip is available on the South African register for settlement purposes. Current guidance provided to the market by JSE Clearing and Settlement is to have a 5 per cent holding of the total issued percentage in South Africa ring fenced for the JSE Settlement Authority to fulfil its role in mitigating risk through occasionally facilitating lending and borrowing within the South African market. In practice, selling shareholders have typically agreed to make this scrip available.

International issuers with an inward listing are allowed to use shares as acquisition currency in South Africa and to include South African shareholders in a rights offer. A foreign entity with an inward listing that raises capital in South Africa must open a special bank account in South Africa for the duration of the listing for purposes of recovering and recording the capital raised. The capital raised must be deployed as soon as possible but not later than one month after being raised and recorded in the special bank account. There are no additional registration or filing processes for international issuers raising capital in South Africa (over and above the prospectus or placing document required by any local exchange) other than the requirement to file its constitution and board composition with the CIPC.

IV POST-IPO REQUIREMENTS

Public companies are subjected to various ongoing compliance requirements in the Companies Act, which include holding annual general meetings at which a directors' report, audited financial statements for the immediately preceding financial year and an audit committee report must be presented to the shareholders; directors must be elected in certain cases; and an auditor and an audit committee must be appointed for the ensuing financial year.

As public companies are considered 'regulated companies' in the Companies Act, the Takeover Provisions in Chapter 5 of this Act and the Takeover Regulations must be complied with, which require approval from the Takeover Regulation Panel in some instances (such as where an 'affected transaction' is being concluded, which includes, *inter alia*, mergers, amalgamations and schemes of arrangement). Incremental shareholding acquisitions and disposals that cross threshold multiples of 5 per cent will need to be notified to the Takeover Regulation Panel.

In addition, various corporate governance requirements are set out in the JSE Listings Requirements, which include various rules regulating the composition of the company's board and board committees, and place an obligation on companies to comply with the Code of Corporate Practices and Conduct as set out in the King Report IV on Corporate Governance. Companies typically set out their compliance details in their pre-listing statement on an 'apply and explain' basis (application disclosure) and annual reports, and are expected to uphold these obligations post-IPO.

The JSE Listings Requirements set out the following requirements, among others:

a establishment of a nominations committee, an audit committee, a social and ethics committee, and a risk and nominations committee for certain businesses;
b compliance with the King IV composition requirements;
c appointment of a chief executive officer, a chair and, in most cases, a lead independent director;
d appointment of an executive financial director, subject to exceptions; and
e implementation of a formal policy for the appointment of directors.

To a certain extent, similar requirements must also be in place for smaller exchanges.

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V OUTLOOK AND CONCLUSION

Previously, the securities exchange operated by the JSE was the only platform for public listings in South Africa. The new exchanges (ZAR X, A2X, 4AX and the Equity Express Securities Exchange) are disrupting the monopoly held by the JSE, and are likely to provide useful benefits for publicly listed companies, including lower costs and improved liquidity for public M&A activity.

International issuers have showed an increased interest in inward listings (both primary and secondary) on the JSE over the past two years. South Africa may move into a period of improved investment grading status after the elections in May 2019.[5]

A rise in the prominence of cryptocurrencies (otherwise commonly referred to as coins and tokens) in South Africa has resulted in South African regulators instigating various public workshops and discussions to establish regulations that address the emerging trends. Regulators appear to be following a pro-innovative approach, and based on their public statements so far, they are expected to regulate tokens rather than ban them. Currently, tokens are not considered to be 'securities' by the FSCA, and digital currency exchanges are not formally required to have FSCA exchange licences to operate tokens. Once regulations have provided more clarity on the treatment of tokens, or theoretically, even before that, it is possible that existing South African stock exchanges may start to list derivatives or exchange-traded funds that track returns on tokens. It is unclear whether the regulators will prescribe a process to be followed in respect of initial coin offerings and whether these will be dealt with in a similar way to IPOs.

5 Erik Schatzker, Amogelang Mbatha and Andres Martinez, 'Tito Mboweni makes regaining SA's investment grade rating a top priority'. Available at: https://www.timeslive.co.za/sunday-times/business/2018-12-03-tito-mboweni-makes-regaining-sas-investment-grade-rating-a-top-priority/.

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Chapter 15

SPAIN

Alfonso Ventoso and Marta Rubio[1]

I INTRODUCTION

The process of going public in Spain has experienced major changes since the early 2000s – getting closer to the European Union's economic and monetary integration and, more recently, moving towards the creation of a capital markets union. During this process, Spain has transposed EU law in a timely manner, achieving full harmonisation of its domestic framework and a competitive position among its European peers.

In this context, and as part of Spain's own efforts to promote market efficiency while ensuring investors' protection, Spanish stock exchanges have gained wider international recognition. In 2014 and 2015, with the European economy gradually recovering after the financial crisis of 2008, Spain enjoyed strong initial public offering (IPO) activity, with 14 companies going public and raising aggregate proceeds of €13.1 billion.[2] However, the domestic political impasse of 2016, with two (and nearly three) general elections, along with international developments, including the US elections and Brexit, took their toll: some IPO candidates cautiously delayed their debut, and Spanish listing activity declined in terms of both number of deals (three IPOs and one listing) and proceeds raised (€1.4 billion).[3] The year 2017 set off to a good start with four IPOs raising €3.4 billion in the first half of the year, but the political uncertainty surrounding Catalonia thwarted the trend and the year ended with only one additional IPO raising €667 million. Transactions in the Spanish market followed the same path in 2018 as the year ended with only three IPOs that raised an aggregate €846 million, two listings of companies that were already listed on foreign markets and several projects being cancelled even after publication of the prospectus. [4]

II GOVERNING RULES

i Main stock exchanges

The Spanish stock exchanges are the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges. These four stock exchanges were created as independent secondary markets in 1831, 1915, 1890 and 1980, respectively. Since 1989, the four stock exchanges have been electronically interconnected in real time through an automated quotation system, and constitute a single secondary market.

1 Alfonso Ventoso is a partner and Marta Rubio is an associate at Uría Menéndez.
2 www.bolsasymercados.es/ing/Studies-Research/Statistics.
3 idem.
4 idem.

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Stock exchanges are the sole regulated market in Spain for equity securities.[5] They are intended for relatively large companies with a minimum capitalisation of €6 million and a minimum free float of around 25 per cent of the company's share capital. In November 2018, 132 companies were listed on the Spanish stock exchanges. Total market capitalisation at that time was approximately €1.06 trillion – €386 billion of which was foreign equity.[6]

Two multilateral trading facilities[7] also operate in Spain: the Alternative Equity Market (MAB) and Latibex. In contrast to regulated markets, multilateral trading facilities can be freely created and their management company can be a market regulator, an investment firm or a special purpose entity.[8]

The MAB was established in 2006 to grant small companies access to capital markets through a less burdensome framework. It is divided into five segments addressed to distinct types of companies:

a growth companies;
b real estate investment trusts (REITs), which, since December 2016, includes a subgroup for developing REITs;
c open-ended investment schemes;
d venture capital firms; and
e hedge funds.

This market is growing rapidly, ending 2018 with an aggregate market capitalisation of €41.9 billion, 41 listed companies in the growth segment and 61 in the REITs segment.[9]

Latibex, an international market for Latin American securities, was created in 1999 to channel European investment towards Latin America. It enjoyed its golden age during the early 2000s, but has gradually declined ever since. In November 2018, securities of only 19 issuers were traded on the platform.

Given the MAB's relatively small size and tailor-made regulations, and Latibex's current decline, this chapter focuses on the regulatory framework and process of IPOs in the Spanish stock exchanges.

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5 Article 4, Paragraph (21) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May on markets in financial instruments defines 'regulated market' as a multilateral system operated or managed by a market operator that brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system, and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and that is authorised and functions regularly and in accordance with Title III of the referred Directive.

6 www.bolsasymercados.es/ing/Studies-Research/Statistics.

7 Article 4, Paragraph (22) of Directive 2014/65/EU defines 'multilateral trading facility' as a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial interests – in the system and in accordance with its non-discretionary rules – in a way that results in a contract in accordance with Title II of the referred Directive.

8 Juan Carlos Machuca, 'Spain. International Securities Law and Regulation' in Dennis Campbell (general editor), *International Securities Law and Regulation*, third edition. Huntington, NY: Juris Publishing, 2014.

9 www.bolsasymercados.es/ing/Studies-Research/Statistics.

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ii Overview of listing requirements

As a general rule, Spanish legislation establishes the principle of freedom to issue and offer securities in Spain, and to design the placement procedure without prior administrative approval. Nevertheless, the admission of securities to trading on the Spanish stock exchanges is subject to verification of eligibility requirements of both the issuer and the relevant securities, as well as specific information requirements.

Regarding eligibility requirements, the issuer must be a public limited company – or an equivalent legal form for foreign issuers – validly incorporated and existing in accordance with the laws of the country in which it is domiciled. Further, the issuer's securities that are admitted to trading must grant the same rights to all holders who are in the same position.

Securities for which admission to trading is requested must meet the requirements of the legal framework to which they are subject, and must be represented in book-entry form and be freely transferable. Moreover, application for admission to listing must cover all securities of the same class and, as indicated, a minimum volume of €6 million and a minimum distribution of the securities among the public are required.

Finally, admission to trading on the Spanish stock exchanges is conditional upon submitting documentation to the corresponding regulatory bodies evidencing compliance with the legal framework applicable to the issuer and the securities, the issuer's audited financial statements, and a public offering or listing prospectus.

The authority that verifies the fulfilment of the above requirements in a Spanish listing is the Spanish National Securities Market Commission (CNMV), in its capacity as the supervisor of the Spanish primary and secondary securities markets.

iii Overview of law and regulations

The main regulations governing public offerings and listings in Spain are the consolidated text of the Securities Markets Act (approved by Royal Legislative Decree 4/2015 of 23 October) and Royal Decree 1310/2005 of 4 November on listings, public offerings and the prospectus required for such purposes (RD 1310/2005), both of which implement Directive 2003/71/EC of the European Parliament and of the Council of 4 November (the Prospectus Directive) and Directive 2001/34/EC of the European Parliament and of the Council of 28 May on the admission of securities to official stock exchange listing and on information to be published on those securities. Moreover, Commission Regulation (EC) No. 809/2004 of 29 April (the Prospectus Regulation) implementing the Prospectus Directive and its delegated regulations, as well as Regulation (EU) 2017/1129 of 17 June on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the New Prospectus Regulation), are directly applicable in Spain.

The New Prospectus Regulation was published in July 2017 and will fully repeal the Prospectus Directive and the Prospectus Regulation with effect from 21 July 2019.[10] It was proposed by the European Commission in 2015 on the path towards the capital markets union and was drafted in the form of a regulation in order to set out a regulatory framework uniformly applicable throughout the European Union. The New Prospectus Regulation seeks to ensure investor protection and market efficiency while enhancing the single market for

10 The New Prospectus Regulation entered into force on 20 July 2017 and will be effective as from 21 July 2019 except for various exemptions to the obligation to draft a prospectus, which are applicable since the Regulation's entry into force, and rules relating to offerings exempt from the obligation to be documented with a prospectus owing to their small size, which will be applicable from 21 July 2018.

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capital. Specifically, it intends to both harmonise the disclosure regime when securities are offered or admitted to trading, and reduce regulatory complexity and administrative burdens of those processes.

These regulations should be construed in light of EU Level 3 materials[11] issued occasionally by the European Securities and Markets Authority (ESMA) and its predecessor, the Committee of European Securities Regulators (namely, the recommendations for the consistent implementation of the Prospectus Regulation[12] and the Q&A on prospectuses).

On a separate note, the governing bodies of the stock exchanges have their own internal regulations, which consist of circulars (general decisions and regulations on trading and other primary functions of the stock exchange) and operating instructions (decisions and rules of a specific nature to organise the activities of each department and market members).

Likewise, the Spanish central securities depository (Iberclear) is also subject to its own internal rules and a specific regulatory framework on the clearance, settlement and registry of transactions carried out on Spanish markets. This framework was adapted to EU regulations[13] and Iberclear migrated to TARGET2-Securities – a pan-European settlement platform implemented in the Eurosystem to provide harmonised and borderless core securities settlement services throughout Europe.

III THE OFFERING PROCESS

i General overview of the IPO process

An IPO represents a critical milestone in a company's life. A company going public must not only ensure that it satisfies listing eligibility criteria, but also prepare to meet its concomitant obligations as a listed company.

At the most initial stages, a company contemplating an IPO typically retains an array of advisers to assist on the preparation and execution of the transaction from commercial, legal and accounting perspectives.[14]

First, the company must retain one or, more frequently, multiple investment banks to receive commercial advice on the IPO's design and execution, to market the company's stock and, ultimately, to underwrite the offering. Before contacting potential investors, underwriters and their own advisers will carry out a broad due diligence review of the company to identify any material information that requires public disclosure. In fact, achieving proper disclosure – and thus minimal asymmetries in information – protects both the company and the underwriters from future claims by investors.

11 In 2001, the European Union launched the 'Lamfalussy process', a regulatory approach that established four levels in the legislative procedure: Level 1 consists of framework legislation setting out the core principles adopted by a co-decision of the European Parliament and the Council; Level 2 consists of implementing measures adopted by the European Commission; Level 3 involves cooperation among national supervisory bodies; and, at Level 4, the Commission enforces the timely and correct transposition of EU legislation into domestic law.

12 www.esma.europa.eu/sites/default/files/library/2015/11/11_81.pdf.

13 In particular, Royal Decree 878/2015 of 2 October adapted Spain's clearance, settlement and recording system to Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July on improving securities settlement in the European Union and on central securities depositories.

14 Javier Redonet del Campo, 'Equity' in Raj Panasar and Philip Boeckman (editors) *European Securities Law*, 2nd edition. Oxford: Oxford University Press, 2014, pp. 79–116.

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Second, the company must retain legal counsel (domestic and, if necessary, international) to participate in the IPO process by:

a helping the company meet listing eligibility requirements;
b drafting all necessary documentation, including corporate documents and resolutions, the prospectus and other regulatory applications;
c liaising with the CNMV, the stock exchanges and other authorities;
d assisting the company in negotiations with the underwriters;
e contributing to the due diligence review; and
f providing legal opinions to the underwriters on various legal aspects of the transaction.

As indicated, the underwriters must also retain legal counsel mainly to conduct the company's due diligence review, draft the underwriting agreement, assist in the preparation of marketing materials and provide legal opinions to the underwriters.

Third, the company's auditors will need to audit the company's financial statements for the preceding three fiscal years[15] and ensure compliance with accounting rules. The company may also request that the auditors audit or review interim financial statements, if any, and other special financial information such as *pro forma* information or financial forecasts or estimates (in this case, with the scope and limitations established in the Prospectus Regulation). Lastly, the auditors will issue comfort letters for the underwriters confirming that the prospectus accurately reflects the company's financial information and that, to their knowledge, no material change has occurred from the date of the most recently audited or reviewed financial statements.

Moreover, a number of recent IPOs in Spain involved the support of independent financial advisers who assisted the companies throughout the process, alleviating the inevitably demanding workload in such deals.

Towards the end of the preparation phase, a company going public typically engages other specialists such as an agent bank to settle the transaction, a public relations agency to assist with press releases, a financial printer to print and distribute the prospectus or offering memorandum, and a roadshow consultant.

The process and timeline of an IPO will vary significantly depending on the IPO candidate's corporate structure, financial history and sophistication, although it will rarely last less than four months.

From a legal perspective, the main, most laborious task is drafting the required prospectus, which must be approved by the CNMV before the securities can be admitted to trading on the Spanish stock exchanges.

Prospectuses are divided into three sections: a share registration document disclosing material information about the issuer such as its business, financial situation, organisational structure, management and shareholders; a securities note describing the offered securities and the placement procedure; and a summary of both other sections.[16] Accordingly, its drafting requires the active involvement of all parties, naturally starting with the company but also with the underwriters (mainly to advise on the presentation of the company's business and strategy and the sector in which it operates), the auditors (to verify that financial information

15 Pursuant to Article 12.2 of RD 1310/2005, the CNMV may accept that financial statements cover a shorter period provided that investors are supplied with the necessary information to make an informed decision on the issuer and the securities.

16 See Annexes I, III and XXII to the Prospectus Regulation.

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is accurately disclosed) and the legal advisers (to draft legal sections and provide general advice on the entire document). Even more, the prospectus is prepared in close collaboration with the CNMV, which reviews interim drafts until the document satisfies, at its discretion, all regulatory requirements.[17] Only then will the prospectus be approved and registered with the CNMV and ready for distribution to the public. Since 2014, most prospectuses are drafted in English following an international format that allows not drafting an international memorandum to market the company's stock among foreign investors. This eliminates any potential inconsistencies or discrepancies between both documents and normally reduces the deal's workload.

Even in IPOs solely addressed to qualified investors[18] (which would not qualify as public offerings,[19] and are exempt from publishing an offering prospectus), it is market practice in Spain that prospectuses are registered with the CNMV before the underwriters begin building the book of investors. As these prospectuses later serve as the required listing prospectuses,[20] such early registration provides a great degree of certainty to the process in terms of timing and symmetry of information between the marketing materials and the prospectus.

Upon completion of the book-building period, which typically takes 10 days to two weeks, the company and the underwriters determine the IPO's final price[21] based on investors' interest, execute the underwriting agreement and allocate the shares among final investors. Within 36 to 48 hours of confirmation of the shares' final allocation (the date of which is considered the transaction date) and delivery of settlement details, shares are admitted to listing by the CNMV and the Spanish stock exchanges. In IPOs, shares typically start trading on the Spanish stock exchanges a couple of hours following admission by the CNMV and the offering is settled within two days of the transaction date.

ii Pitfalls and considerations

During the first stages of the IPO process, the company and its advisers must design the transaction and, potentially, adapt the issuer's corporate structure to the envisaged deal. A variety of issues must be considered at this stage.

First, the IPO may consist of either a primary or secondary offering. In a primary offering, the company going public offers newly issued shares and receives the proceeds, whereas in a secondary offering, existing shares are offered by one or multiple selling shareholders who wish to reduce their stake in – if not exit – the company (or potentially by the issuer if treasury shares are offered). Combined transactions in which the company and shareholders share the offer proceeds are also common in Spanish markets.

The company must also outline, with the underwriters' advice, the scope of business that may appeal to potential investors, and reorganise its corporate structure accordingly. In doing so, the impact on the deal's schedule should be assessed.

17 Article 24 of RD 1310/2005 establishes a 10-working-day period for the CNMV to approve the prospectus (or 20 working days if no securities of the issuer have previously been offered to the public or admitted to trading on a regulated market). However, this period restarts each time the CNMV reasonably requests supplementary information.

18 As defined in Article 2.1 of the Prospectus Directive and Article 39 of RD 1310/2005.

19 Article 38.1 of RD 1310/2005.

20 Article 13 of RD 1310/2005.

21 The prospectus only includes a non-binding price range of the shares.

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Likewise, the company must choose its target investors. The offering may be addressed solely to qualified investors (institutional offering), the general public (retail offering) or both. The ultimate choice should be made taking into account that institutional offerings are typically more flexible and require a lower level of disclosure whereas retail offerings provide a wider pool of funds (although they tend to be more closely scrutinised). Moreover, institutional offerings may include a family and friends tranche addressed to up to 150 investors, which allows the issuer to benefit from the flexibility of institutional offerings while enlarging the target public.[22]

Another significant factor when designing an IPO is its territorial scope, as international transactions must meet additional obligations. Apart from any requirements arising from dual or multiple listings (which are less common in the Spanish market), any international deal is subject to the extraterritoriality of US securities law. In fact, the US Securities Act of 1933 requires that any offering of securities – whether or not apparently related to the United States – be registered with the US supervisor except under various exemptions, two of which are highlighted here. First, a deal may be exempt from registration under Regulation S if it is an 'offshore transaction' and no direct selling efforts are made in the United States by either the company, its shareholders, the underwriters or their respective affiliates. Second, a deal may be exempt from registration under Rule 144A of the Securities Act of 1933 if it is addressed exclusively to qualified institutional buyers, as defined therein.[23] The nature of extraterritoriality makes it necessary to engage US legal advisers in any international IPO.

From a contractual perspective, a company going public must determine whether it must obtain waivers from third parties, or amend or terminate its contracts with related parties, shareholders, partners or others in view of its imminent listing.[24] In general, the company should ensure that any related-party transaction is properly documented, carried out at arm's length and made public. As for shareholders' agreements, any agreement restricting the free transferability of the company's shares or regulating shareholders' voting rights must be disclosed to the CNMV when the company becomes public.[25] Further, any concerted action among shareholders should be performed prior to the IPO to avoid the obligation to launch a mandatory tender offer for the company's entire share capital.[26]

On a separate note, a company contemplating an IPO must comply with various rules concerning publicity on the transaction. In short, any information on the transaction that is disclosed orally or in writing for advertising or other purposes must be consistent with the information contained in the prospectus[27] (which, in turn, must include all information necessary to allow investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and the rights attached to

22 Such option was first implemented in Spain in 2017.

23 Michael Willisch, 'Rule 144A and Regulation S. An introduction for Spanish Companies' in *Revista de derecho del mercado de valores* 188-4113, 2008, pp. 457–470.

24 See Section IV.

25 Article 531 of the consolidated text of the Companies Act, approved by Royal Legislative Decree 1/2010 of 2 July (the Spanish Companies Act).

26 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids and Royal Decree 1066/2007 of 27 July on the rules applicable to tender offer for securities.

27 Article 15.4 of the Prospectus Directive and Article 12 of Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing the Prospectus Directive (Delegated Regulation (EU) 2016/301).

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the securities underlying the IPO).[28] This principle enables the company to control the information on which investors will base their investment decision, thereby mitigating the risk of future claims by investors. Thus, any marketing materials – usually prepared by the underwriters – must be thoroughly reviewed from this perspective.

This issue caused some controversy in 2016, when a new EU regulation developing the concept of consistency entered into force.[29] In particular, the new EU regulation prevents disclosure of 'alternative performance measures' (APMs) concerning the issuer unless they are included in the prospectus. APMs are financial measures on performance, financial position or cash flows that are not prepared under the applicable financial reporting standards (which include measures as widespread as earnings before interest, tax, depreciation and amortisation). Coupled with ESMA guidelines on the disclosure of alternative performance measures in the prospectus[30] and the CNMV's efforts to observe them, it seemed it would restrict the way in which the company – and more probably the bankers – wish to present the company's financial situation. Issuers nevertheless promptly started to include APMs in their financial statements and auditors have made all efforts to reconcile them with financial statement items, which enables their disclosure in the IPO prospectus and thus in marketing materials.

Authorities' focus has more recently shifted to defining statements or indicators that can be taken as profit forecasts or estimates, and differentiating them from other information as objectives or trend information. The main disadvantages of disclosing profit forecasts or estimates for issuers are increased liability towards investors, as well as higher transaction costs in terms of price and time given that the Prospectus Regulation requires that issuers who disclose profit forecasts in their prospectuses attach a report prepared by independent accountants or auditors stating that in their opinion the forecast or estimate has been compiled properly on the stated basis and that the basis is consistent with the issuer's accounting policies.[31]

iii Considerations for foreign issuers

The Prospectus Directive created a cross-border passport mechanism that validates any prospectus approved in a given Member State (the 'home' Member State) throughout the European Union, subject only to the condition that the home Member State certifies the approval of the prospectus to any host Member State and the ESMA in accordance with the Prospectus Directive. The host Member State normally requests the translation of the prospectus into a language accepted by it or a language customarily used in the sphere of international finance. The summary of the prospectus will be translated into the official language of the host Member State.[32]

28 Article 5 of the Prospectus Directive and Article 16 of RD 1310/2005.

29 Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing the Prospectus Directive with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending the Prospectus Regulation.

30 ESMA Guidelines on Alternative Performance Measures, which were most recently updated on 5 October 2015, recommend, among other things, presenting these measures in a clear, comprehensible way and with less prominence or emphasis than measures directly stemming from financial statements; reconciling them with the financial statements; explaining their relevance and reliability; and providing comparisons for the corresponding previous years.

31 ESMA's Q&A on prospectuses was last updated in March 2018 to define and provide examples of profit forecasts according to the provisions of the Prospectus Regulation.

32 www.esma.europa.eu/sites/default/files/library/2015/11/2014-esma-342_languages_accepted_for_the_purpose_of_the_scrutiny_of_the_prospectus.pdf.

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This expeditious process has proven highly beneficial for companies undertaking dual or multiple listings in regulated EU markets. The new prospectus regulation, mentioned in Section II.iii, seeks to strengthen this mechanism in order to ultimately ensure the effective functioning of the capital markets union.

Conversely, an IPO of a company incorporated in a country outside the European Union that identifies Spain as the home Member State requires the CNMV's approval. In this case, the prospectus may be drawn up in accordance with the legislation of that country if it complies with international standards and imposes information requirements equivalent to those in the Prospectus Regulation.[33]

IV POST-IPO REQUIREMENTS

Spanish law imposes additional obligations on public companies to ensure adequate levels of transparency, accountability and good governance, the majority of which are based on EU regulations. The following is a non-exhaustive summary of the main obligations of Spanish companies with shares listed on a regulated market (and, eventually, of all listed companies having identified Spain as their home Member State).

In terms of corporate governance, Spanish companies with shares listed on a regulated market are subject to various special provisions concerning their shares, general shareholders' meetings and management.[34] For instance, they must establish a corporate website and approve specific internal regulations, including regulations on general shareholders' meetings and the board of directors. These companies are mandatorily managed by a board of directors, the composition and functioning of which is subject to specific rules, and they are required to create an audit committee and an appointments and remunerations committee.

With regard to disclosure requirements, Spanish companies with shares listed on a regulated market must periodically approve and publish an array of documentation on their corporate websites as well as on that of the CNMV:[35]

a audited annual financial statements, half-year financial statements (which may be voluntarily audited or reviewed by the company's auditor) and quarterly financial statements;[36]

b an annual corporate governance report detailing the structure of the company's governing system and how it functions in practice;[37] and

c an annual report on directors' remuneration describing remuneration received (or to be received) by directors in connection with their position or for fulfilling their executive duties, as well as policy on the remuneration of directors.

33 Article 20 of the Prospectus Directive and Article 31 of RD 1310/2005.

34 Title XIV, 'Public listed companies', of the Spanish Companies Act.

35 See Directive 2004/109/EC of 15 December on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Royal Decree 1362/2007 of 19 October on transparency requirements.

36 In each case, individual and, if applicable, consolidated financial statements.

37 Among others, the annual corporate governance report must include a list of all related-party transactions carried out with the company's shareholders, directors and senior managers or within the company's group during the relevant period.

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From a market-abuse perspective,[38] companies with shares traded on the Spanish stock exchanges must disclose, as soon as possible, all inside information[39] directly pertaining to the company. Inside information is typically disclosed by notifying the CNMV and posting the information on the company's website. However, disclosure of inside information may be delayed if immediate disclosure is likely to prejudice the issuer's legitimate interests, the delay is not likely to mislead the public and the company is able to ensure the information's confidentiality. Moreover, these companies may not operate on the basis of inside information (which also applies to treasury-stock transactions), and they must disclose any acquisition of treasury shares exceeding, in aggregate, 1 per cent of the company's voting rights.

Shareholders and directors of companies having identified Spain as the home Member State are also subject to various disclosure obligations, which primarily relate to their stake in the company's share capital, net short positions and remuneration systems.

V OUTLOOK AND CONCLUSION

Looking forward, there are some IPO projects ongoing but the outlook is rather uncertain. Although macroeconomic conditions are increasingly improving, domestic political distress (mainly arising from the national government's fragmentation) along with international geopolitical uncertainties relating to, among others, the Brexit outcome and US external-trade policies, have led to a decrease in investor confidence and hinder the return of Spanish listing activity to robust, sustainable levels.

Nevertheless, in the medium term, the implementation of the envisaged measures under the capital markets union should simplify and reduce the costs of the IPO process in Spain – and throughout the European Union – and ease small companies' access to alternative sources of funding.

38 See Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April on market abuse and its implementing regulations.

39 Inside information is information of a precise nature that is not public and that directly or indirectly relates to the company or financial instruments issued by it and that, if it were made public, would be likely to have a significant effect on the prices of the instruments issued by the company.

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Chapter 16

SWITZERLAND

Philippe A Weber, Thomas M Brönnimann and Christina Del Vecchio[1]

I INTRODUCTION

With its modern financial market infrastructure and competitive regulatory framework, Switzerland offers issuers and investors alike an attractive capital markets environment. Issuers listing on exchanges in Switzerland stem from a range of industries, including the financial, retail, industrial and pharmaceutical industries. Generally, domestic companies tend to list in Switzerland; however, foreign companies also consider either a primary or secondary listing in Switzerland to gain better access to international institutional investors. In addition, the Swiss market has strong representation from certain industries that may attract foreign peer companies, especially with regard to the pharmaceutical, biotechnology and financial services industries.

II GOVERNING RULES

i Main stock exchanges

SIX Swiss Exchange (SIX) operates the principal equity exchange in Switzerland, with 261 companies listed as at 31 December 2018 (of which 222 were Swiss-domiciled issuers). As at 31 December 2018, the market capitalisation of all SIX-listed shares of issuers domiciled in Switzerland and Liechtenstein was approximately 1.4 trillion Swiss francs. The only other equity exchange in Switzerland is BX Swiss (BX). BX is much smaller than SIX and mainly targets small and medium-sized Swiss enterprises. As at 31 December 2018, 20 companies were listed on BX.

ii Overview of listing requirements

Issuers seeking to list their shares on a stock exchange in Switzerland must comply with the applicable exchange listing rules. The listing rules issued by the SIX Exchange Regulation (the SIX Listing Rules), for example, are largely modelled on the EU Prospectus Directive, though they are less extensive and more flexible. The SIX Listing Rules and various additional rules and directives issued by the SIX Exchange Regulation set out the main steps a company must undertake for a listing of its shares. In particular, the SIX Listing Rules require that a listing application be submitted and a prospectus be approved and published prior to the shares being admitted to trading on SIX. The SIX prospectus review and approval process takes 20 trading days. Generally, the SIX approval process for prospectuses is less onerous

1 Philippe A Weber is the managing partner, Thomas M Brönnimann is a partner and Christina Del Vecchio is a counsel at Niederer Kraft Frey Ltd.

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than in most EU jurisdictions and the United States. For example, the review by SIX is typically limited to a scheme rule check, and amended drafts of the listing prospectus can be filed within the SIX 20-trading-day review period without adversely affecting the offering's timeline. In practice, the approval process is structured so that SIX approval is obtained before printing of the prospectus and the start of the offering period.

The issuance or placement of equity securities (as opposed to their listing) does not currently require registration with or authorisation by any regulatory body in Switzerland. However, pursuant to the new prospectus regime under the Financial Services Act of 15 June 2018 (FinSA), which is expected to enter into force on 1 January 2020, any prospectus for a public offering will need to be approved by a competent authority (see Section V).

Listing application

Either the issuer or a SIX-recognised representative prepares and submits the listing application to the SIX Exchange Regulation. The listing application must contain a short description of the equity securities to be listed as well as a request for the planned first trading day. Generally, the following documentation must be submitted to the SIX Exchange Regulation, together with the duly signed listing application:

a the listing prospectus (described in greater detail in Section II.ii, 'Prospectus');

b an official notice pursuant to Articles 40a and 40b of the SIX Listing Rules (if required). An official notice is required:
- if the listing prospectus is not provided in full to potential investors to advise investors where the listing prospectus can be obtained;
- to set out any material changes made to the information contained in the listing prospectus between the date of its publication and the listing date; or
- to advise of any supplements to the listing prospectus;

c a copy of the current extract from the commercial register of the issuer;

d a copy of the valid articles of association of the issuer;

e evidence that the auditors of the issuer fulfil the requirements of auditors for public companies;

f an original of the duly signed declaration by the lead manager of the issuer that the free float of relevant equity securities is sufficient;

g if necessary, an original of the duly signed declaration by the issuer that any printed share certificates will comply with the SIX printing regulations. In the case of book-entry securities, the issuer must submit an explanation of how the holders of such securities may obtain proof of their holding; and

h a duly signed declaration by the issuer in accordance with Article 45 of the SIX Listing Rules stating, among others, that its responsible bodies are in agreement with the listing and there has been no material deterioration in the issuer's assets and liabilities, financial position, profits and losses, and business prospects since the listing prospectus was published.

Regulatory standards

In preparing the listing application on SIX, issuers must indicate which regulatory standard they are applying to and demonstrate their satisfaction of the corresponding requirements.

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The following main regulatory standards are available for listings on SIX:

a The International Reporting Standard. This is aimed at international investors. It has the most comprehensive transparency requirements and requires the application of International Financial Reporting Standards (IFRS), US generally accepted accounting principles (GAAP) or another internationally recognised accounting standard.

b The Swiss Reporting Standard. This is aimed at domestic investors. Issuers may apply Swiss GAAP FER (the GAAP applied in Switzerland), with the other listing requirements remaining consistent with the International Reporting Standard.

c The Standard for Investment Companies. This is for the listing of equity securities issued by investment companies (i.e., companies that solely invest in collective investment schemes and that do not perform any other commercial activity).

d The Standard for Real Estate Companies. This is for the listing of equity securities issued by real estate companies (i.e., companies that generate at least two-thirds of their revenue from real estate-related activities).

Minimum equity capital requirements

Pursuant to the regulatory standards, an issuer's consolidated equity capital, as reported on its consolidated balance sheet as of the first day of trading, must amount to at least 2.5 million Swiss francs for all the standards listed above.

Financial track record

Pursuant to the regulatory standards, an issuer must have existed as a company for at least three years and have produced audited annual financial statements for three full financial years preceding the listing application.

The three-year rule does not apply to companies that are listed under the Standard for Investment Companies or the Standard for Real Estate Companies; however, companies with a shorter financial history may benefit from exemptions granted by the SIX Regulatory Board (if necessary) where:

a it appears in the interests of the issuer or of the investors, namely in cases where the listed entity:
- is the result of a corporate reorganisation such as a merger, spin-off, or other transaction in which a pre-existing company or portions thereof are continuing as commercial entities; or
- has not yet been able to present financial statements for the prescribed period, but nonetheless wishes to access the capital markets to finance its strategy for growth (young companies); and

b the SIX Regulatory Board has a guarantee that investors are adequately informed to form a qualified opinion on the issuer and the admitted securities.

Where exemptions are granted, issuers must either comply with stricter transparency requirements, such as quarterly reporting until annual accounts for three complete financial

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years are available (in connection with young companies) or provide additional financial information, such as *pro forma* financials (in the case of listed entities resulting from corporate reorganisation).[2]

Minimum free float

At least 20 per cent of all of the issuer's outstanding securities of the same category must be publicly owned with capitalisation of at least 25 million Swiss francs. The definition of free float for purposes of the SIX Listing Rules is set out in the Directive on the Distribution of Equity Securities.[3]

Prospectus

In connection with initial public offerings (IPOs), issuers are currently required to publish a prospectus pursuant to both Swiss corporate law (the Swiss Code of Obligations of 30 March 1911 (CO)) and the SIX Listing Rules. The requirements of these two regimes are discussed in greater detail below. However, the new prospectus regime under the FinSA includes certain requirements regarding the content of prospectuses, which will need to be reviewed and approved by a competent authority with regard to its completeness, coherence and comprehensibility. It is expected that SIX and BX will apply to be appointed as a competent authority to approve prospectuses. See Section V.

Issuance or offering prospectus

Article 652a CO requires an offering prospectus when new shares are offered to the public in Switzerland. The offering prospectus must include information on:

a the content of the existing entry in the commercial register, with the exception of details relating to the persons authorised to represent the company;

b the existing amount and composition of the share capital, including the number, nominal value and type of shares, and the preferential rights attaching to specific share classes;

c the provisions of the articles of association relating to any authorised or conditional capital increase;

d the number of dividend rights certificates and the nature of the associated rights;

e the most recent annual accounts and consolidated accounts with audit report and, if more than six months have elapsed since the accounting cut-off date, the interim accounts;

f the dividends distributed in the past five years or since the company was established; and

g the resolution concerning the issue of new shares.

The offering prospectus must be made available to investors, but is not currently subject to any filing or approval requirements with any Swiss regulator. However, pursuant to the Swiss

2 For further details, see the SIX Directive on Exemptions regarding Duration of Existence of the Issuer, available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_02-DTR_en.pdf, and the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus, available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_15-DCFH_en.pdf.

3 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_03-DDES_en.pdf.

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financial market reforms under the FinSA, any prospectus for a public offering will need to be reviewed and approved by a competent authority (see Section V). Nevertheless, a breach of the CO prospectus requirements may, in any event, lead to prospectus liability claims.

The question of whether a prospectus complies with the CO prospectus requirements is also relevant for non-Swiss issuers offering shares to the public in Switzerland without listing shares on SIX. Typically, additional disclosure items, to the extent required, will be included in a Swiss wrapper or in the prospectus.

Listing prospectus

The SIX Listing Rules require that the prospectus be approved and published prior to the shares being admitted to trading on SIX. Often, Swiss issuers that list shares on SIX prepare a prospectus that complies with both the SIX Listing Rules and the CO prospectus requirements: an 'offering and listing prospectus'.

In essence, the listing prospectus must provide sufficient information for competent investors to reach an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer, as well as of the rights attached to the equity securities. In addition, specific mention must be made of any special risks. An issuer of equity securities on SIX must prepare a listing prospectus that contains information prescribed in Scheme A.[4] Separate schemes are available for the listing of equity securities of investment companies (Scheme B) and real estate companies (Scheme C).

Generally, the following information is included in listing prospectuses:

a a summary;
b general information about the issuer, such as its name, registered office, legal form and purpose;
c information on the securities offered, including the rights attached to such securities and on the offering;
d risk factors;
e use of proceeds;
f dividends and other distributions;
g capitalisation;
h information on the business activities of the issuer, its turnover, assets and investments;
i information on the board of directors and the management of the issuer as well as its auditors;
j shares, share capital and voting rights;
k significant shareholders (this information must be provided in accordance with Article 120 of the Financial Markets Infrastructure Act of 19 June 2015 (FMIA) and the corresponding implementing ordinances);
l offering restrictions;
m taxation;
n audited annual consolidated financial statements for the past three full financial years prepared in accordance with the applicable financial reporting standard and, if the balance sheet in the last audited annual financial statements is more than nine months old on the date on which the listing prospectus is to be published, additional interim financial statements; and
o persons responsible for the content of the listing prospectus.

4 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_03-SCHA_en.pdf.

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In addition, an industry overview and market trends section, as well as a management discussion and analysis of financial condition and results of operation section, are typically included in the listing prospectus, but are not technically required. Finally, information contained in previously or simultaneously published documents can be incorporated by reference into the listing prospectus.

In terms of companies applying for the listing of their equity securities on the International Reporting Standard of SIX, financial statements need to be prepared in accordance with IFRS or US GAAP. If a company applies for listing on the Swiss Reporting Standard, the preparation of its financial statements must be in accordance with Swiss GAAP FER or the standard according to the Banking Act. Swiss GAAP FER is comparable with IFRS or US GAAP, but is more principle-based and gives a true and fair view of the net assets, financial position and operational results. A working capital statement is required under IFRS and US GAAP as well as under Swiss GAAP FER and the standard according to the Banking Act (for a more detailed discussion regarding SIX regulatory standards, see Section II.ii, 'Regulatory standards').

In addition, if an issuer's financial history is rather complex, SIX may require additional financial disclosure, such as *pro forma* financials as further described in the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus.[5] In light of this, it is highly recommended to approach SIX in advance to discuss any nuances or complexity to an issuer's financial statements.

Issuers that are not incorporated in Switzerland may also apply the accounting standards of their home country (i.e., home country standard), provided that these standards are recognised by the SIX Regulatory Board. Currently, the only additional standard recognised by the SIX Regulatory Board for the listing of equity securities by foreign issuers is IFRS EU.

iii Overview of law and regulations

Switzerland is not a member of the European Union or the European Economic Area. Accordingly, the EU Prospectus Directive and other EU regulations relating to IPOs are not applicable to IPOs conducted in Switzerland. In Switzerland, various regulatory and self-regulatory bodies are involved in the rule-making and enforcement of such rules in connection with IPOs and equity securities markets and exchanges pursuant to authority vested in them from Swiss legislation. Below is an overview of the applicable legislative framework followed by summaries of the main regulatory and self-regulatory authorities mandated with the implementation, supervision and enforcement of such legislation.

Legislative framework

Generally, the current legislative framework with regard to IPOs and equity securities markets and exchanges in Switzerland consists of the following:

a the CO;[6]

b the FMIA;[7]

5 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_15-DCFH_en.pdf.

6 Unofficial English translation at www.admin.ch/opc/en/classified-compilation/19110009/201704010000/220.pdf.

7 Unofficial English translation at www.admin.ch/opc/en/classified-compilation/20141779/201901010000/958.1.pdf.

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c the Financial Market Infrastructure Ordinance of 25 November 2015;[8] and
d additional ordinances issued by the Swiss Financial Market Supervisory Authority (FINMA).

Supervisory bodies

FINMA

The main financial market regulatory body in Switzerland is FINMA. It delegates certain aspects of the regulation of the Swiss financial markets to a number of private or semi-private self-regulatory bodies that it licenses and supervises. For example, SIX Group Ltd is mandated with the issuance, monitoring and enforcement of regulations related to SIX.

Regulations governing Switzerland's financial market are currently undergoing significant revisions, including certain changes to the supervisory role and competencies of FINMA and the other regulatory bodies responsible for overseeing the Swiss financial markets. Pursuant to these reforms, FINMA will retain its broad mandate and continue to operate alongside the other regulatory bodies. However, following the full implementation of the FMIA, the FinSA and the Financial Institutions Act of 15 June 2018 (FinIA), FINMA will also become the competent supervisory authority for ensuring compliance with these new pieces of legislation. In addition, FINMA will be granted new enforcement tools under the FinIA and there will be increased cooperation and exchanges of information between FINMA and other Swiss and foreign supervisory, regulatory, governmental and judicial authorities (see Section V).

The SIX Regulatory Board

One of the most important self-regulatory bodies under FINMA's supervision with regard to equity markets and exchanges in Switzerland is the SIX Regulatory Board.[9] It is responsible for issuing the regulations applicable to SIX issuers (i.e., rules and directives) and participants (i.e., the Rule Book and participant directives).

The SIX Exchange Regulation

The SIX Exchange Regulation,[10] an independent and autonomous entity within SIX Group Ltd, regulates and monitors participants and issuers listed on the SIX. In particular, it carries out tasks prescribed under Swiss legislation, and under the rules and regulations issued by the SIX Regulatory Board, and monitors compliance with these regulations. One of its essential tasks is the approval of the listing of securities on SIX, and the issuance of various rules and directives in connection therewith. The SIX Exchange Regulation is permitted, subject to the relevant rules, to prescribe sanctions or submit sanction proposals, as well as inform the chair of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

8 Unofficial English translation at www.admin.ch/opc/en/classified-compilation/20152105/201901010000/958.11.pdf.

9 www.six-exchange-regulation.com/en/home/profile/regulatory-board.html.

10 www.six-exchange-regulation.com/en/home/profile/six-exchange-regulation.html.

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The SIX Disclosure Office

The SIX Disclosure Office supervises and oversees the compliance with disclosure obligations of qualified shareholdings – including disclosure of shareholdings in connection with IPOs – receives notifications of changes in shareholdings, grants exemptions and relief from certain reporting obligations and delivers decisions on whether a reporting obligation exists.[11]

III THE OFFERING PROCESS

i General overview of the IPO process

The timetable of an equity offering depends on both the type and the size of the offering. In addition, certain offerings may require a greater amount of preparation on the part of the issuer, particularly with regard to corporate governance and structure, and accounting and reporting requirements. Nevertheless, IPOs in Switzerland generally take between four and six months, and an indicative IPO can generally be organised into the following five phases.

The IPO planning and preparation phase

During the IPO planning and preparation phase, there are likely to be many work streams operating in parallel, which may overlap. During this phase, these work streams generally address the following tasks:

a discussing and developing the issuer's strategy, business plan, equity story (i.e., investment case) and offering structure;

b establishing a timetable and holding kick-off meetings;

c selecting the responsible team, both internally at the issuer and externally, including the underwriters, bookrunners and any other managers (i.e., the banking syndicate), and legal and financial advisers;

d making any necessary changes in respect of the company's corporate structure to meet legal or operational requirements (the length of this phase depends on the required restructurings (if any) and the issuer's focus);

e considering matters concerning capital, financial and accounting or tax structures; and

f beginning due diligence exercises (which include business, financial and legal due diligence; due diligence exercises continue throughout the process).

The drafting phase

During the drafting phase, the issuer and its other advisers:

a draft the prospectus and other key legal documents;

b develop marketing and presentation materials, such as analyst and pilot fishing investor presentations;

c engage with the issuer's auditors regarding presentation of financial information in the prospectus and delivery of comfort letters; and

d attend courtesy meetings at SIX to discuss the contemplated offering structure and content of the prospectus.

11 www.six-exchange-regulation.com/en/home/investor/obligations/disclosure-of-shareholdings/board.html.

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The negotiating and investor education phase

During the negotiating and investor education phase, the IPO work streams generally address the following tasks:

a shareholders' resolutions in respect of the offering and capital increase (if applicable);
b the negotiation of underwriting agreement and any sub-underwriting agreements (if applicable);
c delivery of the analyst presentation and review of research reports;
d preparation of the SIX listing application;
e submission of the listing application together with the preliminary listing prospectus and any additional required documents;
f a draft of the roadshow presentation and other materials for analysts, press and investors;
g the response to SIX comments (if applicable);
h preparation of interim financial statements (if applicable); and
i issuance of a press release regarding the issuer's intention to float, followed by the publication of analysts' research reports.

During this period, issuers typically receive approval from the SIX Exchange Regulation for the listing of equity securities.

The pre-trading and marketing phase

During the period from approximately two weeks prior to the first day of trading, the IPO work streams generally address the following tasks:

a approval of the prospectus and underwriting agreement by the board of directors of the issuer;
b final price discussions with the board of directors of the issuer, and setting of a price range;
c execution of the underwriting agreement; and
d beginning of the offer period, publishing of the prospectus, starting of the price-fixing process (e.g., the book-building process) and beginning of roadshow presentations.

Approximately one to two trading days prior to the first day of trading, the IPO work streams generally address the following tasks:

a subscription and payment of the nominal value of the equity securities to be offered (if applicable);
b registration of the capital increase in the commercial register of the issuer (if applicable);
c determination of the final offer price, and execution of the pricing agreement to the underwriting agreement and pricing supplement to the offering and listing prospectus (if applicable); and
d allocation of shares to investors.

The first trading day and aftermarket phase

Following the first trading day, the IPO work streams generally address the following tasks:

a stabilisation of the shares along with the disclosure of stabilisation measures (within five trading days);
b settlement and payment of net proceeds (usually within two trading days of the first trading day); and
c exercise of the overallotment option (30 calendar days after first trading day) and disclosure of exercise of the overallotment option (within five trading days of the exercise).

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ii Considerations for foreign issuers

Foreign issuers of equity securities are subject to certain additional listing requirements as set out in the SIX Directive on the Listing of Foreign Companies.[12] However, generally, these additional requirements are not very onerous and, in practice, they do not pose particular issues. An especially attractive aspect of listing in Switzerland is that currently no government agencies are involved in the listing process, which results in a much faster and flexible process. In some respects, SIX views itself as a market participant rather than exclusively being a supervisor, and this generally results in more accessibility and flexibility. In addition, the Swiss market has strong representation from certain industries that may attract foreign peer companies, especially with regard to the pharmaceutical, biotechnology and financial services industries.

Subject to certain conditions, Swiss law allows Swiss companies to prepare their accounts and to report in a foreign currency. Hence, if an EU or US company decides to list in Switzerland it can either list the shares of the foreign entity on SIX or change its domicile to Switzerland by setting up a new Swiss holding company and listing the shares of the new holding company on SIX. In either scenario, the issuer can continue to report in euros or US dollars. In addition, SIX also permits trading of equity securities in euros or US dollars. A change of domicile route is most often taken for tax or regulatory purposes.

Overview

As a general matter, the SIX Listing Rules and their implementing provisions apply equally to issuers that do not have their registered office in Switzerland and intend to list their equity securities on SIX. In addition to these provisions, there are specific requirements that only apply with regard to foreign issuers as set out in the SIX Directive on the Listing of Foreign Companies.[13]

In particular, a foreign issuer whose equity securities are not listed on another exchange recognised by the SIX Regulatory Board may only submit an application for a primary listing. For a primary listing, the foreign issuer must demonstrate that it has not been refused listing in its home country pursuant to investor protection legislation. This requirement is usually satisfied by an opinion delivered from an independent law firm or a relevant extract from the decision issued by the competent authority in the issuer's home country in connection with the registration process in question.

A foreign issuer whose equity securities are listed on another exchange recognised by the SIX Regulatory Board may, however, choose between a primary and a secondary listing on SIX. The same applies if a company is planning on listing simultaneously on another primary exchange and on SIX (a dual listing). In principle, exchanges that are members of the Federation of European Securities Exchange and the World Federation of Exchanges are recognised by the SIX Regulatory Board as having equivalent listing provisions.

In connection with the listing prospectus, foreign issuers must describe those publications in which announcements required by an issuer under the issuer's home country company law will appear. Further, the foreign issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX. In addition, the SIX Regulatory Board reserves the right to modify the listing procedure as appropriate

12 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf.

13 ibid.

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if, under the foreign issuer's home country's company law, the time at which the equity securities are legally created is not the same as that under Swiss law (i.e., by entry in the commercial register).

In addition to IFRS and US GAAP, foreign issuers who wish to list their shares on SIX according to the International Reporting Standard may also apply their home country standard, provided that these standards are recognised by the SIX Regulatory Board. Presently, the only additional standard recognised by the SIX Regulatory Board for such purpose is IFRS EU.

Secondary listing requirements

In connection with secondary listings, the applicable issuer requirements are deemed fulfilled if the equity securities are listed on a recognised exchange with equivalent listing provisions. This requirement is usually fulfilled with an opinion from counsel in the respective jurisdiction regarding the sufficiency of investor protection rules in such jurisdiction. Further, if an issuer submits an application for the listing of equity securities to SIX within six months of the same equity securities having been listed on the primary exchange, the SIX Regulatory Board will recognise the listing prospectus prepared in connection with the listing on the primary exchange as approved by the competent body for that exchange, provided that certain technical information (e.g., security number, paying agent, settling agent and trading currency) is added for the Swiss market.

However, if the listing on SIX occurs more than six months after the listing on the primary exchange, the issuer must submit a short-form prospectus that contains most of the information on the equity securities required by prospectus Scheme A, as well as a description of the issuer and a 'no material change clause'. The short-form prospectus must contain a reference to the secondary listing and to the trading currency on SIX. The short-form prospectus must also contain the audited annual consolidated financial statements for the past three full financial years, and if the balance sheet in the last audited financial statements is more than nine months old on the date on which the short-form listing prospectus is to be published, additional interim financial statements. Annual and any interim financial statements must be prepared in accordance with the financial reporting standards of the primary exchange and be submitted to the SIX Exchange Regulation.

The free float is considered adequate for a secondary listing if the capitalisation of the shares circulating in Switzerland is at least 10 million Swiss francs or if the applicant can otherwise demonstrate that there is a genuine market for the equity securities concerned.

IV POST-IPO REQUIREMENTS

The SIX Listing Rules and the various additional rules – in particular, the Directive on Regular Reporting Obligations for Issuers of Equity Securities, Bonds, Conversion Rights, Derivatives and Collective Investment Schemes[14] – set out the requirements for maintaining a listing on SIX, with a focus on periodic financial reporting, general reporting and disclosure obligations.

14 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_20-DRRO_en.pdf.

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An issuer of equity securities must comply with the following continuing obligations, among others, to maintain a listing on SIX:

a timely disclosure of any price-sensitive facts (*ad hoc* publicity) (SIX Directive on Ad Hoc Publicity);[15]

b publication of the annual report comprising the audited annual financial statements, in accordance with the applicable financial reporting standard and the corresponding audit report;

c publication of semi-annual financial statements;

d at the beginning of each financial year, publication of a corporate calendar covering at least the current financial year, which must be kept up to date;

e notification of any change in the rights attached to the listed equity securities, in good time before the entry into force of that change;

f regular reporting concerning information on the issuer, such as:
- change of name of the issuer;
- change of registered office;
- change of auditors;
- change of balance sheet date (closing of accounts for financial year);
- dividend payments;
- changes to the issuer's capital structure (e.g., a capital increase through the creation of conditional or authorised capital, or a capital decrease); and
- in respect of primary-listed foreign issuers, free float and shareholder structure;

g information on annual and extraordinary general meetings of shareholders;

h timely disclosure of transactions in the company's equity securities by members of the board of directors and senior management (regardless of the transaction value);

i publication of information relating to corporate governance (SIX Directive on Information relating to Corporate Governance);[16]

j payment of the annual listing fees; and

k disclosure of qualified shareholdings (the thresholds are 3, 5, 10, 15, 20, 25, 33 ⅓, 50 or 66 ⅔ per cent) (Article 120 FMIA).

V OUTLOOK AND CONCLUSION

The Swiss financial market regulatory framework is currently undergoing fundamental and comprehensive reforms. The main purposes of these reforms are to harmonise Swiss regulations with existing and new EU regulations, and to ensure access of Swiss financial institutions to the European market by fulfilling the equivalence requirements under Directive 2014/65/EU on markets in financial instruments.

These new financial market regulations are predominately set out in the:

a FMIA, which came into force on 1 January 2016;

b FinSA, which was adopted by the Swiss parliament on 15 June 2018; and

c FinIA, which was adopted by the Swiss parliament on 15 June 2018.

15 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_17-DAH_en.pdf.

16 Available at www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_16-DCG_en.pdf.

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The FMIA is of particular relevance in the context of equity capital markets in Switzerland, as it primarily regulates financial market infrastructure, disclosure of shareholdings, insider trading, market manipulation and public takeover offers. In addition, the FinSA includes, among others:

a a new prospectus regime for public offerings of securities in Switzerland;

b the codification of private placement exemptions and exemptions from the duty to publish a prospectus; and

c revisions of the prospectus liability regime.

On 15 June 2018, the Swiss parliament passed the FinSA and FinIA, and then, on 23 October 2018, the Swiss Federal Council presented the draft ordinances implementing the FinSA and the FinIA for public consultation until early February 2019. It is expected that the acts and implementing ordinances will enter into force on 1 January 2020. However, there will be a transition period in relation to full compliance with the final legislation.

i Proposed new prospectus regime

To establish a level playing field with internationally comparative prospectus disclosure standards, the FinSA sets out, among others, content and prior approval requirements for all public offering prospectuses. These requirements are substantially modelled on the EU Prospectus Directive. Currently, only stock exchange listing prospectuses must be approved before the first day of trading, and only in respect of equity securities.

Under the new legislation, subject to certain exemptions (such as eligible debt offerings), all prospectuses will need to be reviewed and approved by a competent authority with regard to completeness, coherence and comprehensibility before the publication of the offering or the admission to trading on a Swiss trading platform. Additionally, first-time issuers will be required to submit their prospectus for approval at least 20 calendar days before the publication of the offering or the admission to trading on a Swiss trading platform. It is expected that SIX and BX will apply to be appointed as a competent authority to approve prospectuses. In addition, in the context of IPOs, the approved prospectus will also need to be published at least six business days before the end of the offering period, therefore implementing a new minimum statutory requirement for the duration of IPOs.

ii Codification of private placement exemptions and exemptions from the duty to publish a prospectus

There are currently no express private placement safe harbours for share offerings under Swiss law. The FinSA includes express exemptions from the duty to publish a prospectus, which are largely consistent with the exemptions under the current EU Prospectus Directive and existing SIX regulations. The list of exempt transactions includes, among others, offerings limited to investors classified as professional clients and offerings addressed to fewer than 500 investors. Regarding private placements that do not require a prospectus, the FinSA further provides that offerees must, however, be able to take note of the essential information within the framework of the offer.

iii Proposed revisions of the prospectus liability regime

The FinSA also includes changes to the current prospectus liability regime. Although the current prospectus liability regime will largely remain intact, it was initially proposed that defendants will need to show that they did not act intentionally or negligently to avoid

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prospectus liability, rather than the burden of proof being borne by the claimants. However, the Swiss parliament did not adopt this shift in the burden of proof. Separately, the FinSA introduces administrative criminal liability in the case of intentional violation of Swiss prospectus rules, and certain limitations of liability in connection with required summaries and forward-looking statements included in prospectuses.

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Chapter 17

TURKEY

Ömer Çollak, Ökkeş Şahan and Nazlı Tönük Çapan[1]

I INTRODUCTION

There was a slowdown in initial public offering (IPO) activity in Turkey until 2017 and, therefore, few companies were considering going public in the Turkish equity market. To boost capital market activity, the Capital Markets Board of Turkey (CMB) and Borsa Istanbul introduced certain regulatory changes with the aim of easing Turkish IPOs.

To this end, in 2017, the CMB published a major change regarding sales periods and allocation percentages to attract Turkish companies to go public in Turkey rather than considering foreign exchanges. In addition, in an effort to encourage Turkish companies to go public on Borsa Istanbul, the CMB eased the conditions for IPOs in 2018, and the condition on preserving the sum of capital and legal reserves of the issuer should no longer be required for IPOs. In parallel with the CMB's initiative, Borsa Istanbul also introduced certain amendments to the listing principles in the Borsa Istanbul Listing Directive (the Listing Directive) with a view to asserting Borsa Istanbul as a viable option for IPOs in the minds of Turkish companies. Accordingly, companies that have not earned profit in the past two years or meet the shareholders' equity to capital ratio as required under the Listing Directive, or both, can still be listed in the BIST Stars market, provided certain conditions are met. Before this amendment, many companies with operating profits could not go public because of certain cost and expense items under their financials preventing them from satisfying profit conditions. Following the amendment, entities that have recorded operating profits as per its latest audited annual financials and relevant interim financials will be eligible for listing in the BIST Stars market. In addition, with the amendments to the Listing Directive, the issuing entity will be able to include new funds from the offering in its shareholders' equity to capital calculations.

Following the new legislative amendments with regard to incentivising Turkish companies to go public on Borsa Istanbul, Turkish corporates were looking forward to a record year for IPOs at the start of 2018, with a pipeline of approximately a dozen issuers, aiming to raise as much as US$4 billion collectively and promising to surpass the previous high of 2007. Two deals in February 2018 – for utility company Enerjisa Enerji and healthcare provider MLP Saglik Hizmetleri – were completed, although MLP Saglik Hizmetleri had to cut its asking price by 21 per cent.

However, the fate and success of Turkish IPOs remain inevitably tied to broader macroeconomic conditions, timing and investor sentiment. At a time of increased outflows from emerging markets and a strengthening US dollar, two IPOs in Turkey's fashion retail

1 Ömer Çollak is a partner, Ökkeş Şahan is a counsel and Nazlı Tönük Çapan is an associate at Paksoy.

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sector, namely Beymen and DeFacto, were cancelled, and one technology company, Penta Teknoloji (Turkish McVities and Godiva owner Yıldız Holding's technology distributor), was postponed in early May, weeks after the announcement of snap elections in Turkey. While the market remained volatile, Yıldız Holding completed the IPO of its discount grocery chain, Şok Marketler, in May 2018, only one week after the above-mentioned IPOs were postponed, raising a total of 2.3 billion Turkish lira, after reducing its asking price and adding a direct participation (by way of private placement) in the offering by Yıldız Holding. Furthermore, Turkish defence firm ASELSAN successfully completed a secondary public offering in June 2018, raising a total of 2.9 billion Turkish lira.

Although the markets have been silent since then, we expect the postponed Turkish IPOs to come to the markets at the first opportunity when the markets rebound, and the new welcome changes in the legislation since 2017 and 2018 will support the growth in Turkish capital markets in the year ahead.

II GOVERNING RULES

The CMB, Borsa Istanbul, the Central Registry Agency (MKK), and Istanbul Clearing, Settlement and Takasbank (Takasbank) are the main rule-making and enforcing authorities on IPOs in Turkey. The main legislation applicable to companies considering going public in Turkey are the:

a Capital Markets Law No. 6362;
b Communiqué on Shares No. VII-128.1;
c Communiqué on Prospectus and Issuance Document No. II-5.1;
d Communiqué on Sales of Capital Market Instruments No. II-5.2;
e Communiqué on Material Events No. II-15.1;
f Communiqué on Corporate Governance No. II-17.1;
g Listing Directive; and
h relevant directives, general letters and announcements of Takasbank and the MKK.

i Main stock exchanges

Borsa Istanbul is the sole exchange entity in Turkey in the form of a joint-stock company, bringing together all the exchanges operating in Turkey (i.e., former Istanbul Stock Exchange, the Istanbul Gold Exchange and the Derivatives Exchange of Turkey). Borsa Istanbul mainly consists of four markets, namely the Equity Market, the Debt Securities Market, the Derivatives Market, and the Precious Metals and Diamond Market.

Publicly held companies from various sectors are traded in the Equity Market, and this trading is carried out in the following sub-markets:

a the BIST Stars market, on which the shares of large-sized companies with a market value of free-float shares of at least 100 million Turkish lira, and other companies listed on the BIST 100 index, are traded;
b the Collective and Structured Products Market, on which the shares of securities investment companies, real estate investment companies, venture capital investment companies, warrants issued by intermediary institutions and exchange-traded funds are traded;
c the BIST Main market, on which the shares of medium-sized companies with a market value of free-float shares between 25 million and 100 million Turkish lira are traded;

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d the BIST Emerging Companies Market, on which the shares of emerging companies with a market value of free-float shares of less than 25 million Turkish lira are traded;

e the Pre-Market Trading Platform, on which the shares of certain companies determined by the CMB pursuant to its Decision No. 17/519, dated 3 June 2011, have been admitted to trading;

f the Watchlist Market, on which the shares of companies under special surveillance and investigation owing to extraordinary situations with regard to transactions on Borsa Istanbul, insufficient compliance with disclosure requirements, or other events that may necessitate a temporary or permanent suspension of the trading are traded; and

g the Equity Market for Qualified Investors, where the shares of companies are;
- issued for direct sale to qualified investors as defined under relevant legislation of the CMB (CMB-qualified investors) without being publicly offered; and
- traded only among qualified investors of the CMB.

In addition to these seven market segments, an Official Auction Market may be opened when necessary, allowing the trading of stocks by courts, executive offices and other official entities in a separate market.

There is one other market, namely the Primary Market, on which the shares in companies being publicly offered and listed for the first time on Borsa Istanbul, and any additional shares offered following rights offerings of companies listed on Borsa Istanbul, are traded. In addition to these markets, there are two different transaction structures that are conducted on the Equity Market. Block trades of listed stocks are conducted as specifically regulated wholesale transactions, and pre-emption rights during rights issues (granting the right to subscribe for newly issued shares) are traded separately as pre-emption right transactions.

As at the end of 2018, there were 414 companies in total traded in the Equity Market, of which 150 companies were in the BIST Stars market and 145 companies were in the BIST Main market. Generally, domestic companies tend to list their shares at home. Overseas companies do not tend to list in the Turkish market.

ii Overview of listing requirements

The issuer shall prepare a prospectus used for domestic offering, submit it to the CMB for approval and also apply to Borsa Istanbul to get the offered shares listed. The major requirements for launching an IPO and getting the offered shares listed are as follows:

a the company's articles of association must be amended to comply with the CMB rules and regulations;

b there must be nothing that restricts the transfer or trading of the equity securities to be traded on Borsa Istanbul, or prevents shareholders from exercising their rights; and

c the issuer's share capital must:
- be fully paid in;
- except for the funds specifically permitted by law, have been free from any revaluation funds or similar funds in the two years preceding the application for the public offering; and
- regarding the total amount of non-trade related party receivables, not exceed 20 per cent of the issuer's total receivables or 10 per cent of its total assets.

The issuer must pay to the CMB a fee that is equal to the sum of 0.1 per cent of the difference between the nominal value of the offering shares and their offering price in the IPO, and 0.2 per cent of the nominal value of any shares that are not being publicly offered.

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The Listing Directive regulates the listing and trading of securities through a public offering, through a private placement without a public offering and to qualified investors. Under the CMB, only joint-stock companies can become public companies and list their shares on Borsa Istanbul. To list and trade securities on Borsa Istanbul, a company must have been incorporated for at least two years in accordance with the relevant CMB regulations.

The company must meet all the conditions of the group of the market to which it belongs, and the groups are generally determined by the value of the shares offered to the public.

The BIST Stars market Group 1

Under the BIST Stars market Group 1, the following rules apply:

a the market value of shares offered to the public must be at least 250 million Turkish lira;
b the total market value of the company must be at least 1 billion Turkish lira;
c profit must have been earned in the past two years;
d the minimum ratio of nominal value of publicly offered shares to paid-in capital must be 5 per cent; and
e the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be greater than 3:4.

The BIST Stars market Group 2

Under the BIST Stars market Group 2, the following rules apply:

a the market value of shares offered to the public must be at least 100 million Turkish lira;
b the total market value of the company must be at least 400 million Turkish lira;
c profit must have been earned in the past two years;
d the minimum ratio of nominal value of publicly offered shares to paid-in capital must be 10 per cent; and
e the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be greater than 1:1.

The BIST Main market Group 1

Under the BIST Main market Group 1, the following rules apply:

a the market value of shares offered to the public must be at least 50 million Turkish lira;
b there is no total market value requirement;
c profit must have been earned in the past two years;
d the minimum ratio of nominal value of publicly offered shares to paid-in capital must be 15 per cent; and
e the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be greater than 1:1.

The BIST Main market Group 2

Under the BIST Main market Group 2, the following rules apply:

a the market value of shares offered to the public must be at least 25 million Turkish lira;
b there is no total market value requirement;
c profit must have been earned in the past two years;
d the minimum ratio of nominal value of publicly offered shares to paid-in capital must be 25 per cent; and
e the minimum ratio of shareholders' equity to the capital according to the most recent independently audited financial statements must be greater than 5:4.

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Other requirements

Under the Listing Directive, the following requirements also apply:

a two years must have elapsed since the company's establishment (however, this is not applied for holding companies that have been established for less than two years but own a minimum of 51 per cent in shares of a company that has been established for more than two years);

b the exchange management must have had the corporation's financial structure examined and accepted its ability to continue as a going concern;

c the company must have obtained confirmation from Borsa Istanbul that its financial structure is sufficient for its operations;

d the shares must not contain any clauses prohibiting the shareholders to use their rights;

e the company's articles of association must not include anything restricting the transfer or trading of the securities to be traded on Borsa Istanbul, or preventing shareholders from exercising their rights;

f there must be no major or material legal disputes that may adversely affect the production, operation or commercial activities of the company;

g there must be an independent legal report confirming that the establishment and the operation are in compliance with the relevant laws;

h there must be no material legal dispute that could adversely affect production or other commercial activities;

i the company must not have:
- suspended its operations for more than three months during the past two years, except for the causes accepted by the exchange management;
- applied for liquidation or concordat (a formal project regarding the liquidation of debts, prepared and presented by the debtor to the court for its approval, under which the debtor is released from his or her debts once the partial payments are completely made); and
- taken part in any other similar activity specified by the Borsa Istanbul board without the board's permission;

j the company's securities must comply with Borsa Istanbul's criteria on current and potential trading volumes; and

k the company's legal status in terms of its establishment, activities and shares must comply with the applicable law.

If an application is to be filed for an initial listing of shares, the listing application shall be made for the whole amount of capital of the relevant company.

iii Overview of law and regulations

The main regulations governing IPOs in Turkey are the Listing Directive, the Communiqué on Shares No. VII-128.1 and the Communiqué on Sales of Capital Market Instruments No. II-5.2, as mentioned above. With the purpose of attracting Turkish companies to list in Borsa Istanbul, the CMB eased local allocation requirements for IPOs by amending its Communiqué on Sales of Capital Market Instruments No. II-5.2 in parallel with Borsa Istanbul's approach on easing IPOs through an amendment to the Listing Directive.

To this end, on 1 December 2017, the CMB published its amendments to the Communiqué on Sales of Capital Market Instruments No. II-5.2 regarding sales periods and the allocation percentages of capital market instruments being offered to the public. The legally required percentage, designated for allocation of the nominal value of shares in

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a public offering to domestic investors, has now changed to 20 per cent (10 per cent for domestic institutional investors and 10 per cent for domestic individual investors), unlike the provisions in effect prior to this amendment, where issuers had to allocate at least 30 per cent of the nominal value of the shares to domestic investors (20 per cent for domestic institutional investors and 10 per cent for domestic individual investors). The CMB is also authorised to decrease such allocation percentages to zero or increase them by taking into consideration the market price of shares to be offered, market conditions and the issuer's request on similar grounds. Additionally, once the book-building commences, should there be under-subscription in the domestic market, an amount up to and including the size of the minimum domestic allocation can be reallocated and sold to international investors.

In addition to the amendment on allocations, the CMB paves the way for revising the offering price downwards through a public disclosure announcement without requiring any prospectus amendment. If the offering price is to be revised prior to initiating the sales or book-building period, the public offering may start on the second day at the earliest following the date of the public disclosure. If the offering price is to be revised within the sales or book-building period, at least two business days shall be added to the respective public offering period.

In 2018, the CMB amended the Communiqué on Shares No. VII-128.1 to ease the conditions required for IPOs in Turkey. Accordingly, the condition on preserving the sum of capital and legal reserves of the issuer should no longer be required for IPOs, and thus the issuers having total assets at a minimum amount of 10 million Turkish lira and net sales at a minimum amount of 5 million Turkish lira will be able to go public regardless of whether the sum of their capital and legal reserves is lost.

Prior to the CMB's amendments, the Listing Directive was also amended on 31 July 2017 and subsequently on 8 January 2018. Before the amendments, the issuing entity had to have an equity to capital ratio of greater than 3:4 for listing in the BIST Stars market Group 1, and 1:1 for listing in the BIST Stars market Group 2. Following the amendments, companies that have neither earned profit in the past two years nor meet the shareholders' equity to capital ratio, or both, can still be listed in the BIST Stars market, provided certain conditions are met. To satisfy the foregoing, the usual requirements have been eased by allowing the addition of the proceeds to be obtained from the offering as well as the nominal value of the newly issued shares to the shareholders' equity amount under the latest audited financials in calculating the required ratio. From now on, a company is able to include the new funds from the offering in its shareholders' equity to capital calculations. However, this is only possible where the shareholders' equity to capital ratio of the relevant company is positive as per its latest audited financials, and there is an operating profit as per its latest audited annual financials and relevant interim financials. These eligibility criteria are only applicable where there is issuance of new shares, other requirements of listing in the BIST Stars market are met and the board of Borsa Istanbul approves the listing application of the relevant company.

III THE OFFERING PROCESS

The issuer must prepare a prospectus used for a domestic offering and submit it to the CMB for approval of the primary listing of its shares. Additionally, the following steps are expected to be initially conducted by the company that is considering going public:

a organisation of an internal working group;
b articles of association amendment;
c due diligence work for the IPO;

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d preparation of the prospectus;
e selection of an intermediary institution and execution of a market advisory agreement;
f selection of an independent auditor and preparation of financial statements;
g agreement on comfort packages and legal opinions;
h drafting of the marketing presentations, followed by marketing and book-building;
i pricing and allocation of shares;
j simultaneous application to the CMB and Borsa Istanbul;
k approval of the CMB;
l settlement;
m commencement of trading on the relevant market of Borsa Istanbul upon its approval; and
n exercise of any over-allotment and price stabilisation.

The company whose shares are offered to the public shall complete the offering process with the assistance of an internal working group and external advisers. An internal working group must be set up within the company to carry out the required IPO process. In general, finance and public relations divisions, and other relevant mid-level managers of the company, are included in the internal working group.

To complete the full IPO process in a diligent, professional and adequate manner, professional external advisers shall also be appointed. In practice, the main external advisers are as follows:

a an intermediary institution shall be appointed by the company whose shares will be offered to the public and there shall be an agreement with the intermediary institution. There may also be a consortium (for example, in a relatively large IPO) rather than a single intermediary institution to take advantage of the syndicated efforts of several brokerage firms;
b an independent auditor shall prepare the financial statements of the company whose shares are offered to the public in accordance with capital markets regulations. These statements must be audited by an independent audit firm selected from the CMB's authorised list. The company must sign an audit contract with the selected audit firm;
c a financial adviser who generally advises on the timetable, structuring, valuation, price determination and so on shall also be appointed by the company whose shares are offered to the public;
d a research analyst is adequate for publishing research on the company;
e legal advisers shall be appointed to handle the legal aspects of the full IPO process (e.g., preparing the CMB application documents in line with the CMB and Borsa Istanbul regulations, carrying out legal due diligence, and negotiating the agreements between the company and external advisers); and
f public relations advisers are crucial for attracting as many investors as possible. They publish marketing materials and press releases that explain the company's core business activities.

i General overview of the IPO process

The IPO process may be structured in three ways: offer of existing shares (shareholders' sale as shareholders sell their shares through a public offering and the company does not receive any cash but the shareholders generate income); offer of shares resulting from a capital increase (by fully or partially restricting the pre-emptive rights of existing shareholders on newly issued shares on which the company obtains financial gain); or a combination of an offer of existing shares and capital increase.

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In addition, companies with over 500 shareholders (other than companies whose shares are already traded on the stock exchange or companies raising capital from the public using crowdfunding) are deemed to be public companies and are subject to the Capital Markets Law No. 6362 and its sub-regulations. Once a company reaches this threshold, this constitutes another way to join the market without raising capital. In such cases, the company must apply to Borsa Istanbul within two years of becoming a public company to have its shares listed and traded. If the company fails to do so, the CMB is authorised to decide to have either the shares of that company listed and traded on Borsa Istanbul or to take the company outside the scope of the Capital Markets Law No. 6362. If the company is taken outside the scope the Capital Markets Law No. 6362, it cannot continue to trade on the exchange as a listed company and it must therefore become a privately held company.

For primary listing of the company, the prospectus and other documents required under the capital markets legislation shall be submitted to the CMB to obtain its approval. The CMB will approve the prospectus if the information given is found to be complete according to CMB standards and regulations. Further, the CMB generally requests additional documents or information from the company whose shares will be offered to the public. In this case, the company shall be informed in writing or electronically within 10 business days of the date of application by the CMB, and accordingly required to complete the deficiency. Once the prospectus is approved by the CMB, it shall be published on the issuer's website within 15 business days of the date of receipt, as well as on the Public Disclosure Platform.

Although each deal is different, an indicative timetable for an IPO is set out below, where 'T' signifies the first day of trading on Borsa Istanbul.

Time line	Action
T minus 6 months to T minus 3 months	Preparation for the IPO: • the company's articles of association must be amended to comply with the CMB; • requirements for public companies must be considered; • advisers must be appointed; • eligibility for an IPO and listing is discussed; and • due diligence is started. After the preparation period, prospectus drafting commences.
T minus 3 months	First submission of the prospectus to the CMB.
T minus 2 months to T minus 1 month	First draft reports circulated and announcement of intention to float made.
T minus 5 weeks	Connected brokers' research is published and the research blackout period starts.
T minus 4 weeks	Borsa Istanbul approval of listing is received and the price range is set. The underwriting agreement is signed and the final valuation report is submitted to the CMB. Updated prospectus with price range (subject to approval by the CMB) is made available on the issuer's and domestic underwriter's websites. There is a management briefing to syndicate sales. The preliminary immediate or cancel (IOC) order with price range (subject to approval by the CMB) is distributed. The management roadshow starts.
T minus 3 weeks	Submission of final documents to the CMB. End of the period for informing investors of the IPO.
T minus 2 weeks	Prospectus approved by the CMB. International book-building starts and announcement of sales.
T minus 9 days	Domestic book-building starts.
T minus 6 days	The pricing decision is made. Domestic and international book-building ends.
T minus 4 days	If requested, the distribution list is sent to the CMB. Offer price and allocations announced. New shares are created, and shares can be sold or transferred.
T minus 1 day	Settlement and publication of final IOC.
T	First day of trading and start of price stabilisation (if any).

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ii Pitfalls and considerations

The main considerations in the IPO for companies are generally the costs and fees attributed to the process. Accordingly, the usual costs and fees for conducting an IPO and their percentage of the total amount of such costs and fees are as follows:

a brokerage and IPO consultancy fees (71 per cent);
b independent audit fees (5 per cent);
c legal consultancy fees (9 per cent);
d CMB fees (4 per cent);
e MKK fees (1 per cent);
f Borsa Istanbul listing fees (2 per cent); and
g other fees (advertisement, promotion, other consultancy services, etc.) (8 per cent).

Based on the Borsa Istanbul reports, the aggregate amount of the fees and costs generally corresponds to 4 to 7 per cent of the total offering proceeds of the issuer for the issuances launched in the main equity market.

iii Considerations for foreign issuers

Requirements for the listing of shares of foreign-based institutions that are operating abroad are the same as for Turkish companies. There is no requirement for ministerial approval for the initial listing of foreign capital market instruments. In addition, there is no requirement for the foreign company to be listed in its home country. However, the CMB may ask for additional requirements or waive some of the conditions.

Foreign issuers must apply to the Borsa Istanbul with the information and documents indicated in the Listing Directive for the listing of securities. There are special discounts relating to Borsa Istanbul listing fees applicable to foreign issuers.

IV POST-IPO REQUIREMENTS

There are continuous disclosure requirements attributed to public companies as per applicable capital markets legislation in relation to financial statements and material events.

i Disclosure requirements relating to financial statements

Pursuant to the Communiqué on the Principles Regarding Financial Reporting in Capital Markets No. II-14.1 and the Communiqué on Public Disclosure Platform No. VII-128.6, financial statements must be presented quarterly in accordance with Turkish Financial Reporting Standards (TFRS):

a annual results: audited year-end consolidated financial statements and reports prepared in accordance with TFRS must be published on the Public Disclosure Platform within 70 days following the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 60 days following the end of the accounting period);
b the second quarter: interim condensed consolidated six-month financial statements subject to limited review procedures by independent auditors must be published on the Public Disclosure Platform within 50 days of the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 40 days following the end of the accounting period); and

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c the first and third quarter: unaudited first quarter and third quarter consolidated financial statements must be published on the Public Disclosure Platform within 40 days of the end of the accounting period (if companies are not required to submit consolidated financial statements, the period is 30 days following the end of the accounting period). If the first and third quarter financial statements are independently audited, they must be published on the Public Disclosure Platform within 40 days and 50 days, respectively, for companies preparing unconsolidated and consolidated financial statements.

Pursuant to the CMB's Disclosure Communiqué No. II-15.1 (the Disclosure Communiqué), companies may make public disclosures relating to future forecasts through a decision of the board of directors or the written consent of the persons authorised by the board of directors. Companies may disclose their future forecasts to the public at most four times in a year by making either public disclosures on the Public Disclosure Platform or relevant explanations under activity reports. If there is a material change within the scope of future forecasts, disclosure of the material change is required.

ii Disclosure of material events

Disclosure of material events by public companies is primarily regulated by the Disclosure Communiqué, and the CMB makes a distinction between 'inside information' and 'continuous information'. Rather than identifying each material event requiring disclosure in the Disclosure Communiqué, the CMB leaves specific disclosure decisions regarding inside information to the companies' individual discretion on a case-by-case basis. Yet, disclosure guidelines published on 10 February 2017 clarify the events triggering a disclosure requirement by providing illustrative examples. In the event of the existence of any news or rumours relating to the issuer disclosed for the first time through media institutions or by other means of communication that is likely to affect the value or price of the issuer's shares, capital markets instruments or investors' investment decisions, issuers are obliged to make disclosures on the accuracy and adequacy of such news or rumours. Interpretations, analyses, assessments and predictions made on the issuer company based on the issuer's public disclosures do not fall within the scope of this principle.

iii Inside information

The Disclosure Communiqué defines inside information as any information or event not disclosed to the public that may impact investors' investment decisions or is likely to affect the value or price of the shares, or relevant capital markets instruments of the issuer. If any inside information comes to the attention of any persons who hold, directly or indirectly, 10 per cent or more of the share capital or the voting rights of the issuer company; or who, regardless of such threshold, hold privileged shares that give their holders the right to nominate or elect members to the board of directors of the issuer (and that the issuer is not itself aware of), such persons must make a public disclosure regarding the inside information. Public companies may suspend the disclosure of inside information by taking full responsibility for any non-disclosure to protect its legitimate interests, provided that such suspension does not mislead investors; the company is able to keep any related inside information confidential; and the board of directors resolves on the necessary precautions to protect the interests of the issuer and not to mislead investors, or an officer authorised by the board of directors approves such precautions in writing.

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Once the suspension conditions are eliminated, the issuer company must disclose the inside information on the Public Disclosure Platform, including disclosing the suspension decision and the reasons for the suspension. Inside information must be publicly disclosed if it cannot be kept confidential.

iv Continuous information

The following changes in share ownership or management control in a company must be publicly disclosed under the Disclosure Communiqué by the persons conducting the relevant transactions:

a a person or persons acting together becoming direct or indirect holders of 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent of the issued share capital or voting rights of a public company in Turkey are required to disclose such acquisitions on the Public Disclosure Platform and, thereafter, to disclose on the Public Disclosure Platform their transactions in the shares or voting rights of such company, when the total number of the shares or voting rights they hold falls below or exceeds such thresholds. If direct shares of a person (real person or legal entity) in the public company exceed or fall below 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent, the notification referred herein shall only be made by the MKK in lieu of such shareholder. However, in the case of persons reaching, exceeding or falling below such thresholds (1) by acting in concert, (2) indirectly or (3) with voting rights (through voting agreements, etc.), the relevant shareholder or the persons acting in concert with such shareholder, rather than the MKK, will need to disclose the change in their shareholding;

b the founding shareholder and the shareholders are required to disclose on the Public Disclosure Platform any direct or indirect acquisition of 5, 10, 15, 20, 25, 33, 50, 67 or 95 per cent of the issued share capital or voting rights of the company by investment funds belonging to a founding shareholder as well as its transactions in the shares or voting rights of the company, when the total number of the shares or voting rights that it holds falls below such thresholds;

c persons with managerial responsibility in a public company, persons with close relations to any such persons or the majority shareholder in a public company are required to disclose their transactions relating to the shares or other capital markets instruments of such company, as of the date when the aggregate value of the transactions performed by such persons reaches 286,000 Turkish lira (individually or together) in one year; and

d companies are required to make necessary updates within two business days of any changes relating to the general information that the company disclosed on the Public Disclosure Platform. The MKK is responsible for updating the shareholding list, and setting forth a public company's natural person and legal entity shareholders who directly hold 5 per cent or more of the shares or voting rights of such public company.

Any changes in rights attached to different classes of shares in public companies must be disclosed on the Public Disclosure Platform, and changes relating to the voting rights must be notified to the MKK.

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V OUTLOOK AND CONCLUSION

The newly introduced changes made under legislation of both the CMB and Borsa Istanbul mainly aim to remove certain regulatory impediments to go public in Turkey and attract more Turkish companies to tap into equity capital markets through primary or secondary offerings.

Although Turkish IPOs are facing a recent slowdown, we expect the postponed Turkish IPOs to come to the markets in the first opportunity when the markets rebound, and easier offering opportunities will support the increase in new IPOs on Borsa Istanbul. However, the future of Turkish IPOs still remains subject to broader macroeconomic conditions, timing and investor sentiment.

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Chapter 18

UNITED STATES

David J Goldschmidt[1]

I INTRODUCTION

A long-time leader in the initial public offering (IPO) arena, the United States is home to the two largest stock exchanges by market capitalisation in the world, the New York Stock Exchange (NYSE) and the Nasdaq Stock Market (Nasdaq). Since the establishment of the first US exchange, the US offering process and regulatory landscape have changed dramatically, with the modern US IPO market regulated by both federal statutes and agency regulations, as well as the rules of the exchange on which a company is listed. Foremost among the governing statutes are the Securities Act of 1933, as amended (the Securities Act), which regulates offerings, and the Securities Exchange Act of 1934, as amended (the Exchange Act), which provides for market regulation once a company is public.

More recent regulation that has contributed to the evolution of the IPO market has come from the Sarbanes–Oxley Act of 2002 (SOX), the Jumpstart Our Business Startups Act of 2012 (the JOBS Act) and the Fixing America's Surface Transportation Act in 2015 (the FAST Act), which, despite its name, made additional changes to the IPO landscape. The current US presidential administration has targeted additional legislative reform and in 2018 passed the Economic Growth, Regulatory Relief and Consumer Protection Act. This and other statutory changes have had limited effect on the IPO arena, and significant legislative developments in 2019 are unlikely because of the difficulty of brokering agreement among the Democrat-controlled House and the Republican-controlled Senate and presidency. The duty of administering, amending and interpreting federal securities laws is the responsibility of the US Securities and Exchange Commission (SEC), the agency that, among other things, reviews IPO registration statements and ensures regulatory compliance both during the IPO process and once companies are public. Throughout 2018, the SEC took steps to develop the IPO market, by, for example, expanding access to various forms of disclosure relief, and clarifying and streamlining the disclosures required by public companies, generally. These efforts, assisted by positive market conditions, contributed to an increase in IPO activity in 2018.

Not dissimilar to other markets around the globe, the US IPO market has experienced significant volatility over the past decade. However, the number of IPOs has increased from 102 in 2016, 168 in 2017 to 191 in 2018 (in contrast with 152 IPOs in 2015, 277 in 2014, 217 in 2013 and 138 in 2012).[2] In 2018, cross-border IPOs accounted for a signoficant number of US listings, with Chinese businesses alone launching 35[3] IPOs in the United States.

1 David J Goldschmidt is a partner at Skadden, Arps, Slate, Meagher & Flom LLP.

2 Thomson Reuters.

3 ibid.

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Special purpose acquisition company (SPAC) IPOs continued to increase in popularity, with 36[4] SPAC IPOs in 2018 compared with 30 in 2017 and 6 in 2016.[5] The year 2018 was also characterised by a significant number of 'mega' or 'unicorn' offerings. Healthcare and technology sectors led the number of 2018 IPO issuances, followed by financial services issuers.

Going into 2019, economic volatility, the effects of US trade and Federal Reserve policies, the month-long US federal government shutdown, and other US and worldwide geopolitical events pose challenges to maintaining a robust IPO market. However, the forecast for positive, if moderated, economic growth and corporate profits are reasons to remain cautiously optimistic about IPO potential. The presence of multiple unicorns, and other companies among many sectors that have announced an intention to go public in 2019, also supports projections of a strong year for the IPO market.

The decision to go public requires careful consideration by a company and its management. Issuers must be mindful that the US public company disclosure system may result in reduced confidentiality for the company and its management. Moreover, additional liability arises for the issuer, its directors and its management from being public in the United States. Further, the expense of complying with public company reporting obligations should not be underestimated. Despite these factors, going public in the United States is an exciting (and often long-anticipated) event for any company. The resulting liquidity for existing investors, as well as the visibility and prestige that comes from listing on US exchanges, is very attractive for many domestic and foreign companies.

Unless there is a compelling business reason, domestic issuers generally list in the United States rather than pursuing a primary (or dual) listing in another country. Foreign issuers, called foreign private issuers (FPIs),[6] often opt to list solely in the United States as well. Some foreign companies already listed on an exchange in their home country also choose to list in the United States. For these companies, a US listing can provide several benefits, including increased visibility (which results in an expanded market for new products and services), an ability to use the US listing as currency for acquisitions and the creation of a more diverse investor base (which increases liquidity in the company's shares).

II GOVERNING RULES

i Main stock exchanges

The primary stock exchanges in the United States are the NYSE and Nasdaq. Though each operate with their own independent standards for initial listing and continued listing compliance, many of these requirements are substantially similar across the two exchanges.

4 ibid.

5 ibid.

6 Rule 405 of the Securities Act defines an FPI as: 'any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) Any of the following: (A) The majority of the executive officers or directors are United States citizens or residents; (B) More than 50 percent of the assets of the issuer are located in the United States; or (C) The business of the issuer is administered principally in the United States.' The determination date for FPI status in connection with an IPO is a date within 30 days before the filing of the initial registration statement.

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The creation of the NYSE can be traced to the signing of the Buttonwood Agreement in May 1792.[7] Also known as the 'Big Board', the NYSE is the largest stock exchange by market capitalisation in the world. Nasdaq, however, is a significantly younger exchange, having commenced operations in 1971. Nasdaq is known as the world's first electronic stock market. Unlike the NYSE, whose historic trading floor and official 'ringing of the bell' each day for opening and closing of trading hours is legendary, Nasdaq exists purely as an electronic platform with no physical trading space.

Both the NYSE and Nasdaq welcome domestic and foreign issuers as well as dual listings. Historically, Nasdaq was viewed as the go-to exchange for technology companies, with the NYSE operating as the primary exchange for 'brick-and-mortar' issuers. However, this has changed in recent years, with companies from all industries listing on both exchanges.

ii Overview of listing requirements

The NYSE and Nasdaq each maintain standards for initial listing and continued listing on their respective markets. Standards include financial thresholds and other quantitative benchmarks as well as requirements relating to corporate governance.

Over the years, the quantitative listing requirements for the NYSE and Nasdaq have become increasingly similar, such that the requirements themselves are not generally determinative of which exchange a company will select. Meeting the quantitative listing requirements is rarely a deciding factor for exchange selection. Similarly, the corporate governance requirements are substantially similar, due in large part to SOX, which considerably changed the governance requirements for US public companies. Even if a company meets all of the listing standards, each exchange reserves the right to deny listing to any company.

A US company seeking to list on the NYSE must meet minimum distribution and size criteria, which include, among others, at least 400 round lot shareholders, a post-IPO market value of publicly held shares of US$40 million and a stock price of at least US$4. The company must also meet one of the exchange's two financial criteria: the earnings test or the global market capitalisation test. For IPO companies, the NYSE will accept the underwriters' representation that the offering will satisfy certain of the requirements once the IPO is consummated.[8]

A non-US company may qualify to list on the NYSE in one of two ways – under the standards for domestic issuers or under the alternate listing standards for FPIs. The FPI-specific listing standards are designed to attract major foreign companies with an existing, substantial market for the company's shares in its home jurisdiction. For example, under the minimum distribution and size criteria, the round lot shareholder requirement is 5,000 (versus 400 under the domestic standard), the market value of publicly held shares must be at least US$100 million, or US$60 million for companies qualifying under the affiliated company test (versus US$40 million under the domestic standard), and 2.5 million shares are required to be publicly held (versus 1.1 million under the domestic standard). To qualify under the alternate listing standards for FPIs, the company must also meet one of the financial tests: the earnings test, or one of the valuation or revenue tests (or qualify under the affiliated company test).

7 So named because 24 stockbrokers signed the agreement under a buttonwood tree on Wall Street. Library of Congress, 'History of the New York Stock Exchange', available at www.loc.gov/rr/business/hottopic/stock_market.html (last visited 22 January 2018).

8 There are alternative standards in certain instances, including for real estate investment trusts with less than three years of operating history and special purpose acquisition companies.

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As a general matter, both the NYSE and Nasdaq permit an FPI to follow the governance rules of its home jurisdiction, subject to certain exceptions.

Nasdaq has three separate market tiers, the Nasdaq Global Select Market, the Nasdaq Global Market and the Nasdaq Capital Market. Similar to the NYSE, Nasdaq has liquidity requirements, including number of round lot holders, number of publicly held shares and market value of publicly held shares, as well as financial standards. For example, companies seeking to list on the Nasdaq Global Select Market must qualify under one of four tests: earnings, capitalisation with cash flow, capitalisation with revenue or assets with equity. To demonstrate the similarities between the requirements of Nasdaq and the NYSE, a company seeking to list on the Nasdaq Global Select Market would need 450 round lot holders (400 for NYSE), 1.25 million publicly held shares (1.1 million for NYSE) and a market value of publicly held shares of US$45 million (US$40 million for NYSE). The quantitative requirements for listing on the Nasdaq Global Market and the Nasdaq Capital Market become increasingly less demanding; however, the corporate governance requirements are the same across all three Nasdaq tiers.

The cost of listing on the NYSE and Nasdaq varies somewhat in approach. The NYSE calculates fees based on the exact number of shares listed, subject to a minimum and maximum fee, whereas Nasdaq bases its fee on a share range. For example, to list on the Nasdaq Global Select Market and the Nasdaq Global market, the cost for listing is as follows:

Number of shares listed	The cost of listing	Application fee
Up to 30 million	US$150,000	US$25,000
30+ million to 40 million	US$170,000	US$25,000
40+ million to 50 million	US$210,000	US$25,000
50+ million to 60 million	US$250,000	US$25,000
60+ million to 70 million	US$290,000	US$25,000
More than 70 million	US$295,000	US$25,000

On the NYSE, fees for an IPO are US$0.004 per share, plus a US$25,000 application fee and a US$50,000 special one-time fee, with a minimum of US$150,000 and maximum of US$295,000, which includes the special one-time fee.

iii Overview of law and regulations

IPOs in the United States are governed by federal rules and regulations with oversight by the SEC. The main rules and regulations are contained in the Securities Act and the Exchange Act.

By way of background, the Securities Act was passed in response to the 1929 US stock market crash. It was designed to prevent fraud and misrepresentation in connection with public securities offerings, by requiring that investors receive adequate and accurate information to make their investment decisions. The system is disclosure-based, meaning that a judgement is not made by the SEC on the quality of the IPO company or the securities being offered. Market regulation, however, comes through the Exchange Act, which, among other things, created the SEC. The Exchange Act requires periodic reporting by companies with registered securities (i.e., generally, companies that have made a Securities Act-registered public offering; companies with a security registered on a national exchange; or companies with total assets exceeding US$10 million and a class of equity security held of record by

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more than 2,000 persons or 500 persons who are not accredited investors).[9] Over the years, the SEC has sought to harmonise the Securities Act and the Exchange Act, by providing for integrated disclosure between their forms.

Arguably, the next most significant piece of legislation was in 2002 with the passing of SOX, which came in response to significant US accounting scandals. The main goals of SOX were to strengthen financial disclosures, deter fraud, and heighten corporate responsibility and accountability through various measures, including through increased executive liability. Though not monumentally influential on the actual IPO process, SOX did have a tremendous effect on the governance requirements for companies post IPO.

The most recent significant changes came with the passing of the JOBS Act in April 2012. It created a new category of issuers called emerging growth companies (EGCs), which, generally, are companies with less than US$1.07 billion in annual gross revenues in their most recently completed fiscal year. EGCs are entirely exempt from certain, or subject to reduced, regulatory requirements for a limited period.

The benefits afforded to EGCs pursuant to the JOBS Act include the following:

a allowing them to provide reduced financial information in SEC filings, including in IPO registration statements;

b permitting them to submit draft registration statements confidentially to the SEC for review prior to making them publicly available;

c providing them the ability to 'test the water'[10] with potential qualified investors to determine investor appetite in the offering;

d relaxing restrictions on securities analyst communications; and

e carving out other areas for reduced compliance (or exceptions).

The benefits provided for under the JOBS Act for EGCs were further modified by the FAST Act in December 2015. In July 2017, the SEC expanded that it would expand the confidential IPO registration statement review process to include all issuers, not just EGCs. Similarly, in early 2019, the SEC proposed permitting all issuers to engage in test-the-water communications. This, and other proposed streamlining and simplification measures, which if adopted, will ease disclosure and compliance requirements for all issuers considering an IPO.

Also integral to the IPO process is the Financial Industry Regulatory Authority (FINRA), an independent non-governmental agency that aims to provide investor protection through the regulation of broker-dealers. During the IPO process, the underwriters must file information with FINRA in connection with the initial submission of the registration statement to the SEC and every amendment thereafter.

9 Slightly different numerical standards apply to banks, savings and loan holding companies, and bank holding companies.

10 Through testing-the-water activities, an issuer or someone authorised to act on its behalf may make oral or written communications with certain qualified potential investors prior to or after the filing of the registration statement.

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III THE OFFERING PROCESS

i General overview of the IPO process

A typical US IPO takes approximately 16 to 20 weeks, assuming that no significant issues arise that delay or complicate the process. Adequate planning and preparation are crucial to the IPO process as delays are often caused by disclosure or financial statement issues that could have been addressed in the early offering stages.

The IPO process can be divided into four distinct phases:

a preparation and analysis (the pre-filing phase);
b filing and SEC review (the phase between filing the registration statement with the SEC and responding to, and clearing comments from, the SEC);
c marketing the IPO; and
d pricing and closing the offering.

The IPO team, also known as the 'working group', consists of several key parties, including the company, company counsel, the underwriters, underwriters' counsel and the company's accountants. The roles of each are described in more detail below.

During the pre-filing phase, even before the first meeting of the full working group, a company works with its outside counsel to prepare for the IPO. Preparatory tasks include reviewing the company's current corporate and capital structure, as well as analysing its organisational documents (such as its charter and by-laws) to ensure that the company is best positioned for life as a public company. In-house and outside counsel also will examine the company's existing corporate governance structure and begin to address any changes that may be needed prior to the IPO. In many instances, a company's private governance practices are not suitable for a public company and changes are often required for SOX compliance, including the creation of new board committees. Additionally, committee charters and other corporate policies may need to be drafted or modified. The underwriters will provide guidance on the governance structure from the perspective of marketing the deal, and may suggest additional corporate changes for marketing reasons. During this phase of the IPO process, a company may also need to prepare new equity compensation plans and employment agreements (or amend current ones), and address other general corporate housekeeping matters. The company's in-house finance team and outside auditors should begin preparing the financial statements that will be required in the registration statement. It is important that the company's auditors are involved early in the IPO process as accounting issues are a common source of SEC comments and potential delay. Also at this time, companies should begin to seek any required approvals for the IPO and begin to develop a plan for public reporting after the IPO.

Preparation of the registration statement typically begins with an initial organisational meeting attended by the full working group, followed by drafts of the registration statement being circulated among the group. The registration statement describes the company and its business; provides risk factors regarding the company, its business and the offering; and includes financial and other information, including the use of proceeds from the offering, company capitalisation, management's discussion and analysis (MD&A) of the company's financial condition and results of operation, and certain relationships and related-party transactions. For domestic companies, the registration statement is generally filed with the SEC under cover of Form S-1 (or Form S-11 in the case of a real estate investment trust), whereas FPIs generally use Form F-1. Contained within the registration statement is the prospectus, which is the stand-alone document provided to investors. The exhibits

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to the registration statement – which are delineated in the applicable form, as well as other information, such as the expenses of the offering and certain undertakings by the company – are not circulated to prospective investors as part of the prospectus and can be found in filings with the SEC.[11] At a certain point in the drafting phase, the registration statement is sent to the financial printer, which will then run any changes to the document on its system and ultimately file the document with the SEC through its Electronic Data Gathering, Analysis and Retrieval system.

Concurrent with the drafting of the registration statement, legal due diligence is conducted by the company's counsel and underwriters' counsel. During legal due diligence, counsel examines various books, records and agreements as well as other material documents of the company to assist the working group to ensure that the registration statement is accurate and not misleading. As explained in subsection ii, due diligence provides a defence for certain liability participants against liability for claims of false and misleading statements under Sections 11 and 12 of the Securities Act. It also provides counsel with a basis for delivering certain legal opinions and negative assurance letters to the underwriters at the closing of the offering. Business due diligence is also conducted by the underwriters to ensure that the company's business and operations are as it purports them to be.

Also at this time, the underwriting agreement, comfort letter and other transactional documentation are negotiated. The underwriting agreement is the main contract that binds the underwriters and the company for the sale of the securities. Through the underwriting agreement, the securities are purchased by the underwriters from the company and are then resold to the public by the underwriters. The agreement contains the pricing terms, various representations and warranties, and provides for indemnities and closing conditions. Though negotiation of the underwriting agreement begins early in the IPO process, it is not actually signed until near the end when the offering is priced. The comfort letter is delivered by the company's auditors to address the accuracy of the financial data included in the prospectus. All financial data in the prospectus should be supported or confirmed as part of the underwriters' due diligence. Any factual information in the prospectus that is not 'comforted' by the auditors must be backed up by the company.

Before filing the registration statement with the SEC, the company's board of directors (and potentially the company's shareholders) will approve the filing and other corporate activities associated with the offering. Additionally, the stock exchange will be determined and the exchange listing process will begin.

After the registration statement is filed with the SEC, it typically takes up to 30 days to receive SEC comments. During the period between filing the registration statement and receiving the first round of SEC comments, preparation continues to position the issuer for life as a public company. This includes continuing to establish certain corporate governance policies and practices, writing charters and required governance documentation, and continuing to advance the stock exchange listing application.

When comments are received from the SEC, they arrive in the form of a letter. The company, underwriters, counsel and accountants respond by filing an amendment to the registration statement to address the SEC comments. The company also writes a response letter to the SEC. Typically, there are several rounds of back and forth between the company and the SEC before it will allow the registration statement to 'go effective'. During this time, FINRA also reviews the underwriting arrangements.

11 Such filings are generally made available to the public at: www.sec.gov.

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During the marketing phase, the underwriters and the company conduct a roadshow, which is typically a two- to three-week period of investor meetings across the United States, and often in Europe and other jurisdictions. Prior to the roadshow, the deal team will print red herrings or 'reds', which are glossy copies of the preliminary prospectus. These will be handed out during the investor meetings. The books are called 'reds' owing to the red banner that appears at the top of the preliminary prospectus, stating that the information is not complete and may be changed, and that the document is not an offer to sell the securities. Over the course of the roadshow, the underwriters will collect non-binding indications of interest from potential investors. The roadshow is separate from any testing-the-water activities that may already have been conducted by or on behalf of an eligible issuer.

When the roadshow is complete, the underwriters will look to price the deal based on the demand for the securities. As securities only may be sold once the registration statement is declared effective by the SEC, clearance from the SEC and FINRA must be obtained by this time to enable the registration statement to be declared effective by the SEC and for pricing to take place. At the time of pricing, the company and the underwriters agree on the final price of the securities and execute the underwriting agreement. After pricing, the underwriters confirm sales and allocate shares. The securities begin to trade the day after pricing. Following pricing, the company files the final prospectus with the SEC. The final prospectus includes the determined sale price of the stock, the underwriters' compensation and the amount of proceeds the company will receive from the offering.

The offering typically closes on a T+2 schedule (meaning two business days after pricing). At closing, various executed documents are exchanged between the company and the underwriters, including legal opinions and negative assurance letters, the comfort letter, lock-up agreements (which 'lock up' certain existing shareholders from selling their shares for a certain period (typically 180 days)) and other closing certificates.

As described above, the working group acts in concert to ensure that each of the IPO stages progresses as seamlessly as possible. A company's internal team is crucial to the IPO process. The company ensures that the offering documents accurately describe the business, and the risks relating to the offering and the company, among other disclosures. Further, the company's internal finance team is critical in preparing the financial statements and other financial disclosure along with assistance from the company's outside auditors. Management of the company also needs to be available for drafting sessions, diligence calls and participation in the roadshow. Although the company is the key component of the IPO team, the other players have essential roles to ensure the success of the offering.

Company counsel guides the issuer through the offering process, from preparatory structuring through to the closing of the offering. Company counsel assist with drafting the required registration statement disclosure, negotiate agreements and other offering documentation, and assist the company in complying with applicable securities laws.

The underwriters design the marketing effort, set the company's valuation, lead the roadshow and assist the company in describing its business in a compelling way. They arrange investor meetings and control the book-building process. They also participate in certain aftermarket trading activities.

Underwriters' counsel assist the issuer through the offering process. They prepare the initial draft of the underwriting agreement, contribute to drafting other documents and negotiate agreements with company counsel. They advise the underwriters on FINRA compliance (including making the required filings with FINRA) and other issues, such as research reports, trading restrictions and any permitted testing-the-water activities.

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The company's auditors are important in drafting the MD&A section of the prospectus. They assist the company with its required financial statements and deliver the comfort letter. They also assist the other members of the working group in responding to any financial or accounting comments from the SEC.

There are also several other key players in the IPO process, including the financial printer, which prints the preliminary and final prospectuses, and files the registration statement with the SEC; the transfer agent; and market maker or specialist. The company may also enlist the services of an IPO consultant, a compensation consultant or a public relations firm.

ii Pitfalls and considerations

Navigating the IPO process can be difficult and, without careful planning, there are many potential pitfalls that could affect the offering. Several of the key considerations in the IPO process come early in the planning stages when the company is preparing to become a public company.

One of the first crucial steps is to review existing agreements to identify any consent or approvals that may be required for the IPO to occur. Companies should also examine their current corporate structure and capitalisation early in the process to ensure that they correctly align with public company operations and the contemplated offering. For example, a company may need to increase the number of authorised shares or wish to authorise blank check preferred stock prior to the offering. Companies should also consider public company defensive measures such as creating a classified board and limiting the ability of shareholders to call meetings or act by written consent.

Companies must also spend significant time preparing their post-IPO governance structure. Existing policies, charters and other governance-related documents should be reviewed to determine any necessary changes that may be required to comply with public company governance requirements. Often, additional policies, charters and structural changes are required. As a general matter, FPIs may follow the governance requirements of their home jurisdictions instead of the requirements for domestic issuers, subject to certain exemptions and requirements.

Stock options can also prove to be problematic in the IPO process. For grants up to two years before an IPO, a company should be prepared for the SEC to ask for valuation support. Because of this, it is important for a company to obtain independent valuations for options to avoid cheap stock accounting charges.

Companies must review all related-party transactions prior to filing the registration statement to determine which, if any, must be disclosed. In addition, companies may wish to unwind certain transactions prior to the IPO for optical, legal or other reasons. Further, any loans to executive officers and directors must be unwound prior to the first filing of the registration statement.

Early in the planning stages, a company should work with its counsel to determine what financial statements will be required in the registration statement as well as begin to address any related MD&A issues. Generally, companies are required to include in the IPO registration statement three years of income statements, two years of balance sheet information and five years of selected financial statements. EGCs, however, are only required to include two years of audited financial statements and two years of selected financial statements. Mergers and acquisitions activity may trigger additional required financial statements such as *pro formas* and target financial statements, depending on the significance and timing of the

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mergers and acquisitions activity. Financial statement preparedness often drives (and delays) the timing of an offering. In addition, companies should be mindful of SEC 'hot buttons'. In recent years, these have included revenue recognition, cheap stock, segment reporting and loss contingencies.

Foreign issuers in particular need to be aware of applicable audit standards and any reconciliation that may be required with respect to any non-generally accepted accounting principles (GAAP) or certain non-International Financial Reporting Standards (IFRS) financial statements. If financial statements are not prepared in accordance with US GAAP or English-language IFRS as issued by the International Accounting Standards Board (IASB), they must be reconciled to US GAAP. FPIs must also ensure, regardless of the form of presentation of their financial statements, that such statements are audited in accordance with US generally accepted accounting standards.

Issuers must be extremely careful of what is known as 'gun jumping'. As a general matter, there are certain restrictions on communications when a company is contemplating or conducting a securities offering that are intended to prevent a company from conditioning the market for the offering. The communications covered by the gun jumping restrictions are extensive and include press releases, social media activity and interviews, among other forms of communications. Gun jumping is where a company violates these rules. The SEC may deem an action as gun jumping even if it was purely accidental. Therefore, companies must be mindful of the rules from the outset, even before the registration statement is filed. The consequences for gun jumping can be significant. If the SEC determines that gun jumping has occurred, it may impose a cooling-off period, during which the company must delay the offering. Gun jumping may also trigger sanctions, fines or rescission rights.

Aside from the technical legal considerations, it is crucial that a company be prepared to access market windows. This means being vigilant during the planning stages to ensure that the company is best positioned to move forward at the appropriate time when market windows are 'open'. The company's underwriters will be able to advise on the most advantageous time to launch the offering.

It should not be overlooked that becoming a public company exposes the issuer and other offering participants to liability under the US securities laws. In particular, Section 11 of the Securities Act states that if any part of an effective registration statement: 'contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition such person knew of such untruth or omission) may sue' every person who signed the registration statement, as well as every underwriter, expert, and current and future member of the board of directors named in the registration statement, among others.

Though a due diligence defence is available to underwriters, experts and directors, it is not available to the company. The company is 'strictly liable' under Section 11 of the Securities Act, subject to a limited exception if the company can prove the purchaser of the securities knew of the untruth. Additional liability is imposed by Section 12(a)(2) of the Securities Act on any person who offers or sells a security by means of a prospectus or oral communication that contains a material misstatement or omission.

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iii Considerations for foreign issuers

Though many of the procedural elements involved in a US IPO by a domestic issuer are essentially the same as those for an FPI, FPIs are provided with significant relief in several areas. These measures are designed to encourage them to go public in the United States.

In the registration process, FPIs typically utilise Form F-1 to register with the SEC instead of Form S-1 (the form for domestic issuers). Form F-1 contains reduced disclosure requirements compared with Form S-1.[12] Notable differences in Form F-1 include, among others, compensation disclosure. Unlike domestic companies, FPIs are able to disclose more limited compensation information, particularly as it relates to individual compensation, compared with domestic issuers, unless the information is publicly disclosed elsewhere by the FPI. Notwithstanding the accommodations, however, the underwriters may encourage the issuer to provide disclosure akin to what is required for a domestic issuer for marketing purposes.

FPIs also have flexibility with their financial statement presentation. They may prepare and file their financial statements in accordance with US GAAP, IFRS or local GAAP. FPIs that utilise the English-language version of IFRS as issued by the IASB do not need to provide a reconciliation to US GAAP. However, if non-IASB IFRS or local GAAP are used, generally reconciliations to US GAAP must be included. In addition, FPIs have different 'staleness' dates (the date after which financial information may not be used) from domestic issuers.

As a structural matter, instead of directly offering stock to the public, FPIs may choose to offer securities in the United States through the use of American depositary receipts (ADRs). ADRs are stand-alone securities (separate from the stock of the FPI) that represent a certain number of shares of the FPI. The underlying shares are held with a depositary that contracts with the issuer. In many instances, investors find ADRs more attractive than holding shares directly in a foreign corporation as ADRs may result in favourable currency conversions on dividends and other cash distributions.

Once the company is public, unlike a domestic issuer, an FPI is not required to file quarterly reports on Form 10-Q, annual reports on Form 10-K or periodic reports on Form 8-K. Instead, an FPI files annual reports on Form 20-F[13] within four months of the company's fiscal year end, and must furnish to the SEC on Form 6-K information that it:

a makes or is required to make public in the jurisdiction where it is domiciled, or in which it is incorporated or organised;

b files or is required to file with a stock exchange on which its securities are traded, if made public by that exchange; or

c distributes or is required to distribute to its security holders.

Pursuant to the rules of the stock exchanges, FPIs are required to file semi-annual unaudited financial information under cover of Form 6-K.

Post IPO, FPIs also enjoy the benefit of being exempt from the US proxy rules that generally require proxy solicitation in connection with shareholder meetings. They also do not need to comply with the rules for presenting shareholder proposals. Further, FPIs

12 Historically, certain FPIs were permitted to file their registration statements confidentially with the SEC. Although this ability remains in place, the changes in 2017 that enable all issuers to file confidentially make this 'benefit' significantly less relevant.

13 Certain Canadian FPIs are able to file annual reports on Form 40-F, which has significantly reduced disclosure requirements compared with Forms 10-K and 20-F.

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are exempt from filing insider trading reports under Section 16 of the Exchange Act, as well as from the short-swing profit rules, which generally prohibit a company insider from profiting from company stock that is bought and sold within a six-month period. Additional regulations from which FPIs are exempt include Regulation FD, which prohibits the selective disclosure of material, non-public information; Regulation G, which addresses the use of non-GAAP financial measures; and Regulation BTR, which covers trading during pension fund blackout periods.

Both the NYSE and Nasdaq provide accommodations to FPIs in the corporate governance arena. To utilise these exemptions, an FPI must disclose in its annual report on Form 20-F how the company's governance practices differ from those required for a domestic company under the rules of the applicable exchange.

IV POST-IPO REQUIREMENTS

Once a company becomes public, there are several ongoing governance and reporting requirements with which the company must comply. These requirements are considerably different for domestic issuers than for FPIs, which are provided relief from compliance in many instances as discussed above.

Domestic companies are required to file annual, quarterly and periodic reports with the SEC. The due date for these filings is based on the company's filer status as either a large accelerated filer, accelerated filer or non-accelerated filer. Among other requirements, large accelerated filers are companies that have a public float of US$700 million or more, whereas accelerated filers have a public float of more than US$75 million but less than US$700 million. For a newly public company, regardless of its filer status, the annual report on Form 10-K is due 90 days after the company's fiscal year end. This is shortened to 75 days for an accelerated filer and 60 days for a large accelerated filer for subsequent Form 10-K filings. Quarterly reports on Form 10-Q are due 40 days after the company's fiscal quarter end for large accelerated filers and accelerated filers, and 45 days for all other filers. Periodic reports on Form 8-K are typically due within four business days of the triggering event for all types of filers. There are various activities that trigger the need to file (or furnish) a Form 8-K, including entering into or terminating a material agreement, consummating a significant acquisition, or the departure of a director or executive officer. Form 8-K is also used to satisfy necessary disclosure under Regulation FD, which generally prohibits disclosure of material information by domestic issuers to certain people without disclosing it to the public as well. As previously discussed, FPIs generally file annual reports on Form 20-F and other reports under cover of Form 6-K.

Post IPO, domestic companies must also file proxy statements, which are due 120 days after the company's fiscal year end if certain information in Form 10-K incorporates by reference information from the proxy statement (as is typically the case) that must comply with the detailed US proxy rules. Domestic companies are also required to hold annual meetings, for which significant advance preparation is required.

The company's board of directors and the committees of the board must hold regular meetings. Directors and certain officers of the company, among others, must also file reports relating to their shareholdings and be mindful of the rules regarding trading by insiders. In addition, various annual certifications are required to be delivered to the exchange on which the company is listed.

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One of the more onerous requirements for many companies is compliance with SOX 404, which addresses a company's internal control over financial reporting. A company's (1) management must report on the company's internal control over financial reporting and (2) an auditor is required to attest to the assessment of management.

This is neither required in a company's IPO registration statement nor in the first annual report following its IPO. However, in the second annual report, part (1) is required and part (2) may be required depending on a company's filer status or other special designation.

V OUTLOOK AND CONCLUSION

There is reason for cautious optimism concerning the US IPO market in 2019. The year 2018 was strong for IPOs, and the SEC has remained focused on easing regulatory burdens and facilitating continued access to IPOs, by both domestic companies and FPIs. Several key factors will affect the market, including global economic volatility and macroeconomic conditions, US Federal Reserve and trade policies, and the impact of domestic and global geopolitical events. Regardless of any uncertainty that may exist, it is expected that the US IPO market will remain at the forefront of the global IPO arena.

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Appendix 1

ABOUT THE AUTHORS

FEDERICO AMOROSO

Chiomenti

Federico Amoroso joined the firm in 2012 and became a partner in 2018.

Prior to joining the firm, he worked in London from 2004 to 2007 and in Milan from 2011 to 2012. He also worked in the legal departments of two major international investment banks.

Federico represents Italian and international issuers and investment banks in a wide variety of public and private finance transactions. He has worked on major Italian and foreign privatisation transactions, and has significant experience in the areas of initial public offerings, other public and private equity and equity-hybrid securities offerings, as well as debt offerings. He also advises Italian and international clients with regard to corporate and securities law matters, as well as debt, tender offers, exchange offers and other restructuring transactions involving listed companies.

Federico graduated in law from the University of Rome in 2003 and has an LLM from Columbia Law School, New York (2008). He was admitted to the Italian Bar in 2006, and was admitted to the New York Bar in 2012.

He is a member of the Rome Bar, and his languages are Italian and English.

JEAN MARCEL ARAKAWA

Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados

Jean Marcel Arakawa advises corporations, financial institutions and institutional investors on a wide array of corporate and financial transactions, securities and payment services regulatory issues. His experience includes public offerings and private placements of equity, debt and hybrid securities, listing of securities in exchange markets, private equity investments and divestments, and corporate transactions involving public companies. Jean holds an LLB from University of São Paulo Law School and an LLM from New York University School of Law, and worked as an international lawyer with Cleary Gottlieb Steen & Hamilton LLP.

THOMAS M BRÖNNIMANN

Niederer Kraft Frey Ltd

Thomas Brönnimann is a partner and member of the NKF corporate M&A, capital markets and banking, finance and regulatory teams. His practice focuses on capital markets, and private and public M&A transactions, with a particular focus on listed entities and other large enterprises.

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Mr Brönnimann has extensive experience in large corporate M&A and capital markets transactions. He represents issuers and investment banks in IPOs, rights offerings, convertible bonds, PIPE transactions, block trades and other capital market transactions, and advises listed companies on corporate law and governance matters, and securities regulations.

His M&A practice includes both public tender offers and private transactions for strategic and financial buyers and sellers. He represents clients before the Swiss Takeover Board. Other areas of work include financings through the credit spectrum.

From 2007 to 2009, Mr Brönnimann was the legal counsel of a Swiss-based, privately owned investment company responsible for the company's private and public M&A activities in Switzerland and abroad. He is recognised by *Chambers Global* and *Chambers Europe* for his strong technical skills, responsiveness and the breadth of his experience.

MATTHEW COLE

A&L Goodbody

Matthew Cole is a partner in the capital markets group of A&L Goodbody in Dublin. He has an extensive track record advising issuers and underwriters on equity capital markets transactions, both in Ireland and in London, where he practised for many years. His experience encompasses IPOs, rights issues and equity placings on Euronext Dublin and Euronext Growth in Ireland, as well as the Main Market of the LSE and AIM. Mr Cole is listed in *The Legal 500*, which describes him as 'a key name' and an 'equity capital markets expert'. *Chambers Global* notes he is 'particularly sought after by corporate issuers and financial institutions for advice on IPOs'.

ÖMER ÇOLLAK

Paksoy

Ömer Çollak is a partner heading the capital markets practice at Paksoy, with a specific focus on equity, debt, and equity-linked transactions representing the underwriters and issuers in initial public offerings, debt offerings, Islamic finance transactions and private placements.

Mr Çollak also acts in regulatory capital issuances under Basel III, and represents clients in structured finance transactions, including but not limited to securitisations. Further, he has significant experience in listed company mergers and acquisitions in addition to various high-ticket cross-border mergers and acquisitions in varying sectors, including financial institutions and retail, acting for private equity firms and strategic investors.

Prior to joining to Paksoy, Mr Çollak worked as a foreign associate at a US firm in California, where he acted for biotech and high-technology multinational clients.

Mr Çollak is a graduate of Marmara University School of Law, and holds an LLM degree from Golden Gate University School of Law, San Francisco. He is admitted to the Istanbul Bar, and is a member of the American Bar Association and the International Bar Association.

SUZANNE CORREY

Maples Group

Suzanne is a member of Maples Group's corporate and Latin American teams. She has extensive experience in all aspects of corporate work, including joint ventures, IPOs, and mergers and acquisitions, and also advises on a wide variety of structured finance, capital markets and investment fund transactions. Suzanne maintains a strong focus on public company work, advising clients through all stages of their growth from start-up to IPO and beyond.

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EZRA DAVIDS

Bowmans

Ezra Davids is chair of corporate and M&A at Bowmans, specialising in M&A, capital markets and securities law. Ezra is the most recent chair of the faculty advisory board of the Law School of the University of Cape Town. He is also a member of the board of trustees of the Legal Resources Trust (a non-profit human rights organisation using the law as an instrument of justice); a director of Freedom Under Law (a non-profit organisation dedicated to the promotion of the rule of law in southern Africa); and a patron of the Student Sponsorship Programme (a non-profit organisation that places and enables academically talented, low-income students to excel in South Africa's best high schools). He is also the former chair of the recent developments in M&A subcommittee of the Corporate and M&A Committee of the International Bar Association and a member of the University of Cape Town Council. Ezra is the relationship partner for a number of the firm's major clients such as Bharti, Verizon, Barrick Gold Corporation, Microsoft, UPS, Goldman Sachs, Merrill Lynch, UBS, Eskom and Transnet. He is also a regular contributor to international M&A and equity capital markets publications, and is co-contributor on the mergers chapter of the *Modern Company Law* textbook. Ezra was the first practising African lawyer to be featured on the front page of *The American Lawyer*.

CHRISTINA DEL VECCHIO

Niederer Kraft Frey Ltd

Christina Del Vecchio is a capital markets and finance counsel at NKF. Her practice focuses on capital markets, corporate finance and general securities regulation. Ms Del Vecchio has significant experience representing investment banks, investors and international companies in a range of debt and equity transactions, including initial public offerings, listings on SIX, rights offerings, exchange offers and other liability management transactions, asset-backed securities, high-yield bonds, debt securities and equity-linked debt securities. Ms Del Vecchio is recognised by *Chambers Global* for her expertise in managing and executing capital markets transactions.

SHEENA DOGGETT

A&L Goodbody

Sheena Doggett is a partner in the corporate department of A&L Goodbody. She is head of the firm's corporate team in London, and splits her time between Dublin and London. She has been involved in many of the most important transactions in Ireland in recent years, and her key areas of expertise include corporate finance, public mergers and acquisitions, private equity transactions, share incentives and corporate governance. Ms Doggett is listed in *Who's Who Legal* and *Chambers Europe*, which noted that 'clients praise her "unrelenting pursuit of solutions to a problem"'.

MARGARIDA TORRES GAMA

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Margarida Torres Gama joined the firm in 2007. She is a member of the corporate, M&A and capital markets team, and of the insurance, reinsurance and pension fund team.

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Margarida especially focuses on mergers, acquisitions and joint ventures, acting both for Portuguese and foreign clients, as well as on the provision of general legal advice to companies mainly in the areas of commercial, corporate, securities and insurance law.

Margarida has also been involved in several transactions regarding the issue and offering of equity and debt securities.

TAN TZE GAY

Allen & Gledhill LLP

Tze Gay is the head of the equity capital markets practice. Her areas of expertise span equity and debt capital markets, and corporate regulatory and compliance.

She has extensive experience acting for issuers and underwriters on a wide range of innovative, high-value and complex transactions, from initial public offerings and listings on the Singapore Exchange, and regional and international exchanges to global debt offerings. She continues to advise listed corporates and business trusts after listing on their follow-on equity offerings, debt offerings, acquisitions and disposals, and corporate regulatory and compliance advisory matters.

Tze Gay is widely recognised as a leading capital markets practitioner in Singapore by various notable legal publications, including *Chambers Asia-Pacific*, *Chambers Global*, *IFLR1000*, *The Legal 500 Asia Pacific* and *Who's Who Legal: Capital Markets*.

Tze Gay has been a partner since 1992. One of the significant transactions that she has acted in, as transaction counsel, is the IPO and listing on the Singapore Exchange of NetLink NBN Trust in 2017. It is the largest IPO in Singapore since 2011, and the first completed IPO in Singapore involving an internalised trustee-manager structure.

ENRICO GIORDANO

Chiomenti

Enrico Giordano joined the firm in 1992 and became a partner in 2003.

Enrico has held a number of positions in firm management, including head of capital markets, member of the remuneration committee, member of the business development committee and member of the European network steering committee.

Enrico represents Italian and international issuers and investment banks in a wide variety of public and private finance transactions. He has worked on major Italian and foreign privatisation transactions and has significant experience in IPOs, other public and private equity and equity-hybrid securities offerings, as well as debt offerings. He also advises Italian and international clients with regard to corporate and securities law matters, as well as debt, tender offers, exchange offers and other restructuring.

He graduated in law from the University of Rome in 1989 and has a PhD in private comparative law from the University of Macerata in 1991. He was admitted to the Italian Bar in 1992, and admitted to practise before the Italian Supreme Court in 2015. He is a member of the Rome Bar, and his languages are Italian and English.

DAVID J GOLDSCHMIDT

Skadden, Arps, Slate, Meagher & Flom LLP

David J Goldschmidt is the global chair of Skadden's capital markets group. He represents US and international issuers and investment banks in a variety of financing matters, including

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public offerings, private placements of debt and equity securities, and international securities offerings. He also counsels US and international clients on an ongoing basis, including advising on corporate governance, SEC filings and disclosure issues. He has extensive experience advising issuers and underwriters on offerings by high-technology and communications companies. Mr Goldschmidt is also very active in representing and advising real estate investment trusts in connection with capital market transactions, including many initial public offerings and general corporate matters, as well as representing issuers and investment banks in connection with private and public securities offerings by Israeli companies. He is also involved in developing new financial products. Mr Goldschmidt serves on Skadden's Policy Committee. He was named *Who's Who Legal 2016* Capital Markets Lawyer of the Year and has repeatedly been selected for inclusion in *Chambers USA*, *Chambers Global*, *The Legal 500 US*, *The Best Lawyers in America*, *IFLR1000*, *Who's Who Legal* and *Euromoney*, and Legal Media Group's *Guide to the World's Leading Banking, Finance and Transactional Attorneys*.

JEMMA LOHR MCPHERSON

Latham & Watkins

Jemma Lohr McPherson is an associate in the Paris office of Latham & Watkins and is a member of the firm's corporate department. Her capital markets practice focuses on initial public offerings, debt capital markets transactions (with a focus on high-yield bonds), mergers and acquisitions with a capital markets element, and compliance with US, EU and French securities laws. She has represented underwriters, corporate clients and sponsors in, among others, the automotive, retail, recycling and energy industries. Before joining Latham, she practised in the capital markets group at Clifford Chance in New York. She is a graduate of Wellesley College, Georgetown University Law Center, the University of Paris I (Pantheon-Sorbonne) and Sciences Po Paris. She is admitted to the bars of California, New York and Paris.

THOMAS MARGENET-BAUDRY

Latham & Watkins

Thomas Margenet-Baudry is a partner in the Paris office of Latham & Watkins and is a member of the firm's corporate department. He concentrates his practice on capital markets transactions, with a focus on high-yield debt and equity securities. He has represented issuers and underwriters on a broad range of French, international and US capital raising transactions, including initial public offerings, high-yield financings, rights issues and investment-grade debt offerings. He also has broad experience with French public M&A and tender offer regulation, and regularly advises clients on French and EU corporate governance and securities regulation matters. Before joining Latham, Mr Margenet-Baudry spent eight years with Sullivan & Cromwell in both New York and Paris, which included a one-year secondment within the legal department of Goldman Sachs in London and Paris. He is a graduate of the University of Paris I (Pantheon-Sorbonne) and Columbia University School of Law. He is admitted to the bars of New York and Paris. He has been recognised by *Chambers Europe* as being 'energetic and upfront' while offering 'solid expertise', and by *The Legal 500 EMEA* as 'highly versatile' and a 'great adviser'.

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FRANK MAUSEN

Allen & Overy

Frank specialises in securities laws and capital markets regulation, including stock exchange listings. His clients include banks as well as corporate, institutional, supranational and sovereign issuers, which he advises on debt and equity transactions, and structured finance transactions, including securitisation, structured products, covered bonds, IPOs, placements and buy-backs of securities, exchange offers, listing applications and ongoing obligations deriving from such listings. He has 15 years of experience in these areas.

Frank regularly holds conferences on securitisation and other capital markets topics in Luxembourg and abroad. He is a member of the securitisation working group of the Association of the Luxembourg Fund Industry, and the securitisation working group and the financial markets committee of the Luxembourg Bankers' Association. Frank is also a member of the Islamic Finance working group of Luxembourg for Finance (Luxembourg's agency for the development of the Luxembourg financial centre) and has recently joined the securitisation working group of the HCPF (an advisory committee set up by the Luxembourg Ministry of Finance aiming to modernise Luxembourg's financial sector legislation).

He is an active member of Allen & Overy's fintech task force, supporting clients from established financial institutions, incumbents and start-ups in developing innovative products.

FINN O'HEGARTY

Maples Group

Finn is a member of Maples Group's corporate team and the Latin American practice group. Finn has extensive experience in all aspects of corporate work, including joint ventures, IPOs, and mergers and acquisitions, and also advises on a wide variety of structured finance, capital markets and investment fund transactions.

BHAKTA BATSAL PATNAIK

Trilegal

Bhakta Batsal Patnaik is a partner at Trilegal and heads the capital markets practice.

He has extensive experience in equity capital markets, and has advised borrowers and lenders in structured finance transactions and debt issuances. He has also been actively involved with infrastructure investment trust and real estate investment trust listings. Bhakta has advised issuers and major investment banks on a broad range of domestic and international transactions, including offerings and private placements of convertible and exchangeable bonds, equity securities, including ordinary shares and units of real estate investment trusts and business trusts, leveraged notes and equity upside notes, and block trades in India, Singapore, Indonesia, Thailand and Malaysia. He has also been involved in restructuring of debt and equity-linked instruments. He was involved in the drafting of the REIT and InvIT Regulations in India based on his Singapore experience.

Bhakta is recognised as a leading lawyer for capital markets in India by several publications, including *Chambers Global*, *Chambers Asia-Pacific* and *Asialaw*.

Prior to joining Trilegal, he was a partner with S&R Associates for five years, and worked with Linklaters for five years and Amarchand & Mangaldas & Suresh A Shroff & Co for three years.

Bhakta is an alumnus of the National Law School of India University, Bangalore. He is a member of the Bar Council of Delhi, India, and is registered as a solicitor in England and Wales.

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EDUARDO PAULINO

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Eduardo Paulino joined the firm in 2002 and became a partner in 2015. He is a member of the corporate, M&A and capital markets team.

Eduardo's main areas of practice include capital markets, company and corporate law, and banking and finance. He especially focuses on M&A, public offerings, project finance and privatisations. He is also experienced in banking and finance law matters, and compliance.

He has recently been involved in complex high-profile M&A transactions in the banking sector, and in the process of recapitalisation of the Portuguese banking sector. Eduardo regularly acts in equity, and debt public and private offerings, public takeover processes in the banking, telecommunications, construction, paper and media sectors, as well as in privatisations of Portuguese and foreign companies, and complex financing transactions.

Eduardo Paulino also participates in various inter-disciplinary teams working in domestic and cross-border M&A transactions, acting for both Portuguese and foreign clients.

PAUL PÉPORTÉ

Allen & Overy

Paul specialises in securities law and capital markets regulation, including stock exchange listings. He advises clients on the full spectrum of debt and equity transactions, including securitisation, structured products, covered bonds, IPOs, placements and buy-backs of securities, exchange offers, listing applications and ongoing obligations deriving from such listings. He also previously worked in the credit and rate markets department at JPMorgan in London before joining Allen & Overy. He regularly holds conferences on various capital markets-related topics in Luxembourg and abroad. Paul is a member of the Commercial Banking Cluster (with a focus on Luxembourg-covered bond banks) at the Luxembourg Bankers' association (ABBL). He also recently joined the ABBL working group on KIID and PRIIPs, which focuses on the EU Regulation on key information documents for packaged retail and insurance-based investment products, European market infrastructure (EMIR) and benchmark regulation. Paul is also a member of the group of experts of the association of Luxembourg insurers and reinsurers, focusing on the application of EMIR to Luxembourg life insurance companies. Paul is a member of the Financial Market Forum of the ABBL.

He is also an active member of Allen & Overy's fintech task force, supporting clients from established financial institutions, incumbents and start-ups in developing innovative products.

ALEXANDER RANG

Hengeler Mueller

Alexander has a broad capital markets practice advising issuers and banks, covering IPOs (including dual-track processes), capital raises, private placements and block trades, as well as equity-linked instruments, hybrid bonds and repurchase programmes. Alexander also advises financial institutions on regulatory matters, predominantly in capital market transactions that are driven by specific regulatory considerations, and in relation to the Single Supervisory Mechanism.

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SHARON ROSEN

Fischer Behar Chen Well Orion & Co

Sharon Rosen is a partner in FBC's corporate and securities department, and leads the firm's US capital markets practice. Ms Rosen's practice primarily focuses on international capital markets, private and public M&A transactions, with an emphasis on cross-border transactions, and general corporate advice. Ms Rosen provides ongoing corporate and securities law advice to Israeli companies publicly traded in the United States. Prior to joining FBC in 2011, Ms Rosen was a member of the corporate and securities department of a prominent law firm in New York, and a member of its Israeli practice group (2004–2011). Ms Rosen is a member of the Israel Bar and the New York State Bar.

MARTA RUBIO

Uría Menéndez

Marta Rubio joined Uría Menéndez in September 2014.

Her practice focuses on capital markets law, with experience in initial public offerings, and issues and offers of shares and bonds (including convertible bonds). She has also taken part in various tender offers and M&A transactions as well as in restructuring transactions involving private companies.

Marta regularly advises companies on corporate law and good governance matters and regulatory issues concerning securities law.

ÖKKEŞ ŞAHAN

Paksoy

Ökkeş Şahan is a counsel at Paksoy, specialising in securities law, capital market transactions, corporate governance and public company law. He practises in capital markets, acting for issuers and underwriters in equity-linked instruments in international public offerings, eurobond offerings and private placements.

Prior to joining Paksoy, Mr Şahan worked for almost 15 years at the Capital Markets Board of Turkey as legal counsel.

Mr Şahan is a graduate of Ankara University School of Law, and holds an LLM degree from the University of California, Davis. He is a member of the Istanbul Bar and holds the following licences: capital market activities (advanced level), derivative instruments, real estate appraiser, credit rating specialist, corporate governance rating specialist and independent auditing in capital markets.

NITZAN SANDOR

Fischer Behar Chen Well Orion & Co

Nitzan Sandor is a partner in FBC's corporate and securities department. Ms Sandor's practice concentrates on capital markets and M&A. Ms Sandor represents major Israeli public companies and dual-listed corporations on securities laws matters, and has represented issuers in several of Israel's largest securities offerings. Ms Sandor advises on cross-border capital markets and corporate transactions, and also advises clients in connection with regulatory reforms in corporate and securities laws, and in the regulation of investment companies. Ms Sandor is listed in *The Legal 500*, and has been listed as a 'leading lawyer' by *IFLR1000* and *Chambers Global*.

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CASPAR SCHMELZER

Hengeler Mueller

Caspar advises issuers, underwriters and selling shareholders on capital markets transactions, such as IPOs (structured as a public offer or private placement), rights offerings, secondary offerings and block trades, as well as the issuance of equity-linked securities and high-yield bonds. His practice also includes advising on M&A transactions, as well as on a broad range of securities and corporate law matters.

MILI SONI

Bowmans

Mili Soni is a senior associate in the corporate department of the firm's Johannesburg office and a member of the M&A, and equity capital markets practice. She is also an active member of the Fintech Service Line at Bowmans. She provides general corporate and commercial advice on a daily basis to domestic and foreign clients in various industries. She specialises in M&A, capital markets, and general corporate and commercial law. Her expertise extends to advising on private and public transactions, initial public offerings, listed company transactions and company law. She has conducted extensive research on the global position around cryptocurrencies and initial coin offerings, and advises clients on specialised matters in this niche fintech area. Mili has LLB and LLM degrees from the University of the Witwatersrand.

RACHANA TALATI

Trilegal

Rachana Talati is a senior associate in the capital markets team.

She has advised domestic and international clients on their investments in India, including offerings and private placements of equity securities. Her role has involved conducting due diligence, drafting, reviewing and negotiating transaction documents, and liaising with various regulatory authorities. She has advised in a variety of capital markets transactions, including initial public offerings, qualified institutional placements, preferential issues, rights issues, block trades and issuance of depositary receipts. She also has experience in private equity and has advised clients on investments in various sectors, including airline catering and cement.

Prior to joining Trilegal, she worked with Cyril Amarchand Mangaldas and Amarchand & Mangaldas Suresh A Shroff & Co for four years.

Rachana is an alumnus of the West Bengal National University of Juridical Sciences, Kolkata. She is a member of the Bar Council of Maharashtra and Goa, India.

NAZLI TÖNÜK ÇAPAN

Paksoy

Nazlı Tönük Çapan specialises in capital markets, Islamic finance, banking and finance, mergers and acquisitions, and corporate law.

Her capital markets experience has a specific focus on capital markets transactions, acting for corporate and financial institution issuers, underwriters and lead managers in cross-border and domestic debt and equity offerings, Islamic finance transactions and private placements.

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Ms Tönük Çapan also practises in issuance of warrants and investment funds, registration and deregistration of foreign investment funds, custody and clearing arrangements, structuring of foreign financial institutions in Turkey and capital markets regulatory matters.

Ms Tönük Çapan is also experienced in financial sector private mergers and acquisitions, particularly in IT and energy sectors, takeovers, loan and credit facilities, and other general corporate law-related matters.

SALLA TUOMINEN

DLA Piper

Salla Tuominen is a senior counsel at the corporate practice group of DLA Piper in Finland. Her practice includes capital markets, public takeovers, and other domestic and cross-border M&A transactions involving both public and private corporations. She is also experienced in advising on, and negotiating, venture capital and private equity transactions. Further, she has in-depth knowledge of corporate governance and compliance. Her capital markets-related experience encompasses listing projects, rights issues and public takeovers, and advising in, among others, insider administration, disclosure obligations and public company corporate governance-related issues. She also has experience of a wide variety of banking and finance work, and financial regulatory issues.

Salla Tuominen acts as the corporate secretary in marketing service provider and marketing automation company Avidly Plc, operating in the Nordic countries and listed on Nasdaq First North marketplace, operated by Nasdaq Helsinki.

Prior to joining DLA Piper Finland, she gained experience from other international law firms in Helsinki and from Nasdaq Helsinki, the operator of the Helsinki Stock Exchange.

ALFONSO VENTOSO

Uría Menéndez

Alfonso Ventoso joined Uría Menéndez in September 2002 and has been a partner since 2013. Prior to this, he amassed experience in real estate law and litigation, and worked in London in the insolvency department of a UK firm.

From January to July 2009, he was seconded to Davis Polk & Wardwell in New York, where he was assigned to the capital markets practice group as part of the firm's Foreign Temporary Associates Programme.

Alfonso's practice is focused mainly on equity capital markets (including listings and de-listings, public offerings and block trades), and on providing general advice to investment firms, banks and listed companies on the regulatory aspects relating to securities markets and corporate governance.

In addition, Alfonso advises on M&A transactions, spin-offs, takeover bids, and the sale and acquisition of private companies.

PHILIPPE A WEBER

Niederer Kraft Frey Ltd

Mr Weber is the managing partner of NKF. He often represents Swiss and international clients in some of the largest and most complex corporate M&A, capital markets and banking transactions in Switzerland.

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Mr Weber has vast experience in high-profile corporate M&A, capital markets and banking transactions. He also regularly advises companies, boards and other parties on takeover law, governance and compliance, and represents clients in such matters before regulators, including SIX, the Swiss Takeover Board, FINMA, the Swiss Financial Markets Supervisory Authority, and other Swiss and foreign regulators.

Mr Weber is distinguished as a top-tier banking and finance, capital markets, and corporate and M&A lawyer by *Chambers Global*, *IFLR1000* and *The Legal 500*. He is the co-editor of *CapLaw*, the Swiss capital markets law newsletter. He has authored an award-winning PhD study in international law, and various publications on Swiss corporate and securities law. He regularly lectures on these issues at professional conferences.

RYAN WESSELS

Bowmans

Ryan is a partner in the firm's M&A practice. He focuses primarily on M&A, equity capital markets, corporate finance and securities law. In the M&A arena, he has a wealth of experience in advising on all aspects of domestic and cross-border transactions, and has advised on significant public deals, private deals, black economic empowerment transactions and joint ventures. In the equity capital markets and corporate finance arena, Ryan has advised on several initial public offerings, rights offers and equity placings. In 2008, he completed a seven-month secondment at Deutsche Bank AG, and from 2012 to 2013 he practised at premier US law firm Cravath, Swaine & Moore LLP. Ryan has been recognised as 'highly regarded' and a 'leading lawyer' by the *IFLR1000* for his M&A and equity capital markets expertise.

UN I WONG

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Un I Wong joined the firm in September 2017. She is a member of the corporate, M&A and capital markets team.

Un did an internship at DECO (2016), as well as a summer internship at the office of Dr José Chui Sai Peng, member of the Legislative Assembly (Macau, 2014).

She is also the president of the general assembly of the Luso-Macaense Students' Association, vice president of the general meeting of the Portugal-China Young Entrepreneurs Association and the executive vice president of the Direction Board of Macau Youth Summit.

Un was awarded special merit-based scholarships to study in Portugal by the government of Macau and the Macau Foundation.

WU ZHAOQI

Allen & Gledhill LLP

Zhaoqi's areas of practice encompass equity and debt capital markets, and general corporate and compliance advisory work for Singapore-listed companies.

She has advised issuers and underwriters in capital markets transactions, including initial public offerings of companies and business trusts, rights issues of equity, debt and warrants, placements, establishment of debt issuance programmes and offerings of straight debt, retail bonds, convertible or exchangeable securities, and perpetual securities. She also advises issuers on post-listing regulatory and compliance matters.

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Significant transactions she advised on include the S$1.39 billion IPO of Asian Pay Television Trust (the first pay-TV trust listed on the Singapore Exchange); the concurrent issue by OUE Limited of S$304.7 million convertible bonds and exchangeable bonds (the first concurrent equity-linked issuance by a Singapore company); the preferential offering of senior secured notes with detachable warrants by KrisEnergy Ltd (the first offer to shareholders of secured notes with warrants by a Singapore-listed company) and the issue of S$500 million retail notes guaranteed by Temasek Holdings (Private) Limited.

Zhaoqi was called to the Singapore Bar in 2009 and joined Allen & Gledhill the same year. She was seconded to the London office of Linklaters LLP in 2010–2011.

CHEN YANG

Han Kun Law Offices

Ms Chen's practice focuses on capital markets, mergers and acquisitions, and venture capital and private equity. She has helped clients establish company structures, conduct due diligence investigations and draft related legal documents. Ms Chen has represented many Chinese and international clients in a wide variety of cross-border transactions in different industries such as TMT, education, real estate and energy.

DAVID YUILL

Bowmans

David Yuill is a partner in the corporate department of the firm's Johannesburg office. He specialises in M&A, capital markets, and general corporate and commercial law. He provides regulatory advice in the field of black economic empowerment transactions and advises on asset disposals and unbundling of shareholdings. In the capital markets area, he advises as the executive partner on listings and secondary offerings. He has BA and LLB degrees from Stellenbosch University, and a BCL from the University of Oxford.

ZHI BIN

Han Kun Law Offices

Mr Zhi specialises in Chinese and non-Chinese listings, restructuring and reorganisation, mergers and acquisitions, venture capital and private equity, and foreign direct investment. He applies his knowledge of, and experience with, Chinese industry policy to assist clients in capital operations, financial planning, investment and project management. His clients include large state-owned enterprises and commercial banks, multinational corporations and leading high-growth enterprises. His practice covers a wide range of industrial sectors such as banking, insurance, infrastructure, construction, mining, energy, healthcare, biotechnology and pharmaceuticals.

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Appendix 2

CONTRIBUTORS' CONTACT DETAILS

A&L GOODBODY

International Financial Services Centre
North Wall Quay
Dublin 1, D01H104
Ireland
Tel: +353 1 649 2000
Fax: +353 1 649 2649
mcole@algoodbody
sdoggett@algoodbody.com
www.algoodbody.com

ALLEN & GLEDHILL LLP

One Marina Boulevard #28-00
Singapore 018989
Tel: +65 6890 7712 / 7720
Fax: +65 6302 3188 / 3152
tan.tzegay@allenandgledhill.com
wu.zhaoqi@allenandgledhill.com
www.allenandgledhill.com

ALLEN & OVERY

33 avenue John F Kennedy
1855 Luxembourg
Luxembourg
Tel: +352 44 44 55 1
Fax: +352 44 44 55 222
frank.mausen@allenovery.com
paul.peporte@allenovery.com
www.allenovery.com

BOWMANS

11 Alice Lane
Sandton
Johannesburg
South Africa
Tel: +27 11 669 9320 / 9415 / 9479 / 9225
Fax: +27 11 669 9001
ezra.davids@bowmanslaw.com
david.yuill@bowmanslaw.com
ryan.wessels@bowmanslaw.com
mili.soni@bowmanslaw.com
www.bowmanslaw.com

CHIOMENTI

Via XXIV Maggio 43
00187 Rome
Italy
Tel: +39 6 466221
Fax: +39 6 46622600
enrico.giordano@chiomenti.net
federico.amoroso@chiomenti.net
www.chiomenti.net

DLA PIPER

Fabianinkatu 23
00130 Helsinki
Finland
Tel: +358 40 575 1547
Fax: +358 9 4176 0417
salla.tuominen@dlapiper.com
www.dlapiper.com

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FISCHER BEHAR CHEN WELL ORION & CO

3 Daniel Frisch Street
Tel Aviv, 6473104
Israel
Tel: +972 3 694 4111
Fax: +972 3 609 1116
nsandor@fbclawyers.com
srosen@fbclawyers.com
www.fbclawyers.com

HAN KUN LAW OFFICES

9/F, Office Tower C1
Oriental Plaza
No. 1 East Chang An Ave
Beijing 100738
China
Tel: +86 10 8525 5500
Fax: +86 10 8525 5511 / 5522
yang.chen@hankunlaw.com
bin.zhi@hankunlaw.com
www.hankunlaw.com

HENGELER MUELLER

Bockenheimer Landstr. 24
60323 Frankfurt am Main
Germany
Tel: +49 69 17095 0
Fax: +49 69 17095 099
alexander.rang@hengeler.com
caspar.schmelzer@hengeler.com
www.hengeler.com

LATHAM & WATKINS

45, rue Saint-Dominique
Paris 75007
France
Tel: +33 1 4062 2008 / 2187
Fax: +33 1 4062 2062
thomas.margenet-baudry@lw.com
jemma.mcpherson@lw.com
www.lw.com

MAPLES GROUP

Ugland House
South Church Street
PO Box 309
George Town
Grand Cayman
KY1-1104
Cayman Islands
Tel: +1 345 814 5434 / 5190
Fax: +1 345 949 8080
suzanne.correy@maples.com
finn.ohegarty@maples.com
www.maples.com

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

Alameda Joaquim Eugênio de Lima, 447
01403-001 São Paulo, SP
Brazil
Tel: +55 11 3147 7600
jarakawa@mattosfilho.com.br
www.mattosfilho.com.br

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

Rua Castilho, 165
1070-050 Lisbon
Portugal
Tel: +351 213 817 400 / 826 603
Fax: +351 213 826 629
epaulino@mlgts.pt
mtgama@mlgts.pt
uiwong@mlgts.pt
www.mlgts.pt

NIEDERER KRAFT FREY LTD

Bahnhofstrasse 53
8001 Zurich
Switzerland
Tel: +41 58 800 8000
Fax: +41 58 800 8080
philippe.a.weber@nkf.ch
thomas.m.broennimann@nkf.ch
christina.delvecchio@nkf.ch
www.nkf.ch

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PAKSOY

Orjin Maslak
Eski Büyükdere Caddesi
No:27 K:11 Maslak 34485
Istanbul
Turkey
Tel: +90 212 366 47 00
ocollak@paksoy.av.tr
osahan@paksoy.av.tr
ntcapan@paksoy.av.tr
www.paksoy.av.tr

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

4 Times Square
New York
New York 10036
United States
Tel: +1 212 735 3000
Fax: +1 212 735 2000
david.goldschmidt@skadden.com
www.skadden.com

TRILEGAL

Peninsula Business Park
17th Floor, Tower B
Ganpat Rao Kadam Marg
Lower Parel (West)
Mumbai 400 013
India
Tel: +91 22 4079 1000
Fax: +91 22 4079 1098
bhakta.patnaik@trilegal.com
rachana.talati@trilegal.com
www.trilegal.com

URÍA MENÉNDEZ

C/Príncipe de Vergara 187
Plaza de Rodrigo
Uría
28002 Madrid
Spain
Tel: +34 915 860 400
Fax: +34 915 860 403
alfonso.ventoso@uria.com
marta.rubio@uria.com
www.uria.com

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For more information, please contact info@thelawreviews.co.uk

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Marc Hanrahan
Milbank Tweed Hadley & McCloy LLP

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Mark F Mendelsohn
Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Paul Dickson
Slaughter and May

THE ASSET TRACING AND RECOVERY REVIEW
Robert Hunter
Edmonds Marshall McMahon Ltd

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Sean Gates
Gates Aviation LLP

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Christa Band
Linklaters LLP

THE BANKING REGULATION REVIEW
Jan Putnis
Slaughter and May

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John Buretta and John Terzaken
Cravath Swaine & Moore LLP and Simpson Thacher & Bartlett LLP

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Richard Swallow
Slaughter and May

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Steven M Bierman
Sidley Austin LLP

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Rick Fischer, Obrea Poindexter and Jeremy Mandell
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Willem J L Calkoen
NautaDutilh

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Magrath LLP

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Damian Taylor
Slaughter and May

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Maurits J F M Dolmans and Henry Mostyn
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Covington & Burling LLP

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Arthur Kohn and Janet Cooper
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Thomas A Frick
Niederer Kraft & Frey Ltd

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Calvin S Goldman QC
Goodmans LLP

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Mark Abell
Bird & Bird LLP

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Carl Rohsler
Memery Crystal

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Errol Soriano
Duff & Phelps

THE GOVERNMENT PROCUREMENT REVIEW
Jonathan Davey and Amy Gatenby
Addleshaw Goddard LLP

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Sarah Ellson
Fieldfisher LLP

THE INITIAL PUBLIC OFFERINGS LAW REVIEW
David J Goldschmidt
Skadden, Arps, Slate, Meagher & Flom LLP

THE INSOLVENCY REVIEW
Donald S Bernstein
Davis Polk & Wardwell LLP

THE INSURANCE AND REINSURANCE LAW REVIEW
Peter Rogan
Ince & Co

THE INSURANCE DISPUTES LAW REVIEW
Joanna Page
Allen & Overy LLP

THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW
Thomas Vinje
Clifford Chance LLP

THE INTELLECTUAL PROPERTY REVIEW
Dominick A Conde
Fitzpatrick, Cella, Harper & Scinto

THE INTERNATIONAL ARBITRATION REVIEW
James H Carter
Wilmer Cutler Pickering Hale and Dorr

THE INTERNATIONAL CAPITAL MARKETS REVIEW
Jeffrey Golden
P.R.I.M.E. Finance Foundation

THE INTERNATIONAL INVESTIGATIONS REVIEW
Nicolas Bourtin
Sullivan & Cromwell LLP

THE INTERNATIONAL TRADE LAW REVIEW
Folkert Graafsma and Joris Cornelis
Vermulst Verhaeghe Graafsma & Bronckers (VVGB)

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Barton Legum
Dentons

THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW
Tim Sanders
Skadden, Arps, Slate, Meagher & Flom LLP

THE ISLAMIC FINANCE AND MARKETS LAW REVIEW
John Dewar and Munib Hussain
Milbank Tweed Hadley & McCloy LLP

THE LABOUR AND EMPLOYMENT DISPUTES REVIEW
Nicholas Robertson
Mayer Brown

THE LENDING AND SECURED FINANCE REVIEW
Azadeh Nassiri
Slaughter and May

THE LIFE SCIENCES LAW REVIEW
Richard Kingham
Covington & Burling LLP

THE MERGER CONTROL REVIEW
Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz

THE MERGERS AND ACQUISITIONS REVIEW
Mark Zerdin
Slaughter and May

THE MINING LAW REVIEW
Erik Richer La Flèche
Stikeman Elliott LLP

THE OIL AND GAS LAW REVIEW
Christopher B Strong
Vinson & Elkins LLP

THE PATENT LITIGATION LAW REVIEW
Trevor Cook
WilmerHale

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
Alan Charles Raul
Sidley Austin LLP

THE PRIVATE COMPETITION ENFORCEMENT REVIEW
Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz

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Stephen L Ritchie
Kirkland & Ellis LLP

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John Riches
RMW Law LLP

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Chilton Davis Varner and Madison Kitchens
King & Spalding LLP

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Nick Bird
Reynolds Porter Chamberlain LLP

THE PROJECTS AND CONSTRUCTION REVIEW
Júlio César Bueno
Pinheiro Neto Advogados

THE PUBLIC COMPETITION ENFORCEMENT REVIEW
Aidan Synnott
Paul, Weiss, Rifkind, Wharton & Garrison LLP

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW
Bruno Werneck and Mário Saadi
Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados

THE REAL ESTATE LAW REVIEW
John Nevin
Slaughter and May

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Adam Emmerich and Robin Panovka
Wachtell, Lipton, Rosen & Katz

THE RENEWABLE ENERGY LAW REVIEW
Karen B Wong
Milbank

THE RESTRUCTURING REVIEW
Christopher Mallon
Skadden, Arps, Slate, Meagher & Flom LLP

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William Savitt
Wachtell, Lipton, Rosen & Katz

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Francis J Aquila
Sullivan & Cromwell LLP

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HFW

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András Gurovits
Niederer Kraft & Frey Ltd

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Simon Whitehead
Joseph Hage Aaronson LLP

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John P Janka
Latham & Watkins

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Leslie Perrin
Calunius Capital LLP

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Sidley Austin LLP

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